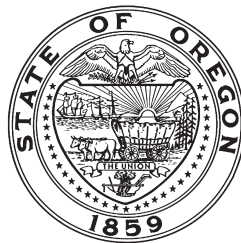


OREGON BULLETIN

Supplements the 2007 *Oregon Administrative Rules Compilation*

Volume 46, No. 5
May 1, 2007

For March 16, 2007–April 13, 2007



Published by
BILL BRADBURY
Secretary of State
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INFORMATION AND PUBLICATION SCHEDULE

General Information

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

Background on Oregon Administrative Rules

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

How to Cite

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

Understanding an Administrative Rule’s “History”

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

Locating the Most Recent Version of an Administrative Rule

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

Locating Administrative Rules Unit Publications

The *Oregon Administrative Rules Compilation* and the *Oregon Bulletin* are available in electronic and printed formats. Electronic versions are available through the Oregon State Archives Website at <http://arcweb.sos.state.or.us>. Printed copies of these publications are deposited in Oregon’s Public Documents Depository Libraries listed in OAR 543-070-0000 and may be ordered by contacting: Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, OR 97310, (503) 373-0701, 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. 07-04

STATEWIDE CHILDREN'S WRAPAROUND PROJECT

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

Oregon children's healthy social and emotional development is critical to their success in school and in life. In the case of young children, services that support their healthy social and emotional development can reduce the prevalence of developmental and behavioral disorders that have high costs and long-term consequences for health, education, child welfare and the juvenile justice systems. In the case of children who develop emotional, behavioral or substance abuse related needs, they and their families frequently need services from multiple child serving agencies. Integration and coordination of those services can improve outcomes for youth and their families, reduce duplication and gaps in services, and avoid the most expensive, out-of-home placements in foster care or the juvenile justice system.

Oregon state agencies have worked independently for years to improve behavioral health services for children within their own systems. However, children and families who would benefit from specialized services and supports from multiple agencies often experience a lack of coordination and integration in service planning and delivery. Tragically, some Oregon families with children in need of the most intensive services are forced to place their children out of their own homes into residential or other home placements in order to access those services and meet their children's needs.

The time has come for Oregon to develop a statewide, integrated system of care for children at risk of developing, or who have already developed, significant emotional, behavioral or substance abuse related needs and their families.

A system of care is a coordinated, comprehensive, culturally competent network of community-based behavioral health services and supports that is organized to:

- Provide services and supports as early as possible so that children can be successful in their homes, schools and communities — reducing the number of children and youth with significant emotional, behavioral or substance abuse related needs who enter foster care or penetrate the juvenile justice system and improving school outcomes for children and youth with significant emotional, behavioral or substance abuse related needs;
- To the greatest extent possible, make services available based on the individual needs of the child and family, rather than on system requirements;
- Increase the self-determination of children and families in designing individualized, community-based services and supports; and
- Maximize the resources available to serve children and families across systems in order to increase the number of children and youth who have access to appropriate behavioral health services and other needed supports.

Both national and local experience support the effectiveness of systems of care in meeting the emotional, behavioral or substance abuse needs of children, youth and families. Among others, key outcomes include improved and/or stabilized emotional and behavioral health, reduced arrests and placements in juvenile detention and other secure facilities, and improved school attendance and achievement.

THEREFORE, IT IS HEREBY ORDERED AND DIRECTED:

1. The Statewide Children's Wraparound Project Steering Committee is established.
2. The Steering Committee shall develop a strategic plan for statewide implementation of a system of care approach to the delivery of behavioral health services and supports for children, youth and families. To that end, the Steering Committee shall:
 - Identify and agree on a common vision and goals for improving services and overcoming barriers to providing coordinated, culturally competent behavioral health services and supports to children, youth and families;
 - Develop and document strategies to better utilize shared system resources, improve cross-agency service coordination at the state and local levels, and improve outcomes for children, youth and families; and
 - Develop a written, multi-year action plan for implementation of those strategies including, if necessary, recommendations relating to policy and statutory changes and/or requests for federal waivers.
3. The Steering Committee shall prioritize in its planning efforts the development of a comprehensive, strategic financing plan that identifies current spending and utilization patterns across agencies at the state level and makes recommendations about the potential for better coordination of resources across systems, the maximization of federal resources available to the State, and ensuring a locus of accountability for services and the resources that support them.
4. The Steering Committee shall also prioritize in its planning efforts the development of recommendations relating to the implementation of systems of care at the local level, taking into account the challenges of behavioral health service delivery that are unique to both urban and rural communities across the state.
5. The Steering Committee's planning efforts shall focus on behavioral health services for children and youth ages 0-18, but in so doing, the Steering Committee may also identify for future study and consideration issues relating to behavioral health services for youth ages 19-24.
6. In all of its work, the Steering Committee shall take into consideration lessons learned in other states and from Oregon system of care projects that have been initiated at the local level.
7. The Steering Committee shall consist of the following members,
 - (a) The Director of the Department of Human Services, or a designee with decision making authority;
 - (b) The Superintendent of Public Instruction, or a designee with decision making authority;
 - (c) The Director of the Oregon Youth Authority, or a designee with decision making authority;
 - (d) The Director of the Oregon Commission on Children and Families, or a designee with decision making authority;
 - (e) A representative from the Governor's Office;
 - (f) Eight individuals appointed by the Governor, consisting of:
 - (A) Two family members: One family member with a child who has received behavioral health services from at least two child and family serving agencies, and one family member with a child who has co-occurring mental health and developmental disability;

EXECUTIVE ORDERS

(B) Two young people who have been the recipients of behavioral health services;

(C) Two behavioral health service providers with experience serving children or youth with significant emotional, behavioral or substance abuse related needs;

(D) A representative from a local school district or Education Service District with experience in meeting the special education needs of children, youth and families;

(E) A representative with experience working with pre-school-aged children (ages 0–5) and their families in a child care and/or Oregon Pre-K/Head Start program;

(F) Two representatives with experience developing and implementing a local systems of care model in Oregon; and

(g) In addition, the Speaker of the House of Representatives and the Senate President will each be invited to appoint a House and Senate member to the Steering Committee.

8. The Steering Committee will be staffed by the Statewide Children's Wraparound Project Manager. Through September, 2007, that position will be supported by federal funds already approved for this initiative. Discussion may be had about extending the work of the Steering Committee beyond September 2007 if necessary.

9. In the course of its work, if the Steering Committee requires the assistance of any other executive branch agency of the State not named in this order, then such agency shall provide that assistance to the Steering Committee upon request.

10. The Governor will appoint a chair for the Steering Committee. The chair shall work with the Statewide Children's Wraparound Project Manager to establish an agenda for the Steering

Committee, appoint subcommittees as needed, and provide leadership and direction to the Steering Committee.

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

12. To facilitate meaningful participation by family members, the Statewide Children's Wraparound Project Manager may provide compensation to the family member representatives who participate in the Steering Committee's efforts. Otherwise, the members of the Steering Committee shall not be entitled to the reimbursement of expenses or to the per diem provided in ORS 292.495.

13. The Steering Committee shall provide its initial recommendations to the Governor's Office no later than September 30, 2007. Final recommendations should be compiled in a report to the Governor and the Legislature no later than December 31, 2007, in time for consideration as part of state agency legislative and budget development for the 2009–11 biennium.

14. This Order expires on December 31, 2008.

Done at Salem, Oregon this 27th day of March, 2007.

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

ATTEST

/s/ Bill Bradbury
Bill Bradbury
SECRETARY OF STATE

OTHER NOTICES

CHANCE TO COMMENT ON... IMPLEMENTATION OF CLEANUP DECISION AND PROPOSED CONDITIONAL NO FURTHER ACTION (CNFA) DETERMINATION FOR THE KITTRIDGE DISTRIBUTION CENTER, PORTLAND, OREGON

COMMENTS DUE: June 1, 2007

PROJECT LOCATION: 4959 NW Front Avenue, Portland, Oregon.

PROPOSAL: Pursuant to Oregon Revised Statute, ORS 465.320, and Oregon Administrative Rules, OAR 340-122-100, the Department of Environmental Quality (DEQ) invites public comment on its proposal to approve the remedy implemented at the Kittridge Distribution Center site in Portland, Oregon and issue a Conditional No Further Action (CNFA) decision.

HIGHLIGHTS: DEQ provided public notice on December 1, 2006 of its proposed remedial action at the Kittridge Distribution Center. No comments were received. DEQ subsequently selected the proposed remedy, which is outlined in the January 25, 2007 Record of Decision (ROD).

The selected remedy required:

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

Schnitzer Investment Corp. completed the remedy implementation. On March 13, 2007 the E&ES was recorded with Multnomah County. DEQ has a copy of the recorded document.

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

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

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

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

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

PROPOSED CLEANUP APPROVAL AND REMOVAL OF THE SITE FROM THE CRL AND INVENTORY THE GARY DAVIS TRUCKING SITE CLACKAMAS, OREGON

COMMENTS DUE: May 31, 2007

PROJECT LOCATION: 16795 SE Evelyn Street, Clackamas, Oregon

PROPOSAL: The Oregon Department of Environmental Quality (DEQ) proposes approval of the cleanup of petroleum-contaminated soil and chromium impacted storm drain sediment, and removal of the site from the Confirmed Release List (CRL) and Inventory of Hazardous Substance Sites.

HIGHLIGHTS: The site property is located in Clackamas approximately 100 feet east of Cow Creek, a tributary of the Clackamas River. The site is used as a truck dispatch and diesel truck maintenance facility. In June 2005 the site owner entered into an agreement with DEQ to address a 1999 release of diesel fuel from an above-ground storage tank (AST). The spill resulted in the impacts to the storm drain system along Evelyn Street, a sheen on Cow Creek, and localized soil contamination. The majority of the most highly contaminated soil was removed in March 2005.

Elevated chromium concentrations were detected in catch basin sediments and samples collected from the parking lot northeast of the shop. Slag fill was identified as the chromium source. Further storm water system evaluation conducted following implementation of storm water best management practices (BMPs) indicated chromium levels were protective of wildlife in Cow Creek. DEQ's proposed NFA requires continued implementation of BMPs to prevent transport of chromium-contaminated sediments to Cow Creek. The BMPs and their documentation standards will be incorporated into their site storm water pollution control plan.

HOW TO COMMENT: The staff memorandum and other files will be available for public review beginning Sunday, April 1, 2007. To schedule an appointment to review the site files call Dawn Weinberger at (503) 229-6729. The DEQ project manager is Mark Pugh (503) 229-5587. Written comments should be sent to the project manager at the Department of Environmental Quality, Northwest Region, 2020 SW 4th Ave., Suite 400, Portland, OR 97201 by Tuesday, May 1, 2007. A public meeting will be held to receive verbal comments if requested by 10 or more people or by a group with a membership of 10 or more.

THE NEXT STEP: DEQ will consider all public comments and DEQ's Northwest Region Cleanup Manager will make and publish the final decision after consideration of these comments.

PROPOSED APPROVAL OF CLEANUP AT TEXACO SERVICE STATION (FORMER) ONTARIO, OREGON

COMMENTS DUE: May 31, 2007

PROJECT LOCATION: 795 Tapadera Avenue, Ontario, Oregon

PROPOSAL: The Department of Environmental Quality is proposing to issue a "Conditional No Further Action" (NFA) determination based on results of site investigation and remedial activities performed at the former Texaco Service Station located at 795 Tapadera Avenue in Ontario, Oregon. The site will remain on the Confirmed Release List and Inventory of Hazardous Substances.

HIGHLIGHTS: The Voluntary Cleanup Program has reviewed site assessment and remedial activities performed at the site. The site is located at 795 Tapadera Avenue in Ontario, Oregon. The former petroleum service station was operational for seven years from 1972 to 1979. The underground storage tanks were removed in June 1979. The site was redeveloped into a Dairy Queen Restaurant. Multiple site assessments and remedial actions have been performed since the initial release was identified in 1992. Soil and groundwater were impacted by petroleum products.

A risk based evaluation according to DEQ's "Risk-Based Decision Making for the Remediation of Petroleum-Contaminated Sites" guidance was performed. Residual contamination remains on portions of the site, Goodfellow Street, and Denny's Restaurant property. Based on the evaluation, the site is proposed for a risk-based closure and issuance of a Conditional NFA determination following the recording of a deed restriction on the site. The proposed Conditional NFA is documented in the "Proposed Remedial Action" memo dated

OTHER NOTICES

April 4, 2007. DEQ will consider all public comments received before issuing the NFA determination.

HOW TO COMMENT: The project file may be reviewed by appointment at DEQ's Eastern Regional Office at 700 SE Emigrant, Suite #330, Pendleton, OR 97801. To schedule an appointment to review the file or to ask questions, please contact Katie Robertson at (541) 278-4620. Written comments should be received by May 31, 2007 and sent to Katie Robertson, Project Manager, at the address listed above.

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

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

CHANCE TO COMMENT ON...

PROPOSED PARTIAL (UPLANDS) NO FURTHER ACTION DETERMINATION FOR THE MULFLUR FAMILY, LLC PROPERTY, PORTLAND, OREGON

COMMENTS DUE: June 1, 2007

PROJECT LOCATION: 9414 NE Vancouver Way, Portland, Oregon.

PROPOSAL: Pursuant to Oregon Revised Statute, ORS 465.320, and Oregon Administrative Rules, OAR 340-122-100, the Department of Environmental Quality (DEQ) invites public comment on its proposal to approve a partial no further action determination (NFA) at the Mulflur Family LLC property in Portland, Oregon.

HIGHLIGHTS: DEQ has reviewed several site investigations and remedial action reports for this 13.2-acre site in northeast Portland. Site assessments and investigations identified areas of the property with moderate levels of petroleum contaminated soil caused as part of the site's past operations as a truck and shipping container maintenance facility. Site sampling investigations were also performed to evaluate the area of the property where an above-ground storage tank (AST) had been located, which was adjacent to a former underground storage tank (UST) cleanup area.

Removal and remedial actions taken at the site are as follows:

- In August of 1988, two USTs — a 3,000-gallon gasoline UST and a 6,000-gallon diesel UST were removed. Additional soil removal was performed and the DEQ UST program approved the cleanup on October 14, 1988;
- In February of 2005, approximately 167 tons of contaminated soil was removed from 5 separate areas on the property;
- Additional site investigation was commissioned by Mulflur in June and July of 2006 in the five removal areas to verify that those prior actions had adequately eliminated contamination;

Based on the work performed by Mulflur and the confirmation sampling performed in 2006, DEQ is prepared to issue a partial NFA for the uplands area of the site. The east side of the property is bordered by a drainage-way that is a tributary to the Columbia Slough. There has not been adequate characterization of the drainage-way to determine if it has been impacted by runoff from the site.

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

Summaries of site information can be found on the internet in DEQ's on-line Environmental Cleanup Site Information (ECSI) data-

base (<http://www.deq.state.or.us/wmc/ecsi/ecsiquery.htm>). The Mulflur Family LLC property is listed as ECSI # 4767.

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

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

PUBLIC COMMENT PERIOD NOTICE OF NO FURTHER ACTION REQUIRED BOISE CASCADE MILL — SALEM 315 COMMERCIAL STREET, SE, SALEM, OREGON

COMMENTS DUE: May 31, 2007

PROJECT LOCATION: Boise Cascade Mill — Salem, 315 Commercial Street, SE, Salem, Oregon

PROPOSAL: As required by ORS 465.320, the Department of Environmental Quality (DEQ) invites public comment on the proposed 'No Further Action' determination for the Boise Cascade Mill in Salem, Oregon. This determination applies to the 13-acre property located in downtown Salem, where the Boise Cascade Converting Plant currently operates. This determination does not include the Salem River Front Park, previously owned by Boise Cascade, or the Minto-Brown Island properties currently owned by Boise Cascade.

HIGHLIGHTS: Boise Cascade used the site since 1962 and operated a sulfite pulp and paper mill from 1962 through the early 1980's. Since the mid 1980's the site has been used as a paper converting facility. The northwest portion of the property is used as truck parking lot and the western portion of the site is not currently used. The property is currently on the market and site development is likely in the near future.

Soil and groundwater tests were performed throughout the property. Forty-seven soil samples were collected from borings (20 at 0-3ft bgs and 27 at 4-26 ft bgs) drilled at the site. Eleven groundwater samples were collected from various locations at the site. Soil and groundwater samples were collected where former mill process areas were identified, including a Bunker C petroleum tank, former pulp mill/bleach plant area, transformer area, former mill area/current truck lot, potential upgradient contamination sources, and an undeveloped southern portion of property.

The results of the investigation indicate: (1) there are no current or potential future unacceptable risks to humans or wildlife from chemical constituents that were detected in soil or groundwater; (2) the extent of the chemicals remaining in soil and groundwater was adequately defined; (3) bunker C petroleum is present at the groundwater-soil interface and has spread within a 25ft radius of the tank, but it is not likely that excavation would disturb this contamination given its depth (25-27feet); and (4) Boise adequately demonstrated that petroleum-derived chemicals have not migrated to surface waters and are not likely to migrate in the future.

HOW TO COMMENT: The DEQ staff report on this determination will be available for public review on the project website (<http://www.deq.state.or.us/lq/cu/wr/BoiseCascade/index.htm>) and at the DEQ Western Region Office in Eugene beginning May 1, 2007. To schedule an appointment to review files in DEQ's Eugene office, call (541) 686-7838. The DEQ Project Manager is Angie Obery (541) 687-7464. Written comments should be sent to the Project Manager at the DEQ, Western Region, 1102 Lincoln St., Suite 210, Eugene, OR 97401. Comments must be received by May 31, 2007.

A public meeting to answer questions and receive comments on the determination will be held during the public comment period.

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

OTHER NOTICES

NO FURTHER ACTION DETERMINATION BEND TRAP CLUB – AREA 4 NORTH BEND, OREGON

COMMENT PERIOD: May 1–30, 2007

PROJECT LOCATION: 61400 Brosterhous Road., Bend, OR 97701

PROPOSAL: Pursuant to Oregon Revised Statute ORS 465.320 and Oregon Administrative Rules OAR 340-122-100, the Department of Environmental Quality (DEQ) is proposing approval of a cleanup conducted at the Area 4 North site, which is part of the former Bend Trap Club site located at 61400 Brosterhous Road in Bend, Oregon.

HIGHLIGHTS: Since November 2005, DEQ has been providing oversight under a Voluntary Cleanup Agreement to investigate the Bend Trap Club, formerly used as a skeet shooting range since 1932. The approximately 40-acre site property is slated to be redeveloped into residential uses. Investigation and cleanup have been completed on the Area 4 North portion of the site, which was the least impacted from shooting activities.

A Record of Decision (ROD) for the Bend Trap Club site was approved by DEQ in August 2006 for the cleanup of shallow soil containing lead from lead shot and polynuclear aromatic hydrocarbons (PAHs), primarily from clay pigeon fragments (CPF). The primary contaminant of concern at Area 4 North was limited to lead.

A Remedial Action completed in September 2006 removed all the lead from the Area 4 North portion and subsequent sampling of the Area 4 North property, indicates that it meets DEQ's residential human health and ecological risk based cleanup goals.

The project documents are available for review at DEQ's Bend office, 300 SE Reed Market Road. Office hours are 8 a.m. to noon and 1 to 5 p.m., Monday through Friday, (541) 388-6146. Questions or concerns regarding DEQ's decision should be addressed to the DEQ project manager, David Anderson at 541-388-6146 x258 or via e-mail at anderson.david@deq.state.or.us

A CHANCE TO COMMENT ON A PROPOSED PROSPECTIVE PURCHASER AGREEMENT FOR THE FORMER PORTLAND CLEANING WORKS FACILITY IN PORTLAND, OREGON

COMMENTS DUE: May 31, 2007

PROJECT LOCATION: 3954 North Williams Avenue, Portland, Oregon

PROPOSAL: The Department of Environmental Quality (DEQ) is proposing to enter into a Prospective Purchaser Agreement (PPA) with North Portland Investments, LLC for certain real property located at 3954 North Williams Avenue Portland, Oregon (Former Portland Cleaning Works Property).

HIGHLIGHTS: Soil at the site has been contaminated by chemicals historically used in dry cleaning operations. Environmental investigations have identified perchloroethylene (PCE) and associated breakdown products, and petroleum hydrocarbons from petroleum-based solvents (e.g. Stoddard Solvent). Soil gas samples

collected beneath the building indicate potential for on-site occupational exposure levels exceeding acceptable DEQ risk-based concentrations. Site-related contaminants have been detected on adjacent residential properties. However, vapor transport modeling results indicate off-site soil vapors do not pose a significant risk to adjacent residents. North Portland Investments, LLC is a prospective purchaser of the site and it had no role in causing or contributing to the soil contamination discovered at the site.

The Prospective Purchaser Agreement will require North Portland Investments, LLC to implement certain agreed-upon remedial measures to address contamination on the subject lots at the Property. Those measures may include four components: (1) Paving the unpaved portions of the building foundation and sealing the remaining foundation joints and gaps, (2) Adjusting the HVAC system, (3) Designing and installing a sub-slab depressurization system with the potential for activation by adding an exhaust fan or blower, and (4) Collecting and testing soil gas and/or indoor air samples to determine the effectiveness of each remedial action component. The purpose of the proposed remedial action is to prevent contaminated soil gas from reaching potential on-site occupational and off-site residential receptors.

DEQ's Prospective Purchaser Program was created in 1995 through amendments to the state's Environmental Cleanup Law. The Prospective Purchaser Agreement is a tool that facilitates the cleanup of contaminated property and encourages property transactions that would otherwise not likely occur because of the liabilities associated with purchasing a property with existing contamination. DEQ has approved over 90 Prospective Purchaser Agreements throughout the State since the program began.

The proposed Prospective Purchaser Agreement will provide North Portland Investments, LLC with a release from liability for claims by the State of Oregon under ORS 465.255 relating to historical releases of hazardous substances at or from the site. DEQ otherwise retains all existing rights it may have as to other parties who may be potentially liable for the releases.

HOW TO COMMENT: Written comments concerning the proposed Prospective Purchaser Agreement should be sent to Charlie Landman at DEQ Headquarters, 811 SW 6th Avenue, Portland, Oregon 97204. Comments must be received by DEQ by 5:00 pm May 31, 2007. Questions may be directed to Mr. Landman at that address or by calling (503) 229-6461. The proposed Prospective Purchaser Agreement and the proposed vapor mitigation statement of work, and other DEQ project file documents may be reviewed, by appointment, at DEQ's Northwest Region Office, 2020 SW Fourth Avenue, Suite 400, Portland, Oregon 97201. To schedule an appointment, call Ms. Dawn Weinberger at (503) 229-6729.

Upon written request by ten or more persons, or by a group having ten or more members, a public meeting will be held to receive verbal comments on the proposed Prospective Purchaser Agreement.

THE NEXT STEP: DEQ will consider all public comments. A final decision concerning the proposed Prospective Purchaser Agreement will be made after consideration of public comments.

NOTICES OF PROPOSED RULEMAKING

Notices of Proposed Rulemaking and Proposed Rulemaking Hearings

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

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

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

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

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

**Board of Geologist Examiners
Chapter 809**

Rule Caption: The Board will adopt the biennial budget for 2007-09 and will increase numerous fees.

Date:	Time:	Location:
6-1-07	8:30 a.m.	Conference Rm. 1193 Royvonne Ave. SE Salem, OR 97302

Hearing Officer: Susanna Knight

Stat. Auth.: ORS 182.462, 182.466, 670.310, 672.705

Stats. Implemented: ORS 672.705, 182.462

Proposed Amendments: 809-010-0001, 809-010-0025

Last Date for Comment: 6-1-07, 5 p.m.

Summary: The Board will adopt the 2007-09 biennial budget with a spending limitation of \$467,915. The Board will also increase numerous fees including the following: annual renewal fees of Registered Geologists, Certified Engineering Geologist, Geologist-in-Training, Over-70 Registered Geologists, and Over-70 Certified Engineering Geologists; exam fees for both the fundamental exam and the practice exam; and application fees, restoration fee for the 1-90 day late period, and temporary permit fee. By increasing all fees, the Board can meet the projected expenditures of the biennium. Actual fee increase and notice of the public hearing were published in the April 2007 Board newsletter distributed to all registrants. Individuals may request a copy of the budget and/or the rule amendments by contacting the Board staff.

Rules Coordinator: Susanna R. Knight

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

Telephone: (503) 566-2837

**Board of Naturopathic Examiners
Chapter 850**

Rule Caption: Rules required by ORS 685.195 to allow criminal records checks on applicants for licensure.

Stat. Auth.: ORS 685.125

Stats. Implemented: ORS 685.195

Proposed Adoptions: 850-030-0020

Last Date for Comment: 5-29-07

Summary: Rule required allowing criminal records checks per ORS 685.195.

Rules Coordinator: Anne Walsh

Address: Board of Naturopathic Examiners, 800 NE Oregon St., Suite 407, Portland, OR 97232

Telephone: (971) 673-0193

Rule Caption: Adds "patient" to definitions and updates language in other definitions.

Stat. Auth.: ORS 685.125

Stats. Implemented: ORS 685.010

Proposed Amendments: 850-010-0005

Last Date for Comment: 5-29-07

Summary: Defines Patient, amends language in other definitions in 850-010-0005.

Rules Coordinator: Anne Walsh

Address: Board of Naturopathic Examiners, 800 NE Oregon St., Suite 407, Portland, OR 97232

Telephone: (971) 673-0193

Rule Caption: Lists substances on Formulary Compendium for Naturopathic Physicians and add to Classifications.

Stat. Auth.: ORS 685.125

Stats. Implemented: ORS 685.145

Proposed Amendments: 850-060-0225, 850-060-0226

Last Date for Comment: 5-29-07

Summary: Add to 850-060-0225 the following that can be prescribed: Gamma-Hydroxy Butyrate, Levocarnitine, Sitagliptin.

Add to 850-060-0226 Classifications: amino Acids; and under Biological (a) Cytokines, (A) Monoclonal.

Rules Coordinator: Anne Walsh

Address: Board of Naturopathic Examiners, 800 NE Oregon St., Suite 407, Portland, OR 97232

Telephone: (971) 673-0193

**Board of Nursing
Chapter 851**

Rule Caption: Advanced Practice Formulary Updated.

Date:	Time:	Location:
6-14-07	9 a.m.	Portland State Office Bldg. Rm. 1B 800 NE Oregon St. Portland, OR

Hearing Officer: Saundra Theis

Stat. Auth.: ORS 678.385, 678.390

Stats. Implemented: ORS 678.370, 678.382, 678.375, 678.380, 678.385, 678.390

Proposed Amendments: 851-056-0012

Last Date for Comment: 6-12-07, 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 May and June 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

NOTICES OF PROPOSED RULEMAKING

Board of Parole and Post-Prison Supervision Chapter 255

Rule Caption: Procedures for Predatory Sex Offender Designation for Inmates.

Stat. Auth.: Ch. 163 (1999 OR Laws), ORS 144.050, 144.140, 181.585, 181.594

Stats. Implemented:

Proposed Amendments: 255-060-0016

Last Date for Comment: 5-21-07

Summary: Amend rule to conform language to ORS 181.585.

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

Rule Caption: Return to DOC for a Period of Greater than 12 months.

Stat. Auth.: ORS 144.107

Stats. Implemented:

Proposed Amendments: 255-075-0073

Last Date for Comment: 5-21-07

Summary: Add language to Exhibit R to clarify the restriction on the qualifying crime in order to be eligible for consideration under this rule.

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

Board of Pharmacy Chapter 855

Rule Caption: Amends several Divisions relating to housekeeping issues and Permanently adopts temporary rule relating to prescriptions.

Stat. Auth.: ORS 475.035 & 689.205

Stats. Implemented: ORS 475.045, 475.125, 475.135, 475.155, 475.165, 475.175, 475.185, 475.188, 475.305, 475.940, 689.155, 689.255, 689.645

Proposed Amendments: 855-001-0000, 855-010-0001, 855-010-0005, 855-031-0005, 855-031-0010, 855-031-0015, 855-031-0020, 855-031-0030, 855-031-0033, 855-031-0040, 855-031-0045, 855-031-0050, 855-031-0055, 855-041-0120, 855-041-0500, 855-050-0070, 855-080-0015, 855-080-0021, 855-080-0022, 855-080-0023, 855-080-0024, 855-080-0026, 855-080-0031, 855-080-0065, 855-080-0070, 855-080-0080, 855-080-0085

Proposed Repeals: 855-010-0010, 855-031-0035, 855-041-0090, 855-080-0030, 855-080-0090

Proposed Ren. & Amends: 855-080-0060 to 855-001-0040

Last Date for Comment: 5-25-07, 12 p.m.

Summary: Amendments are primarily housekeeping changes to improve clarity and update references. Division 1 amendment simplifies list of people to be notified of rulemaking. Division 10 amendment updates Board meeting schedule. Division 31 amendment changes references to incorporate the new school of pharmacy in Oregon and clarifies procedures for interns. Division 41 amendments expand approved list of CPR courses and amend rules on hospitals dispensing to outpatients. Rule on optometric formulary is out of date and needs to be repealed as this issue is covered in ORS Chapter 683. Division 50 permanently adopts amendment in place of temporary rule adopted in December 2006 with regard to Restriction on Sale of Prescription Drugs. Division 80 amendment replaces lengthy controlled drug schedule, which is frequently out of step with the federal schedule, with direct references to the federal schedule. The full text of the proposed rules is available on the Board website at www.pharmacy.state.or.us

Rules Coordinator: Karen MacLean

Address: Board of Pharmacy, 800 NE Oregon St., Portland, OR 97232

Telephone: (971) 673-0001

Department of Administrative Services Chapter 125

Rule Caption: Proposed Amendment confirming requirements for Ballot Measure 37 claims filed after December 4, 2006, concerning State Land Use Regulations.

Date:	Time:	Location:
5-22-07	1:30 p.m.	State Archive Bldg. 800 Summer St. NE Salem, OR

Hearing Officer: David Hartwig

Stat. Auth.: ORS 197.352, 293

Other Auth.: OAR 125-145

Stats. Implemented: ORS 197.352, 306

Proposed Amendments: 125-145-0020, 125-145-0040

Last Date for Comment: 5-24-07, 5 p.m.

Summary: This rule amendment specifies the requirements for Measure 37 claims made to the State of Oregon. These amendments specify general requirements for Measure 37 claims made after December 4, 2006. The rules also incorporate by cross-reference, more specific requirements for Measure 37 claims involving state land use regulations administered by DLCD, such as the Statewide Land Use Planning goals and rules that implement them, as well as ORS Chapter 215.

Rules Coordinator: Cheryl Knottingham

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

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

Department of Agriculture Chapter 603

Rule Caption: Makes commissions responsible for obtaining audits; changes how the oversight program fee is calculated.

Date:	Time:	Location:
6-1-07	9 a.m.	Oregon Dept. of Agriculture Conference Rm. D Salem, OR

Hearing Officer: Ron Pence

Stat. Auth.: ORS 561.250, 576

Stats. Implemented: ORS 561, 576, 577, 578

Proposed Amendments: 603-042-0010, 603-042-0020

Proposed Repeals: 603-041-0005, 603-041-0010

Last Date for Comment: 6-1-07, 5 p.m.

Summary: Makes commodity commissions responsible for obtaining a financial statement audit at least once every five years. Sets forth a fiscal evaluation tool option for commissions with annual assessment income of \$50,000 or less.

Changes the method used for calculating Commodity Commission Oversight Program fee: (1) calls for using the assessment income from the year previous to the billing period; (2) raises the maximum fee to \$12,500; (3) lowers the minimum fee to \$500 for commissions with annual assessment income of \$30,000 or less.

Repeals election related rules; since 2003 the ODA Director has appointment authority for all Commodity Commissioners.

Rules Coordinator: Sue Gooch

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

Telephone: (503) 986-4583

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

Rule Caption: Adopt nationally published addenda to the Oregon Boiler and Pressure Vessel Specialty Code.

NOTICES OF PROPOSED RULEMAKING

Date: 5-22-07
Time: 9:30 a.m.
Location: 1535 Edgewater St. NW
Salem, OR

Hearing Officer: Casey Hoyer
Stat. Auth.: ORS 455.020, 480.545, 480.550
Stats. Implemented: ORS 480.545, 480.550
Proposed Amendments: Rules in 918-225
Last Date for Comment: 5-25-07, 5 p.m.

Summary: This proposed rule adopts the nationally published code addenda to the Oregon Boiler Pressure Vessel Specialty Code. The addenda amends the 2004 Edition of the ANSI/ASME B31.1 Power Piping Code, designated ASME B31.1b (2006) and the 2004 Edition of the National Board Inspection Code (NBIC), designated ANSI/NB-23 (2006).

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

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Department of Corrections
Chapter 291

Rule Caption: Procedural Rules Relating to Administrative Rule-making and Confidential Mediation of Workplace Interpersonal Disputes.

Stat. Auth.: ORS 36.224, 183.335, 183.341
Stats. Implemented: ORS 36.224, 36.230(4), 183.335, 183.341
Proposed Adoptions: 291-001-0110
Proposed Amendments: 291-001-0020, 291-001-0025
Last Date for Comment: 6-15-07

Summary: OAR 291-001-0020 and 291-001-0025 modifications are necessary to adopt by reference the latest version of the Attorney General's Model Rules of Procedures for the Administrative Procedures Act. Other minor housekeeping modifications have been made for clarifications purposes.

OAR 291-001-0110 adoption is necessary to allow for the confidential mediation of workplace interpersonal disputes involving DOC employees. Without such a rule the department employees would have limited ability to participate in candid, confidential mediation. Mediation has the potential for resolving disputes less expensively, achieving more satisfactory outcomes, and improving workplace productivity. OAR 291-001-0100 contains the text of the Attorney General's model "Simplified Workplace Interpersonal Dispute Rule — Confidential and Inadmissibility of Mediation Communications."

Rules Coordinator: Janet R. Worley
Address: Department of Corrections, 2575 Center St. NE, Salem, OR 97301-4667
Telephone: (503) 945-0933

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Department of Fish and Wildlife
Chapter 635

Rule Caption: Commercial ocean Dungeness crab fishery permits valid only off Oregon coast and buoy tag replacement.

Date: 6-8-07
Time: 8 a.m.
Location: 3406 Cherry Ave. NE
Salem, OR

Hearing Officer: Fish & Wildlife Commission
Stat. Auth.: ORS 496.146, 506.119, 506.129, 506.755, 508.921
Stats. Implemented: ORS 496.012, 506.109, 506.119, 506.129, 506.755, 508.921-508.941
Proposed Adoptions: Rules in 635-005 & 006
Proposed Amendments: Rules in 635-005 & 006
Proposed Repeals: Rules in 635-005 & 006
Last Date for Comment: 6-8-07

Summary: Rule restricts Oregon ocean commercial Dungeness crab permitted vessels to fish north of the Oregon/California border. Rule allows Director, Oregon Dept. of Fish and Wildlife to authorize replacement crab buoy tags for ones lost under extraordinary

circumstances. In addition, rule requires buoy tags that have been replaced become null and void and must be immediately returned to the department if recovered.

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

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

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Rule Caption: 2007 tag numbers and/or season regulations for Controlled Antelope, Sheep, Mountain Goat, Deer, Elk, Squirrel.

Date: 6-8-07
Time: 8 a.m.
Location: 3406 Cherry Ave. NE
Salem, OR

Hearing Officer: Fish & Wildlife Commission
Stat. Auth.: ORS 496.012, 496.138, 496.146, 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146, 496.162
Proposed Amendments: Rules in 635-045, 060, 065, 066, 067, 068, 069, 070, 071, 072, 073, 075, 078 & 080
Last Date for Comment: 6-8-07

Summary: Establish 2007 controlled hunt tag numbers and/or season regulations for the hunting of pronghorn antelope, bighorn sheep, Rocky Mountain goat, deer and elk.

Propose 2008 hunting regulations for game mammals, including season dates, bag limits, open areas, location of cooperative travel management areas, and controlled hunting regulations. Propose quotas for 2008 cougar seasons and spring bear controlled hunt tag numbers for 2008. these proposals will be presented in principle to the Oregon Fish and Wildlife Commission in June 2007 and again for adoption in October 2007.

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

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Department of Human Services,
Addictions and Mental Health Division: Addiction Services
Chapter 415

Rule Caption: Amend fee rules that are now contained in Department-wide rules under 407-003.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 409.050
Proposed Amendments: 415-012-0050, 415-012-0080
Last Date for Comment: 5-22-07, 5 p.m.

Summary: The Division is amending OAR's 415-012-0050 & 415-012-0080 to remove references to fees now covered in OAR 407-003, & to update the rules.

Rules Coordinator: Richard Luthe
Address: 500 Center St. NE, E-86, Salem, OR 97301-1118
Telephone: (503) 947-1186

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Rule Caption: Renumber Marijuana Evaluation Specialists Rules From OAR Chapter 410 to OAR Chapter 415.

Stat. Auth.: OAR 409.050
Stats. Implemented: OAR 409.050
Proposed Renumberings: 410-008-0000 to 415-054-0300, 410-008-0005 to 415-054-0310, 410-008-0010 to 415-054-0320, 410-008-0015 to 415-054-0330, 410-008-0020 to 415-054-0340, 410-008-0025 to 415-054-0350, 410-008-0030 to 415-054-0360, 410-008-0035 to 415-054-0370
Last Date for Comment: 5-22-07, 5 p.m.

Summary: The Division is renumbering rules in OAR Chapter 410 to 415, as they are not used by programs in OAR Chapter 410, and are used by programs in Chapter 415.

Rules Coordinator: Richard Luthe
Address: 500 Center St. NE, E-86, Salem, OR 97301-1118
Telephone: 503-947-1186

NOTICES OF PROPOSED RULEMAKING

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

Rule Caption: Updating OAR 309-033 regarding administration of medicines and treatments, and to correct a reference.

Date:	Time:	Location:
5-16-07	2 p.m.	Human Services Bldg. 500 Center St., Rm. 137 Salem OR

Hearing Officer: Richard Luthe

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 426.005–426.309

Proposed Adoptions: 309-033-0625

Proposed Amendments: 309-033-0435

Last Date for Comment: 5-18-07, 5 p.m.

Summary: The Addictions & Mental Health Division is proposing to:

Adopt OAR 309-033-0625 “Administration of Medication and Treatment Without the Informed Consent of a Person in Custody” to correct an earlier filing error that meant to adopt this rule; and

Amend OAR 309-033-0435 “Client Rights With Regards to a Secure Transportation Provider” to update a reference to Criminal History Checks.

Rules Coordinator: Richard Luthe

Address: 500 Summer St. NE, E-86 Salem, OR 97301-1118

Telephone: (503) 947-1186

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Rule Caption: Amend and repeal fee rules that are now contained in Department-wide rules under 407-003.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 409.050

Proposed Amendments: 309-012-0070

Proposed Repeals: 309-012-0065, 309-012-0080, 309-012-0085, 309-012-0090

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

Summary: The Division is repealing OAR 309-012-0065; 309-012-0080; 309-012-0085 & 309-012-0090 “Charges for Reproduction of Medical Records & Charges for Mental Health Division Central Office Documents” as these rules have been replaced by Department of Human Services Department-wide rules in OAR 407-003 “Public Record Fees.”

The Division is amending OAR 309-012-0070 to remove references to fees now covered in OAR 407-003, and to update the rule.

Rules Coordinator: Richard Luthe

Address: 500 Center St. NE, E-86, Salem, OR 97301-1118

Telephone: (503) 947-1186

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Rule Caption: Renumber Residential Facilities Rules From OAR Chapter 410 to OAR Chapter 309.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 409.050

Proposed Renumberings: 410-004-0001 to 309-035-0500, 410-005-0080 to 309-035-0550, 410-005-0085 to 309-035-0560, 410-005-0090 to 309-035-0570, 410-005-0095 to 309-035-0580, 410-005-0100 to 309-035-0590, 410-005-0105 to 309-035-0600

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

Summary: The Division is renumbering rules in OAR Chapter 410 to OAR Chapter 309, as they are no longer used by programs in OAR Chapter 410, & are used by programs in OAR Chapter 309.

Rules Coordinator: Richard Luthe

Address: 500 Center St. NE, E-86, Salem, OR 97301-1118

Telephone: (503) 947-1186

**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.

Date:	Time:	Location:
5-22-07	10 a.m.	Rm. 254, 500 Summer St. NE Salem, OR

Hearing Officer: Annette Tesch

Stat. Auth.: ORS 192.430, 409.050, 411.060, 411.070, 411.095, 411.101, 411.300, 411.660, 411.710, 411.816, 414.042, 414.342, 418.100

Other Auth.: 7 U.S.C. 2012(i); Section 8 of the Food Stamp Act of 1977 (7 U.S.C. 2017) as amended by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104-193, Section 829; Section 408(a)(9) of the Social Security Act (42 USC 608(a)(9)); Section 1613(a) of the Social Security Act (42 U.S.C. 1382b(a)); 42 USC 1383c(c); 42 USC 1396a; Section 1903(x) of the Social Security Act (42 U.S.C. 1396b(x)) as amended by Section 405(c)(1) of The Tax Relief and Health Care Act of 2006; Section 1917 of the Social Security Act (42 U.S.C. § 1396p(c)) as amended by the Deficit Reduction Act of 2005 (DRA); Section 1924 of the Social Security Act (42 U.S.C. 1396r-5); 42 U.S.C. 1396r-5(d); 42 U.S.C. 10602 (The Crime Act of 1984); Public Law 103-286 (The Victims of Nazi Persecution Act of 1994), 108 Stat. 1450; 7 CFR 273.1(b) & (c), 273.9(c)(1), 273.10(e)(2)(iii)(B), 273.11(e), (f), & (j), 273.12(e), 273.13(a); 20 CFR 416.1236(a)(18); 42 CFR 431.200, 431.206, 431.210, 431.211, 431.213, 435.735, 435.1008, 435.1009, 440.140, & 440.150; U.S. Department of Health & Human Services, Centers for Medicare & Medicaid Services, State Medicaid Manual section 3230.2, 3255-3258, 3258.1(A)(1), 3261, & 3262; Social Security Administration Program Operations Manual System section SI 00815.350, SI 00820.010, SI 00830.010, SI 00830.100, SI 01120.220, SI 01130.300, SI 01130.0610, SI 01130.665, and SI 01140.310; Oregon Medicaid/State Children’s Health Insurance Program (SCHIP) Health Insurance Flexibility and Accountability (HIFA) Section 1115 Demonstration; United States Department of Agriculture, Food and Nutrition Service, Administrative Notice 98-93

Stats. Implemented: ORS 192.430, 192.440, 192.502, 409.010, 410.150, 411.060, 411.070, 411.095, 411.099, 411.101, 411.111, 411.113, 411.117, 411.300, 411.320, 411.335, 411.630, 411.632, 411.635, 411.660, 411.700, 411.710, 411.816, 411.837, 414.042, 414.047, 414.055, 414.342, 414.420, 414.422, 414.424, 418.100, 418.125, 418.130, 1999 OL ch. 859

Proposed Amendments: 461-001-0015, 461-025-0310, 461-025-0315, 461-025-0350, 461-101-0010, 461-105-0060, 461-105-0150, 461-105-0410, 461-110-0210, 461-110-0370, 461-110-0530, 461-115-0050, 461-115-0090, 461-115-0140, 461-115-0145, 461-115-0190, 461-115-0705, 461-120-0030, 461-135-0010, 461-135-0510, 461-135-0550, 461-135-0950, 461-135-1110, 461-135-1225, 461-140-0242, 461-140-0296, 461-140-0300, 461-145-0040, 461-145-0105, 461-145-0280, 461-145-0320, 461-145-0330, 461-145-0470, 461-145-0490, 461-145-0582, 461-155-0250, 461-160-0610, 461-160-0620, 461-165-0060, 461-175-0010, 461-175-0200, 461-175-0230, 461-175-0250, 461-195-0521

Proposed Repeals: 461-105-0160

Last Date for Comment: 5-22-07

Summary: OAR 461-001-0015, 461-110-0370, 461-115-0090, 461-115-0140, 461-115-0145, 461-135-0510, and 461-135-0550 are being amended to clarify how residents of Drug Addiction and Alcohol Treatment centers and residential care facilities may be eligible to apply for food stamp benefits and clarify the requirements for these programs. OAR 461-115-0145 about the responsibilities of a center or facility acting as an authorized representative in the Food Stamp program is also being amended to revise and expand the requirements when a resident moves out and to clarify the policies applicable to overpayments, disqualifications, and penalties. These

NOTICES OF PROPOSED RULEMAKING

rules are also being amended to update terminology and add cross-references to other rules.

OAR 461-025-0310 about hearing requests, OAR 461-025-0315 about expedited hearings, OAR 461-115-0050 about the filing of applications, and OAR 461-115-0190 about application processing time frames are being amended to add references to rules about the TA-DVS (Temporary Assistance for Domestic Violence Survivors) program. OAR 461-025-0315 is also being amended to include the Disaster Food Stamp Program (DFSP). OAR 461-115-0050 and 461-115-0190 are also being amended to add cross-references and update terminology.

OAR 461-025-0350 is being amended to state that the withdrawal of a hearing request for the Disaster Food Stamp Program must be in writing.

OAR 461-101-0010 about program acronyms is being amended to add the Disaster Food Stamp Program to the programs covered by the rule.

OAR 461-105-0060 about release of information to clients is being amended to remove language in the current rule requiring that information not be part of the case record to qualify for the exemption from disclosure for confidential informants. As amended, the exemption will only require that the information not be part of the hearing record for the client.

OAR 461-105-0150 is being amended and OAR 461-105-0160 is being repealed so that the topics of requests and fees for written public records are covered in one rule instead of two.

OAR 461-105-0410 is being amended to clarify that the penalty for non-cooperation with the Department's quality control review process does not apply to Medicaid and State Children's Health Insurance Program recipients.

OAR 461-110-0210 about household groups is being amended to revise its language about which household a child resides in for the Food Stamp program in a joint custody situation when the child is getting meals with both parents and at school. This rule is also being amended to add cross-references and follow stylistic and language conventions similar to other recently amended and adopted rules in Chapter 461.

OAR 461-110-0530 about the composition of the financial group is being amended to describe (as already described in OAR 461-160-0580) the inclusion of a community spouse's resources in the eligibility determination for OSIP (Oregon Supplemental Income Program) and OSIPM (Oregon Supplemental Income Program Medical, providing medical coverage to the elderly and individuals with disabilities) clients living in nonstandard living arrangements. Generally, a financial group consists of the filing group members whose income and resources count in determining eligibility and benefits.

OAR 461-115-0705 about verification requirements for Breast and Cervical Cancer Medical, Medical Assistance Assumed, Medical Assistance for Families, Extended Medical, Oregon Health Plan Medical, and Substitute and Adoptive Care medical programs is being amended add clients receiving Social Security Disability Income (SSDI) to the list of clients exempt from citizenship documentation requirements.

OAR 461-120-0030 about the state of residence for individuals in a medical facility is being amended to follow federal requirements regarding the determination of the state of residence for an individual who is over the age of 21. The state of residence for an individual age 21 or older who is capable of indicating intent to reside is the state where the individual is living with the intention to remain permanently or for an indefinite period. The state of residence for an individual age 21 or older who became incapable of indicating intent to reside after age 21, and who was placed in the medical facility by an agency of another state, is a resident of the state who placed them. Previously, in both cases, the rule indicated that the state of residence was the state where the medical facility was located.

OAR 461-135-0010 about assumed eligibility for medical programs is being amended to follow federal requirements regarding assumed eligibility for Oregon Supplemental Income Program Med-

ical (OSIPM). Individuals in a nonstandard living arrangement who are assumed eligible for OSIPM and would be otherwise ineligible for OSIPM due to a disqualifying transfer of assets are not eligible to receive long-term care services. This rule is also being amended to add cross-references to other rules and standardize the terminology used.

OAR 461-135-0950 about the eligibility of inmates for public assistance, medical assistance, and food stamps is being amended to state that in the OSIP (Oregon Supplemental Income Program) and OSIPM (OSIP Medical) programs, if a client who is receiving Medicaid because of a serious mental illness (as defined in the rule) becomes an inmate of a public institution, the client's medical benefits are suspended rather than closed.

OAR 461-135-1110 about eligible and ineligible students in the OHP-OPU program (Oregon Health Plan coverage for adults who qualify under the 100 percent income standard) is being amended to update the expected contribution level that makes some students ineligible for OHP. OHP Standard eligibility for full time higher education students includes a provision that the OHP Standard applicant must be eligible for a Pell Grant or have a Pell Grant Expected Family Contribution (EFC) less than the federal maximum established by the U.S. Department of Education. This rule is being amended to show the increase in the federal maximum for the 2007-2008 school year. The EFC maximum amount for an OHP Standard applicant must be less than \$4,111 for the 2007-2008 school year, an increase from the 2006-2007 school year maximum of \$3,851.

OAR 461-135-1225 about the eligibility and verification requirements in the TA-DVS (Temporary Assistance for Domestic Violence Survivors) program is being amended to state that only income actually received (not gross) income is considered countable in determining eligibility for TA-DVS. This rule is also being amended to state that SSI income is countable for TA-DVS if this income is available in time to meet the client's safety needs. This rule is also being amended to add and update cross-references.

OAR 461-140-0242 about disqualifying transfers of assets in the GA (General Assistance, currently closed), GAM (General Assistance Medical, currently closed), OSIP (Oregon Supplemental Income Program), and OSIPM (Oregon Supplemental Income Program Medical, providing medical coverage to the elderly and individuals with disabilities) programs is being amended to change its requirements about when a home may be transferred to a son or daughter with no transfer of assets penalty. This rule is also being amended to clarify when an asset is considered transferred for fair market value and when a transfer is considered to have been made exclusively for purposes other than establishing eligibility or maintaining benefits.

OAR 461-140-0296 about the length of disqualification due to an asset transfer in the GA (General Assistance, currently closed), GAM (General Assistance Medical, currently closed), OSIP (Oregon Supplemental Income Program), and OSIPM (Oregon Supplemental Income Program Medical, providing medical coverage to the elderly and individuals with disabilities) programs is being amended to provide a disqualification calculation in the situation where the client has been continuously on Medicaid since before to October 1, 1993. This rule is also being amended to clarify when a disqualification period would begin, depending on whether a client is already receiving Department-paid long-term care or waived services (in an in-home or community-based care setting) or whether the client is a new applicant for these services.

OAR 461-140-0300 about adjustments to a disqualification due to a transfer of assets is being amended to that there is no waiver of disqualification for undue hardship if the transfer of assets was made to a person managing the client's or the client's spouse's funds or to the children of the person managing the funds.

OAR 461-145-0040 about burial arrangements and burial funds is being amended to comply with federal requirements regarding the treatment of burial insurance that has cash surrender value. Under this amendment, burial insurance that has cash surrender value is

NOTICES OF PROPOSED RULEMAKING

considered life insurance and is treated in accordance with OAR 461-145-0320.

OAR 461-145-0105 about disqualifying income counted for eligibility in the Food Stamp program is being amended to not allow an increase in FS benefits when TANF benefits are reduced or end because a person is a fleeing felon or is in violation of parole, probation, or post-prison supervision. This rule is also being amended to clarify that the counting of disqualifying income ends when the TANF client-caused overpayment is repaid. This rule is also being amended to state that a reduction in TANF benefits due to the repayment of an overpayment resulting from aid paid pending due to a hearing request does not result in countable TANF disqualifying income.

OAR 461-145-0280 about the treatment of in-kind income is being amended to no longer require that court-ordered third party payments also labeled as child support and made by a noncustodial parent be counted for food stamp benefit determination. This rule is also being amended to remove a conflict with OAR 461-145-0088(4) for the Food Stamp program about the treatment of expenditures by a business entity that benefit a principal.

OAR 461-145-0320 about life insurance is being amended to follow federal requirements regarding the treatment of life insurance. This rule is being amended to exclude term life insurance that has no cash surrender value from consideration in the eligibility process, treat burial insurance that has cash surrender value in the same manner as life insurance, and in the General Assistance (GA), General Assistance Medical (GAM), Oregon Supplemental Income Program (OSIP), Oregon Supplemental Income Program Medical (OSIPM) and Qualified Medicare Beneficiary (QMB) programs, the rule will state that the total face value of a life insurance policy does not include dividend additions that increase the death benefit and cash surrender value.

OAR 461-145-0330 about the treatment of loans and interest on loans for eligibility is being amended to align with the federal policy on the treatment of loans. The programs affected are GA (General Assistance, currently closed), GAM (General Assistance Medical, currently closed), OSIP (Oregon Supplemental Income Program), OSIPM (Oregon Supplemental Income Program Medical, providing medical coverage to the elderly and individuals with disabilities) and QMB (Qualified Medicare Beneficiary) programs. The amended rule makes a more definitive distinction between the treatment of a loan when a client is the borrower versus the treatment of a loan when the client is the lender. This rule is also being amended to follow federal policy on the definition and treatment of negotiable, bona fide loan agreements.

OAR 461-145-0470 about shelter-in-kind income is being amended to follow federal requirements regarding the treatment of earned shelter-in-kind income in the Oregon Supplemental Income Program (OSIP), Oregon Supplemental Income Program Medical (OSIPM), and Qualified Medicare Beneficiary (QMB) program. In these programs, if shelter is provided for services related to the employer's trade or business and acceptance of the shelter is a condition of employment, the shelter-in-kind income is treated as unearned income in accordance with the current rule; otherwise the fair-market value of earned shelter-in-kind income is counted as earned income. Previously, in these programs, all earned and unearned shelter-in-kind income, except HUD payments, was treated as unearned income. This rule is also being amended with regard to the Food Stamp program so its text is consistent with OAR 461-145-0088 which counts as income the expenditures by a business entity for the shelter costs of a principal. This rule is also being amended to state for all public assistance, medical assistance and food stamp programs that a payment (such as child support) for which there is a legal obligation to pay to a member of the financial group that is made to a third party for shelter expenses of a member of the financial group is counted as unearned income.

OAR 461-145-0490 about the treatment of Social Security Benefits is being amended to follow federal requirements regarding the

treatment of retroactive social security benefit (SSB) payments in the Oregon Supplemental Income Program (OSIP) and Oregon Supplemental Income Program Medical (OSIPM). When retroactive payments, made through the representative payee of an individual who is required to have a representative payee because of drug addiction or alcoholism, are required to be made in installments, the total of the benefits to be paid in installments is considered unearned income in the month in which the first installment was made. This rule is also being amended to state that for all programs the representative payee fee paid by a client required by the Social Security Administration to receive payments through a representative payee is excluded, and that the exclusion is limited to the amount authorized by the Social Security Administration.

OAR 461-145-0582 about the treatment of victims' assistance payments in the eligibility process for medical assistance, public assistance, and food stamps is being amended to clarify how to treat payments to victims of Nazi persecution and victims of crimes when the payments are retained as a resource after the month of receipt.

OAR 461-155-0250 about income standards for the Oregon Supplemental Income Program (OSIP) and the Oregon Supplemental Income Program – Medical (OSIPM) is being amended to adjust the standards used to determine eligibility for individuals who live in the household of another. These amounts are based on the Social Security federal benefit amounts. This amendment makes permanent temporary rule changes filed on March 9 and April 1, 2007.

OAR 461-160-0610 about client liability for clients in long-term care or receiving waived services in the OSIP (Oregon Supplemental Income Program) and OSIPM (OSIP Medical) programs is being amended to exempt clients who receive residential non-waived mental health services and who are determined to be eligible for Protected Medicaid under OAR 461-135-0830, 461-135-0811, 461-135-0820, or 461-135-0780 from having a liability towards their cost of services.

OAR 461-160-0620 about income deductions and client liability for long-term care and waived services is being amended to make a required, annual adjustment to the income protection requirements for Oregon Supplemental Income Program — Medical (OSIPM), offered to married couples when one spouse remains at home and the other receives long-term care services. The amount of protection is based on the federal poverty guidelines for a two-person household. This increase will apply to the minimum income allowance (150 percent of the federal poverty guidelines for a couple) and the monthly housing allowance amount (30 percent of the minimum income allowance). This rule is also being amended to simplify the calculation for the amount of support an institutionalized spouse can make available to the community spouse. A community spouse is an individual who is legally married to an institutionalized spouse (in the OSIPM program) and is not in a medical institution or nursing facility.

OAR 461-165-0060 about benefits in amounts less than \$10 is being amended to state that the minimum benefit level for categorically eligible Food Stamp cases may be as low as \$0. The current rule implies but does not state that an eligible family can receive zero food stamp benefits. Eligibility for zero benefits is an option available to the Department under federal regulations. This rule is also being amended to clarify the rule, add cross-references, and follow stylistic and language conventions similar to other recently amended and adopted rules in Chapter 461.

OAR 461-175-0010 about the required content for decision notices is being amended to clarify when mass change notices are required to state a client's right to continue benefits. This rule is also being amended to add the requirement in the Food Stamp program for a continuing benefit decision notice to state that the client's household will incur a liability for any overissued benefits if benefits are continued pending the hearing and the hearing decision is adverse to the client. OAR 461-175-0250 is being amended to conform to these changes in OAR 461-175-0010.

NOTICES OF PROPOSED RULEMAKING

OAR 461-175-0200 about written notice of a decision by the Department regarding an individual's eligibility for benefits in a program is being amended to align the notice situations for OHP with all other self-sufficiency programs. This rule amendment updates the rule to match a recent change in practice under which the Department changed from sending a basic decision notice to a timely continuing notice for clients who were no longer found to be eligible to continue receiving OHP benefits. A timely continuing benefit decision notice informs the client of the right to continued benefits and is mailed earlier than a basic decision notice.

OAR 461-175-0230 about decision notices in nonstandard living situations is being amended to change the notice requirements related to post-eligibility increases and decreases in the client liability for clients receiving waived or long-term care services. This rule is also being amended to clarify the decision notice requirements in the Food Stamp program for residents of Drug Addiction and Alcohol Treatment Facilities and Residential Care Facilities consistent with other pending rule changes. This rule is also being amended to add cross-references to other rules.

OAR 461-195-0521 about the calculation of overpayments is being amended to add Medicare Part D costs to the list of examples of costs that may be included in an overpayment. This rule is also being amended to clarify that Medicare premium payments may only be included in the overpayment if the client is not eligible for QMB (Qualified Medicare Beneficiaries) or another Medicare Savings Program. This rule is also being amended to add cross-references to other rules.

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

Rules Coordinator: Annette Tesch

Address: Department of Human Services, Children, Adults and Families Division: Self-Sufficiency Programs, 500 Summer St. NE, E-48, Salem, OR 97301

Telephone: (503) 945-6067

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

Rule Caption: July 2007 Rule Updates for the DMEPOS Program.

Date:	Time:	Location:
5-16-07	10:30 a.m.–12 p.m.	DHS Bldg., Rm. 137C Salem, OR

Hearing Officer: Darlene Nelson

Stat. Auth.: ORS 409.010, 409.110, 409.050

Other Auth.: 42 USC 1396a(bb), Title 42 Public Health of the Code of Federal Regulations

Stats. Implemented: ORS 414.065

Proposed Amendments: 410-122-0055, 410-122-0080, 410-122-0186, 410-122-0204, 410-122-0320, 410-122-0330, 410-122-0340, 410-122-0520, 410-122-0540, 410-122-0560, 410-122-0590, 410-122-0600, 410-122-0620, 410-122-0625, 410-122-0720

Proposed Repeals: 410-122-0470

Proposed Ren. & Amends: 410-122-0255 to 410-122-0655

Last Date for Comment: 5-31-07

Summary: Amend: **410-122-0055 OHP Standard Benefit Package Limitations:** Rewrites rule to clarify Healthcare Common Procedure Code System (HCPCS) codes covered in this benefit package.

410-122-0080 Conditions of Coverage, Limitations, Restrictions and Exclusions: Clarifies some of the exclusions.

410-122-0186 Payment Methodology: Makes a technical correction.

410-122-0204 Nebulizer: Makes technical corrections to the table.

410-122-0320 Manual Wheelchair Base: Adds coverage for an extra heavy-duty wheelchair for a nursing facility client whose weight exceeds 350 pounds. Clarifies some documentation requirements.

410-122-0330 Power-Operated Vehicle: Clarifies some coverage criteria.

410-122-0340 Wheelchair Options/Accessories: Clarifies coverage and payment information for some code categories.

410-120-0520 Glucose Monitors & Diabetic Supplies: Clarifies that authorization for quantities of supplies that exceed utilization guidelines must be obtained from the appropriate authorization authority.

410-122-0540 Ostomy Supplies: Adds some HCPCS codes and clarifies conditions of coverage.

410-122-0560 Urological Supplies: Clarifies some coverage criteria.

410-122-0590 Patient Lifts: Adds coverage criteria for an electric client lift.

410-122-0600 Toilet Supplies: Removes deleted codes for commode chairs.

410-122-0620 Miscellaneous Supplies: Makes some technical changes and removes deleted codes.

410-122-0625 Surgical Supplies: Adds HCPCS codes from 410-122-0470 (compression burn garments).

410-122-0720 Pediatric Wheelchairs: Clarifies some documentation requirements and removes deleted codes.

Amend and Renumber: **410-122-0255 to 410-122-0655 External Breast Prostheses:** Rewrites rule to add and clarify coverage criteria.

Repeal: **410-122-0470 Supports and Stockings:** Moves information to 410-122-0625.

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

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Rule Caption: Managed Care Plan Reimbursement for Graduate Medical Education.

Date:	Time:	Location:
5-16-07	10:30 a.m.–12 p.m.	DHS Bldg., Rm. 137C 500 Summer St. NE Salem, OR

Hearing Officer: Darlene Nelson

Stat. Auth.: ORS 409.010, 409.110, 409.050

Other Auth.: 42 USC 1396a(bb), Title 42 Public Health of the Code of Federal Regulations

Stats. Implemented: ORS 414.743

Proposed Amendments: 410-141-0420

Last Date for Comment: 5-31-07

Summary: The Oregon Health Plan (OHP-Division 141) administrative rules govern payment of managed care for the Division of Medical Assistance Programs' services provided to clients. Having temporarily amended 410-141-0420 to reflect the new state policy for necessary changes to the reimbursements for Graduate Medical Education (GME) by January 1, 2007, this is the Notice of Proposed Rulemaking/Hearing 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

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Rule Caption: Clarify text: CPT codes, listed in Table 131-0280-1, do not require payment authorization.

Date:	Time:	Location:
5-16-07	10:30 a.m.–12 p.m.	DHS Bldg., Rm. 137C 500 Summer St. NE Salem, OR

Hearing Officer: Darlene Nelson

Stat. Auth.: ORS 409.010, 409.110, 409.050

Other Auth.: 42 USC 1396a(bb), Title 42 Public Health of the Code of Federal Regulations

Stats. Implemented: ORS 414.065

NOTICES OF PROPOSED RULEMAKING

Proposed Amendments: 410-131-0280

Last Date for Comment: 5-31-07

Summary: The Physical and Occupational Therapy Services program rules govern the Division of Medical Assistance Programs' (DMAP) payments for services provided to certain clients. DMAP will revise text in 410-131-0280 to clarify that CPT codes, listed in Table 131-0280-1, do not require payment authorization.

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

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Rule Caption: Delete sanction for "no-show" on medical transportation per federal directive.

Date:	Time:	Location:
5-16-07	10:30 a.m.–12 p.m.	DHS Bldg., Rm. 137C 500 Summer St. NE Salem, OR

Hearing Officer: Darlene Nelson

Stat. Auth.: ORS 409.010, 409.110, 409.050

Other Auth.: 42 USC 1396a(bb), Title 42 Public Health of the Code of Federal Regulations

Stats. Implemented: ORS 414.065

Proposed Amendments: 410-136-0160

Last Date for Comment: 5-31-07

Summary: The Medical Transportation program rules govern the Division of Medical Assistance Programs' (DMAP) payments for services provided to certain clients.

DMAP will amend Rule 410-136-0160 to eliminate the sanction for "no-shows" for medical transportation rides pursuant to Centers for Medicare and Medicaid Services (CMS) directive.

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

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Rule Caption: Clarify current policies: technical changes due to CPT coding updates and payment methodology for obstetric labor management.

Date:	Time:	Location:
5-16-07	10:30 a.m.–12 p.m.	DHS Bldg., Rm. 137C 500 Summer St. NE Salem, OR

Hearing Officer: Darlene Nelson

Stat. Auth.: ORS 409.010, 409.110, 409.050

Other Auth.: 42 USC 1396a(bb), Title 42 Public Health of the Code of Federal Regulations

Stats. Implemented: ORS 414.065

Proposed Amendments: 410-130-0180, 410-130-0200, 410-130-0220, 410-130-0255, 410-130-0368, 410-130-0580, 410-130-0595

Last Date for Comment: 5-31-07

Summary: The Medical-Surgical Services program rules govern the Division of Medical Assistance Programs' (DMAP) payments for services provided to certain clients. In the rules listed above, DMAP will amend current policies and procedures for Medical-Surgical providers to ensure Oregon Administrative Rules (OARs) are not open to interpretation by the provider or outside parties and to help eliminate confusion possibly resulting in non-compliance.

The proposed amendments that pertain to reimbursement, will update current rule with CPT coding changes and minor operational changes within DMAP. Rules will be amended as follows: 410-130-0180 (Drugs), 410-130-0200 (Prior Authorization/Prior Notification), 410-130-0220 (Not Covered/Bundled Services), and 410-130-0255 (Immunizations and Immune Globulins): for CPT coding changes; 410-130-0580 (Hysterectomies and Sterilizations) and 410-130-0595 (Maternity Case Management) respectively: update to the sterilization consent form and its submission requirements, and language clarification on MCM "Emergencies"; and 410-130-0368 (Anesthesia Services): to allow an appropriate flat rate payment for obstet-

ric labor management epidurals (as a result of discussions with Oregon Anesthesia Society).

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

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Rule Caption: Clarify text: prescription for prior authorization of certain services must specify the ICD-9CM diagnosis code.

Date:	Time:	Location:
5-16-07	10:30 a.m.–12 p.m.	DHS Bldg., Rm. 137C 500 Summer St. NE Salem, OR

Hearing Officer: Darlene Nelson

Stat. Auth.: ORS 409.010, 409.110, 409.050

Other Auth.: 42 USC 1396a(bb), Title 42 Public Health of the Code of Federal Regulations

Stats. Implemented: ORS 414.065

Proposed Amendments: 410-129-0060

Last Date for Comment: 5-31-07

Summary: The Speech-language pathology, Audiology, and Hearing Aid Services program rules govern the Division of Medical Assistance Programs' (DMAP) payments for services provided to certain clients. DMAP will revise text in 410-129-0060 to clarify that the prescription for prior authorization of a hearing aid must specify the ICD-9CM diagnosis code.

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

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Rule Caption: Requests for Public Records.

Date:	Time:	Location:
5-16-07	10:30 a.m.	DHS Bldg., Rm. 137C Salem, OR

Hearing Officer: Darlene Nelson

Stat. Auth.: ORS 409.010, 409.110, 409.050

Other Auth.: ORS 192.410–192.505

Stats. Implemented: ORS 414.065

Proposed Amendments: 410-120-1980

Last Date for Comment: 5-31-07, 5 p.m.

Summary: The General Rules (Division 120) govern payment for the Division of Medical Assistance Programs' (DMAP) payments for services provided to clients. DMAP will amend 410-120-1980 to align with the Department of Human Services rules 407-003-0000 and 407-003-0010 that address what fees can be charged for public records request.

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

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Rule Caption: Pharmaceutical rule revisions for July 1, 2007.

Date:	Time:	Location:
5-16-07	10:30 a.m.–12 p.m.	DHS Bldg., Rm. 137C Salem, OR

Hearing Officer: Darlene Nelson

Stat. Auth.: ORS 409.010, 409.110, 409.050

Other Auth.: 42 USC 1396a(bb), Title 42 Public Health of the Code of Federal Regulations

Stats. Implemented: ORS 414.065

Proposed Amendments: 410-121-0030, 410-121-0040, 410-121-0145, 410-121-0150

Last Date for Comment: 6-10-07, 5 p.m.

Summary: The Pharmaceutical Rules govern Division of Medical Assistance Programs payment for pharmaceutical products provided to certain clients. All rules listed above will be revised to make

NOTICES OF PROPOSED RULEMAKING

housekeeping corrections, if necessary; otherwise, DMAP will revise rules as follows:

410-121-0030: to update the Plan Drug List (PDL) to reflect new additions and deletions of drugs to the list.

410-121-0040: to delete references to drug criteria recommended by the U.S. Food and Drug Administration.

410-121-0145: to amend prescription requirements for Over-The-Counter (OTC) Plan B drugs.

410-121-0150: to amend billing requirements for OTC Plan B drug products and to clarify changes in billing requirements as a result of the National Provider Identifier (NPI).

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

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Rule Caption: Clarify current FQHC/RHC policies, including criteria for reporting encounters; add policy for change in scope of service(s).

Date:	Time:	Location:
5-16-07	10:30 a.m.–12 p.m.	DHS Bldg., Rm. 137C Salem, OR

Hearing Officer: Darlene Nelson

Stat. Auth.: ORS 409.010, 409.110, 409.05

Other Auth.: 42 USC 1396a(bb), Title 42 Public Health of the Code of Federal Regulations

Stats. Implemented: ORS 414.065

Proposed Adoptions: 410-147-0362

Proposed Amendments: 410-147-0040, 410-147-0500

Last Date for Comment: 5-31-07

Summary: The Federally Qualified Health Centers and Rural Health Clinics (FQHC/RHC) Services program rules govern the Division of Medical Assistance Programs' (DMAP) payments for services provided to certain clients. The proposed amendments to rule will clarify current policies and procedures for FQHC and RHC providers to ensure Oregon Administrative Rules (OARs) are not open to interpretation by the provider or outside parties and will help eliminate confusion possibly resulting in non-compliance.

The proposed adoption of 410-147-0362: DMAP is required by 42 USC § 1396a(bb)(3)(B), to adjust Federally Qualified Health Centers (FQHC) and Rural Health Clinics (RHC) Prospective Payment System (PPS) encounter rates based on any increase or decrease in the scope of FQHC or RHC services, as defined by 42 USC §§ 1396d(a)(2)(B–C). The Centers for Medicare and Medicaid Services (CMS) defines a “change in scope of services” as one that affects the type, intensity, duration, and/or amount of services provided by a health center. CMS’ broad definition of change in scope of services allows DMAP the flexibility to develop a more precise definition of what qualifies as a change in scope as it relates to “type,” “intensity,” and “duration” and procedures for implementing these adjustments.

This new rule will state the DMAP criteria for change in scope of service requests, and the policy for implementing FQHC and RHC PPS rate adjustments based on DMAP-approved change-in-scope of services.

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

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Rule Caption: Recognize the national standard designation for Ambulatory Infusion Suite of the home infusion therapy provider in rule text.

Date:	Time:	Location:
5-16-07	10:30 a.m.–12 p.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: 410-148-0020, 410-148-0040, 410-148-0100, 410-148-0300

Last Date for Comment: 5-31-07

Summary: The Enteral/Parenteral nutrition and IV services program rules govern the Division of Medical Assistance Programs' (DMAP) payments for services provided to certain clients. The proposed amendments to rule are needed to clarify a national standard designation related to Home infusions provided in *Ambulatory Infusion Suite of the home infusion therapy provider (AIS)*.

The Joint Commission on Accreditation of Healthcare Organizations (JCAHO) and the Centers for Medicare and Medicaid Services (CMS) approved a new designation and modifier for the purpose of identifying when services were performed in an AIS of a Home infusion provider. The proposed amendments to these rules recognize the CMS and JCAHO designation that became effective for use starting October 1, 2004.

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

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Department of Human Services, Public Health Division Chapter 333

Rule Caption: Public Swimming Pools.

Date:	Time:	Location:
5-29-07	10 a.m.	Portland State Office Bldg. 800 NE Oregon St., Rm. 1-B Portland, OR

Hearing Officer: Jana Fussell

Stat. Auth.: ORS 448.011

Stats. Implemented: ORS 448.005–448.100, 448.990

Proposed Adoptions: 333-060-0206, 333-060-0207, 333-060-0208, 333-060-0209

Proposed Amendments: 333-060-0015, 333-060-0105, 333-060-0170, 333-060-0210, 333-060-0215

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

Summary: The Department of Human Services (DHS), Public Health Division (Division) is proposing to adopt and amend their Oregon Administrative Rules (OAR) relating to the supervision, life-guards, safety equipment, safety and safety signage for public swimming pools to bring them up to date, include new technology and design concepts, recognize current procedures and needs for safety and supervision, and to address the numerous new types of pool design and concepts.

Complete text of the proposed rule revisions may be viewed at: <http://oregon.gov/DHS/ph/pl/index.shtml> or by calling the Public Health Division's, Public Swimming Pool Program at (971) 673-0448 or (971) 673-0185.

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

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Rule Caption: Organizational Camp Rules.

Date:	Time:	Location:
5-29-07	10 a.m.	Portland State Office Bldg. 800 NE Oregon St., Rm. 1-B Portland, OR

Hearing Officer: Jana Fussell

Stat. Auth.: ORS 446.330

Stats. Implemented: ORS 444.310–446.350, 446.425, 446.990

Proposed Adoptions: 333-030-0103

Proposed Amendments: Rules in 333-030

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

Summary: The Department of Human Services (DHS), Public Health Division (Division) is proposing to adopt and amend their

NOTICES OF PROPOSED RULEMAKING

Oregon Administrative Rules (OAR) relating to organization camps to clarify and inform the camp operator of health requirements that are required by other statutory requirements as well as to update the standard of care for health services.

Complete text of the proposed rule revisions may be viewed at: <http://oregon.gov/DHS/ph/pl/index.shtml> or by calling the Public Health Division's, Public Swimming Pool Program at (971) 673-0448 or (971) 673-0185.

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

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Rule Caption: Regulations Governing Health and Safety at Outdoor Mass Gatherings.

Date:	Time:	Location:
5-29-07	10 a.m.	Portland State Office Bldg. 800 NE Oregon St., Rm. 1-B Portland, OR

Hearing Officer: Jana Fussell

Stat. Auth.: ORS 433.760

Stats. Implemented: ORS 433-735-433-770

Proposed Amendments: 333-039-0015, 333-039-0055

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

Summary: The Department of Human Services (DHS), Public Health Division (Division) is proposing to revise Oregon Administrative Rule (OAR) 333-039-0015 relating to the on-site water supply at mass gatherings and OAR 333-039-0055 relating to road width requirements at mass gatherings.

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

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Rule Caption: Fees for Public Records.

Date:	Time:	Location:
5-22-07	2 p.m.	Human Services Bldg. 500 Summer St. NE, Rm. 137B Salem, OR

Hearing Officer: Staff

Stat. Auth.: ORS 192.430, 409.050

Stats. Implemented: ORS 192.430, 192.440, 409.010

Proposed Repeals: 333-001-0010

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

Summary: The Department of Human Services, Public Health Division (Division) is proposing to repeal Oregon Administrative Rule (OAR) 333-001-0010 related to fees for public records. The Division will be following the Department-wide rules on public record fees adopted in OAR 407-003-0000 through OAR 407-003-0010 that became effective on February 15, 2007. The rules can be found at: http://arcweb.sos.state.or.us/rules/OARS_400/OAR_407/407_003.html

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

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

Rule Caption: Fees for Public Records.

Date:	Time:	Location:
5-21-07	2 p.m.	Human Services Bldg. 500 Summer St. NE, Rm. 137AB Salem, OR 97301

Hearing Officer: Staff

Stat. Auth.: ORS 192.430 & 409.050

Stats. Implemented: ORS 192.430, 192.440 & 409.010

Proposed Repeals: 411-005-0100

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

Summary: The Department of Human Services, Seniors and People with Disabilities Division (SPD) is proposing to repeal Oregon Administrative Rule (OAR) 411-005-0100 related to fees for public records. SPD will be following the Department-wide rules on public record fees adopted in OAR 407-003-0000 through OAR 407-003-0010 that became effective on February 15, 2007. The rules can be found at: http://arcweb.sos.state.or.us/rules/OARS_400/OAR_407/407_005.html

Rules Coordinator: Christina Hartman

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

Telephone: (503) 945-6398

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Rule Caption: Residential Care and Assisted Living Facilities.

Date:	Time:	Location:
5-30-07	2 p.m.	Human Services Bldg. 500 Summer St. NE Rm. 137ABC Salem, OR

Hearing Officer: Staff

Stat. Auth.: ORS 410.070, 443.450

Stats. Implemented: ORS 443.400-443.460, 443.991

Proposed Adoptions: Rules in 411-054

Proposed Repeals: Rules in 411-055, 411-056

Last Date for Comment: 6-1-07, 5 p.m.

Summary: The Department of Human Services, Seniors and People with Disabilities Division (SPD) is proposing to adopt Oregon Administrative Rules (OARs) in 411-054, effective October 1, 2007, related to residential care and assisted living facilities. With the proposed combination of the OARs in 411-054, SPD is also proposing to repeal the OARs in 411-055 related to residential care facilities and the OARs in 411-056 related to assisted living facilities, effective October 1, 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

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Department of Justice Chapter 137

Rule Caption: Establishes Procedures for Criminal Records Checks for Applicants, Employees, Volunteers, and Contractors.

Date:	Time:	Location:
5-22-07	1:30-3:30 p.m.	Rm. D, (Lower Level R) 1215 State St. NE Salem, OR

Hearing Officer: Leigh Salmon

Stat. Auth.: ORS 181.534, 180.267, 181.010

Stats. Implemented: ORS 180.140, 180.150, 180.267, 181.534, 181.010

Proposed Adoptions: 137-007-0200, 137-007-0210, 137-007-0220, 137-007-0230, 137-007-0240, 137-007-0250, 137-007-0260, 137-007-0270, 137-007-0280, 137-007-0300, 137-007-0310, 137-007-0320, 137-007-0330

Last Date for Comment: 5-22-07

Summary: The proposed rules establish procedures for the Department of Justice to perform criminal records checks and use the information obtained to evaluate the fitness of current employees seeking to change jobs, applicants, volunteers, and contractors (collectively, "applicants") of the Department. Criminal records checks under this rule include name-based checks through the Law Enforcement Data System (LEDS) for all applicants and fingerprint-based checks for those other than current employees. The rules require applicants to provide personal information to facilitate criminal records checks and establish procedures to keep criminal

NOTICES OF PROPOSED RULEMAKING

history information confidential. The rules specify the crimes that the Department of Justice will consider when making determinations about the fitness of applicants to hold a position within the Department and establish procedural rules for challenges to the Department's fitness determinations. The rules permit the Department to require applicants to pay the actual cost of criminal records checks.

Rules Coordinator: Carol Riches

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

Telephone: (503) 947-4700

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Rule Caption: Misleading Use of "Free" Offers and Rebates.

Date:	Time:	Location:
6-25-07	3 p.m.	Commerce Bldg. 158 12th St. NE Salem, OR

Hearing Officer: Hardy Myers

Stat. Auth.: ORS 646.608(4)

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

Proposed Amendments: 137-020-0015

Last Date for Comment: 6-18-07

Summary: The amendments clarify and extend the scope of prohibitions against offers for the sale or lease of goods and services which are accompanied by representations that the purchaser or lessee will receive, in addition, a "free" good or service. The revised rule would apply to transactions wherein the goods or services could be purchased for less money without the purportedly "free" good or service, to transactions in which the selling price has been increased in comparison to a newly-defined standard ("the regular price"), and to certain transactions involving home solicitation sales as that phrase is defined in ORS 83.710(1). Further, the amendments require clear and conspicuous disclosure of the terms of "free" offers. The amendments create a new exemption from the rule for certain "free" offers by manufacturers or other parties other than the seller.

The amendments add new prohibitions against the unfair and deceptive use of "rebate" offers. Failure to clearly and conspicuously disclose limitations on rebates and making any misleading or deceptive offer in conjunction with the purchase or lease of real estate, goods or services will be unlawful under the amendments.

Rules Coordinator: Carol Riches

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

Telephone: (503) 947-4700

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Department of State Lands Chapter 141

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

Date:	Time:	Location:
6-27-07	1:30-3:30 p.m.	Land Board Rm. Dept. of State Lands Bldg. 775 Summer St. NE Salem, OR 97301

Hearing Officer: Jeff Kroft

Stat. Auth.: ORS 273.045, 274.040, 274.710

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

Stats. Implemented: ORS 273.045, 274.040, 274.710

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

Last Date for Comment: 7-31-07

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

lish a process for authorizing ocean energy research projects, demonstration projects and commercial operations through the granting of temporary use permits and ocean energy facility licenses.

Rules Coordinator: Liz Bott

Address: Department of State Lands, 775 Summer St. NE, Suite 100, Salem, OR 97301-1279

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

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Department of Transportation, Highway Division Chapter 734

Rule Caption: Procedures for the Establishment of Speed Zones on Certain Public Roads.

Stat. Auth.: ORS 184.616, 184.619, 810.010, 810.180

Stats. Implemented: ORS 810.180

Proposed Adoptions: 734-020-0014, 734-020-0016, 734-020-0017

Proposed Amendments: 734-020-0015

Last Date for Comment: 5-21-07

Summary: ORS 810.180 authorizes the Department of Transportation to conduct speed zone investigations and set speeds on most public roads. ORS 810.180 also allows the Department to delegate, by rule, speed zoning authority for public paved low volume or public unpaved roads. As proposed, OAR 734-020-0014 creates a list of definitions pertaining to speed zoning. As amended, OAR 734-020-0015 gives additional authority to the State Traffic Engineer when establishing speed zones on rural state highways, and transition speed zones on most public roads. The amended rule also allows the Department to refer speed zoning cases on rural state highways to the Speed Zone Review Panel. As proposed, OAR 734-020-0016 and 0017 establish the process for delegating speed zoning authority. The rules also identify the criteria and procedures for setting speeds on public paved low volume or public unpaved roads.

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

Rules Coordinator: Brenda Trump

Address: Department of Transportation, Highway Division, 355 Capitol St. NE, Rm. 29, Salem, OR 97301

Telephone: (503) 986-3171

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Employment Department, Child Care Division Chapter 414

Rule Caption: OAR 414-205, 414-300 and 414-350.

Date:	Time:	Location:
5-22-07	2 p.m.	Employment Auditorium 875 Union St. NE Salem, OR 97311

Hearing Officer: Lynn Nelson

Stat. Auth.: ORS 657A

Stats. Implemented: ORS 657A.260, 657A.330, 657A.440

Proposed Amendments: 414-205, 414-300, 414-450

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

Summary: Incorporate name change of partner organization (Professional Development Registry to Oregon Registry), clarify types of registered family applications (new, renew and reopen), clarify training requirements for renewing and reopening applicants, delete provision in registered family rules that states we will never disclose identity of complainant because its contrary to public records law.

Rules Coordinator: Lynn M. Nelson

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

Telephone: (503) 947-1724

NOTICES OF PROPOSED RULEMAKING

Oregon Department of Education Chapter 581

Rule Caption: Defines requirements for human sexuality instruction.

Date: 5-23-07 **Time:** 1–3 p.m. **Location:** Rm. 215A, Public Service Bldg.
255 Capitol St. NE
Salem, OR

Hearing Officer: Randy Harnisch

Stat. Auth.: ORS 326.051

Stats. Implemented: ORS 336.455

Proposed Amendments: 581-022-1440

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

Summary: The proposed amendment revises the existing rule to align with requirements of Oregon's Health Education Content Standards. The amendments also extend the content of the rule to include requirements for human sexuality education.

Rules Coordinator: Paula Merritt

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

Telephone: (503) 947-5746

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Rule Caption: Certified technicians required to perform annual bus inspections.

Date: 5-23-07 **Time:** 1–3 p.m. **Location:** Rm. 215A, Public Service Bldg.
255 Capitol St. NE
Salem, OR

Hearing Officer: Randy Harnisch

Stat. Auth.: ORS 326.051

Stats. Implemented: ORS 327.013, 820.100, 820.105, 820.110, 820.120

Proposed Amendments: 581-053-0002

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

Summary: The proposed amendments will ensure that technicians performing annual bus inspections have met specified standards, focusing primarily on mechanical and safety. The amendments will establish a certification process for technician/inspectors and require that school districts utilize only certified inspectors to perform annual bus inspections. The department's pupil transportation section currently provides the testing that would be required for certification at no cost.

Rules Coordinator: Paula Merritt

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

Telephone: (503) 947-5746

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Rule Caption: Establishes requirements for complaint procedures for school districts.

Date: 5-23-07 **Time:** 1–3 p.m. **Location:** Rm. 215A, Public Service Bldg.
255 Capitol St. NE
Salem, OR

Hearing Officer: Randy Harnisch

Stat. Auth.: ORS 326.051

Stats. Implemented: ORS 326.051, 327.103

Proposed Adoptions: 581-022-1941

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

Summary: The proposed rule would require school districts to adopt and implement a process for receiving and processing complaints from district constituents. The rule would establish minimum requirements and timelines for such processes.

Rules Coordinator: Paula Merritt

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

Telephone: (503) 947-5746

Oregon Film and Video Office Chapter 951

Rule Caption: To clarify application process, eligibility requirements and payments of Oregon Production Investment Fund rebates.

Stat. Auth.: ORS 284.300–284.315

Stats. Implemented: ORS 736.75–736.82

Proposed Amendments: 951-002-0005, 951-002-0010, 951-002-0020

Last Date for Comment: 5-21-07

Summary: To clarify application process, eligibility requirements and payment of rebates.

Rules Coordinator: Susan Haley

Address: Oregon Film and Video Office, 121 SW Salmon St., Suite 1205, Portland, OR 97204

Telephone: (503) 229-5832

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Oregon Liquor Control Commission Chapter 845

Rule Caption: Amend 1 rule/repeal 1 rule to simplify Division 6 rules governing suspended licensee activities.

Date: 5-23-07 **Time:** 10 a.m.–12 p.m. **Location:** 9079 SE McLoughlin Blvd.
Portland, OR 97222

Hearing Officer: Jennifer Huntsman

Stat. Auth.: ORS 471, 471.030, 471.040 & 471.730(1), (2) & (5)

Stats. Implemented: ORS 471.315, 471.316, 183.430(2)

Proposed Amendments: 845-006-0498

Proposed Repeals: 845-006-0361

Last Date for Comment: 6-6-07

Summary: OAR 845-006-0361 Operating While Suspended: This rule describes the type of licensee conduct specifically prohibited by the Commission while a licensee is suspended. In order to simplify and clarify our rules regarding licensee operations while suspended, we need to repeal this rule and incorporate its rule language into OAR 845-006-0498.

OAR 845-006-0498 Suspended Licenses: Posting of Suspension Notice Sign, Activities Allowed During Suspension: This rule describes the requirement that a sign be posted on the doors of businesses where the liquor license has been suspended due to violation of Oregon liquor law(s). This rule also describes activities which are allowed and prohibited on premises where the suspension sign is posted. We need to amend this rule incorporating language from OAR 845-006-0361 into section (3). Staff further proposes: combining the language in section (3) (a) and (b) since there is no distinction between retail and non-retail licensees for purposes of this rule; clarifying in section (4) that a violation of section (3) is a Category I violation while a violation of section (1) or (2)(b) is a Category IV violation; and amending the Statutes Implemented section of this rule in order to accurately and completely cite all Oregon Revised Statutes which this rule implements.

Rules Coordinator: Jennifer Huntsman

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

Telephone: (503) 872-5004

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Oregon Public Employees Retirement System Chapter 459

Rule Caption: Modifies provisions of loan program for Deferred Compensation Program participants.

Date: 5-22-07 **Time:** 2 p.m. **Location:** Boardroom
PERS Headquarters
11410 SW 68th Parkway
Tigard, OR

Hearing Officer: Daniel Rivas

Stat. Auth.: ORS 243.470

Stats. Implemented: ORS 243.401–243.507

NOTICES OF PROPOSED RULEMAKING

Proposed Amendments: 459-050-0077
Last Date for Comment: 6-22-07
Summary: Clarifies administration of default and tax reporting requirements of Deferred Compensation loan program.
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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Rule Caption: Modifications to make the agency record filing process more definite and certain.
Date: 5-22-07 **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 238, 238A
Proposed Amendments: 459-005-0220
Last Date for Comment: 6-22-07
Summary: Amend the provisions dealing with having a document deemed to be received by PERS in response to the agency converting to workflows and digital document handling.
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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Rule Caption: Adopt rules to administer judge member retirement.
Date: 5-22-07 **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 238.500–238.585
Proposed Adoptions: 459-040-0001, 459-040-0010, 459-040-0020, 459-040-0030, 459-040-0040, 459-040-0050, 459-040-0060, 459-040-0070, 459-040-0080
Last Date for Comment: 6-22-07
Summary: The purpose of the proposed rules is to clarify administration of the judge member retirement plan under ORS 238.500 to 238.585.
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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Rule Caption: Modifications to address review and appeal process for employers to follow in agency disputes.
Date: 5-22-07 **Time:** 2 p.m. **Location:** Boardroom, PERS Headquarters, 11410 SW 68th Parkway, Tigard, OR

Hearing Officer: Daniel Rivas
Stat. Auth.: ORS 183.464, 183.600–183.690, 238.650
Stats. Implemented: ORS 183.413–183.470
Proposed Amendments: 459-001-0030, 459-001-0035, 459-001-0040
Last Date for Comment: 6-22-07
Summary: Modifies the administrative review and hearing processes to include addressing disputes raised by PERS participating employers in connection with staff determinations made in regards to their obligation (e.g., paying contributions for prior years, being charged for associated earnings, etc).
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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Rule Caption: Provides for consistent administration of withdrawals in PERS programs.
Date: 5-22-07 **Time:** 2 p.m. **Location:** Boardroom, PERS Headquarters, 11410 SW 68th Parkway, Tigard, OR

Hearing Officer: Daniel Rivas
Stat. Auth.: ORS 238.650, 238A.450
Stats. Implemented: ORS 238.265, 238A.120, 238A.375, Ch. 276, OL 2003

Proposed Adoptions: 459-075-0020, 459-080-0020
Proposed Amendments: 459-010-0055
Last Date for Comment: 5-31-07
Summary: 459-010-0055: The proposed modifications to this rule provide for administration of PERS Chapter 238 Program withdrawals in a manner parallel with the draft OPSRP withdrawal rules, OAR 459-075-0020 and 459-080-0020. In particular, they 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 rules.

459-075-0020: Clarifies requirements for withdrawal from the OPSRP Pension Program under ORS 238A.120.

459-080-0020: Clarifies requirements for withdrawal from the OPSRP Individual Account Program under OAR 238A.375.

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: Provides licensing reciprocity between Washington/Oregon for outfitters/guides operating on the Columbia River.

Stat. Auth.: ORS 830.110
Other Auth.: HB 2084, 2005 Oregon Legislature
Stats. Implemented: ORS 704.025, 830.435
Proposed Adoptions: 250-016-0014
Last Date for Comment: 5-31-07, 5 p.m.

Summary: This rule provides licensing reciprocity between Washington and Oregon for outfitters and guides on the lower Columbia River.

Rules Coordinator: June LeTarte
Address: 435 Commercial St. NE #400, PO Box 14145, Salem OR 97309

Telephone: (503) 378-2617

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Oregon University System, Oregon Institute of Technology Chapter 578

Rule Caption: To amend the Authority of Campus Police Officers text.

Date: 5-29-07 **Time:** 2 p.m. **Location:** Snell Hall 215, OIT, Klamath Falls, OR

Hearing Officer: Bob Nettles
Stat. Auth.: ORS 351
Stats. Implemented: ORS 351.070
Proposed Amendments: 578-072-0091
Last Date for Comment: 5-31-07

Summary: 578-072-0091 Amends the Authority of Campus Police Officers text. Amendments allow for text revisions, for fiscal year 2007–08. The schedule of text revisions may be obtained from the Oregon Institute of Technology, finance and Administration office.

NOTICES OF PROPOSED RULEMAKING

Rules Coordinator: Ceilia E. Foster
Address: Oregon University System, Oregon Institute of Technology, 3201 Campus Drive, Klamath Falls, OR 97603
Telephone: (541) 885-1105

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Rule Caption: To amend the fees for Penalties for Offenses.

Date:	Time:	Location:
5-29-07	2 p.m.	Snell Hall 215, OIT Klamath Falls, OR

Hearing Officer: Bob Nettles

Stat. Auth.: ORS 351

Stats. Implemented: ORS 351.070

Proposed Amendments: 578-072-0070

Last Date for Comment: 5-31-07

Summary: 578-072-0070 Amends the Penalties for Offenses fees. Amendments allow for fee adjustments for fiscal year 2007–08. The schedule of text revisions may be obtained from the Oregon Institute of Technology, finance and Administration office.

Rules Coordinator: Ceilia E. Foster

Address: Oregon University System, Oregon Institute of Technology, 3201 Campus Drive, Klamath Falls, OR 97603

Telephone: (541) 885-1105

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Rule Caption: To amend the Vehicle Registration text.

Date:	Time:	Location:
5-29-07	2 p.m.	Snell Hall 215, OIT Klamath Falls, OR

Hearing Officer: Bob Nettles

Stat. Auth.: ORS 351

Stats. Implemented: ORS 351.070

Proposed Amendments: 578-072-0020

Last Date for Comment: 5-31-07

Summary: 578-072-0020 Amends the Vehicle Registration text. Amendments allow for text revisions, for fiscal year 2007–08. The schedule of text revisions may be obtained from the Oregon Institute of Technology, finance and Administration office.

Rules Coordinator: Ceilia E. Foster

Address: Oregon University System, Oregon Institute of Technology, 3201 Campus Drive, Klamath Falls, OR 97603

Telephone: (541) 885-1105

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Rule Caption: To amend the Schedule of Special Institution Fees and Charges.

Date:	Time:	Location:
5-29-07	2 p.m.	Snell Hall, Rm. 215, OIT Klamath Falls, OR

Hearing Officer: Bob Nettles

Stat. Auth.: ORS Ch. 351

Stats. Implemented: ORS 351-070

Proposed Amendments: 578-041-0030

Last Date for Comment: 5-31-07

Summary: 587-041-0030 Amends the Schedule of Special Institution fees and Charges. Amendments allow for increases, revisions, additions or deletions of special course fees and general service fees for fiscal year 2007–08. The schedule of subject fees may be obtained from the Oregon Institute of Technology office.

Rules Coordinator: Ceilia E. Foster

Address: Oregon University System, Oregon Institute of Technology, 3201 Campus Drive, Klamath Falls, OR 97603

Telephone: (541) 885-1105

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Rule Caption: To amend the Parking Fees and text.

Date:	Time:	Location:
5-29-07	2 p.m.	Snell Hall, Rm. 215, OIT Klamath Falls, OR

Hearing Officer: Bob Nettles

Stat. Auth.: ORS Ch. 351

Stats. Implemented: ORS 351-070

Proposed Amendments: 578-072-0030

Last Date for Comment: 5-31-07

Summary: 578-071-0030 Amends the Parking Permits and Fees with text revisions. Amendments allow for increases and text revisions, for fiscal year 2007–08. The schedule of parking fees and text revisions may be obtained from the Oregon Institute of Technology, Finance and Administration office.

Rules Coordinator: Ceilia E. Foster

Address: Oregon University System, Oregon Institute of Technology, 3201 Campus Drive, Klamath Falls, OR 97603

Telephone: (541) 885-1105

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Rule Caption: To amend text revisions for Parking on Campus.

Date:	Time:	Location:
5-29-07	2 p.m.	Snell Hall 215, OIT Klamath Falls, OR

Hearing Officer: Bob Nettles

Stat. Auth.: ORS 351

Stats. Implemented: ORS 351.070

Proposed Amendments: 578-072-0050

Last Date for Comment: 5-31-07

Summary: 578-072-0050 Amends the Parking on Campus text changes. Amendments allow for text revisions, for fiscal year 2007–08. The schedule of text revisions may be obtained from the Oregon Institute of Technology, finance and Administration office.

Rules Coordinator: Ceilia E. Foster

Address: Oregon University System, Oregon Institute of Technology, 3201 Campus Drive, Klamath Falls, OR 97603

Telephone: (541) 885-1105

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Oregon University System, Oregon State University Chapter 576

Rule Caption: Setting fees and charges at Oregon State University for fiscal year 2007–2008.

Date:	Time:	Location:
5-30-07	12 noon	Memorial Union 206 Oregon State University Corvallis, OR

Hearing Officer: Barbara Melton

Stat. Auth.: ORS 351.070, 352.360 & OAR 580-040-0010

Stats. Implemented: ORS 351.070, 352.360

Proposed Amendments: 576-010-0000

Last Date for Comment: 5-31-07

Summary: The proposed amendment will set fees and charges for designated services at Oregon State University for fiscal year 2007–2008. The rule states: “The University hereby adopts by reference a list of fees and charges for fiscal year 2007–2008. The list of fees and charges is available at the Oregon State University Office of Budgets and Fiscal Planning and the Oregon State University Valley Library, and is hereby incorporated by reference in the rule.”

Rules Coordinator: Barbara Melton

Address: Oregon University System, Oregon State University, 638 Kerr Administration Bldg., Corvallis, OR 97331-2128

Telephone: (541) 737-6262

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Secretary of State, Audits Division Chapter 162

Rule Caption: Minimum Standards for Reviews of Oregon Municipal Corporations.

Stat. Auth.: ORS 297

Stats. Implemented: ORS 297.465

Proposed Adoptions: 162-040-0054

Proposed Amendments: 162-040-0000, 162-040-0005, 162-040-0010, 162-040-0015, 162-040-0020, 162-040-0055, 162-040-0060, 162-040-0065, 162-040-0070, 162-040-0075, 162-040-0085, 162-040-0090, 162-040-0095, 162-040-0110, 162-040-0115, 162-040-

NOTICES OF PROPOSED RULEMAKING

0120, 162-040-0125, 162-040-0130, 162-040-0135, 162-040-0140, 162-040-0146, 162-040-0148, 162-040-0155, 162-040-0160

Proposed Repeals: 162-040-0025, 162-040-0030, 162-040-0035, 162-040-0040, 162-040-0045, 162-040-0080

Last Date for Comment: 5-21-07

Summary: The amendments propose the following changes:

The focus and majority of amendments are editorial in nature and are intended to update language throughout for changes promulgated by professional auditing and financial reporting standards. It proposes one rule to recognize professional auditing standards for *Required Supplementary Information* that has become prevalent in financial reporting. It removes the requirement to present a Schedule of Endorsed Warrants Outstanding. It removes references to outdated review procedures and directs the auditor to seek guidance from professional standards.

Rules Coordinator: Julie A. Sparks

Address: Secretary of State, Audits Division, 255 Capitol St. NE, Suite 500, Salem, OR 97310

Telephone: (503) 986-2255

Rule Caption: Minimum Standards for Audits of Oregon Municipal corporations.

Stat. Auth.: ORS 297

Stats. Implemented: ORS 297.465

Proposed Adoptions: 162-010-0115

Proposed Amendments: 162-010-0000, 162-010-0020, 162-010-0030, 162-010-0050, 162-010-0140, 162-010-0150, 162-010-0170, 162-010-0190, 162-010-0230, 162-010-0240, 162-010-0260, 162-010-0280, 162-010-0295, 162-010-0330

Proposed Repeals: 162-010-0180

Last Date for Comment: 5-21-07

Summary: The amendments propose the following changes:

1. Some minor edits and language clarifications for changes in statutes and professional accounting standards.

2. Amend language where necessary to include the word “biennial” when addressing budget matters.

3. OAR 162-010-0020 — Clarify auditor’s responsibility for financial information presented as required supplementary information and other supplementary information.

4. OAR 162-010-0115— Adopt to recognize professional standard on Required Supplementary Information.

5. OAR 162-010-0140 — Remove unnecessary verbiage for Schedule of Accountability for Independently Elected Officials.

6. OAR 162-010-0150 — Simplify Schedule of Property Tax Transactions or Acreage Assessments.

7. OAR 162-010-0180 — Delete requirement to present a Schedule of Endorsed Warrants Outstanding.

Rules Coordinator: Julie A. Sparks

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ADMINISTRATIVE RULES

Board of Examiners for Engineering and Land Surveying Chapter 820

Rule Caption: Amend 2005–2007 biennial budget of the agency.

Adm. Order No.: BEELS 1-2007(Temp)

Filed with Sec. of State: 3-23-2007

Certified to be Effective: 3-23-07 thru 6-30-07

Notice Publication Date:

Rules Amended: 820-010-0325

Subject: Delete unnecessary demarcation of operating budget and examination budget.

Rules Coordinator: Mari Lopez—(503) 362-2666

820-010-0325

Budget

The amount of \$1,820,150 is established for the biennium beginning July 1, 2005, as the intended limit for payment of expenses from fees, moneys or other revenue, including Miscellaneous Receipts, collected or received by the Board.

Stat. Auth.: ORS 670.310, 672.155 & 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: BEELS 1-1999, f. 5-27-99, cert. ef. 7-1-99; BEELS 1-2001, f. & cert. ef. 5-22-01; BEELS 2-2002, f. & cert. ef. 5-15-02; BEELS 4-2003, f. 5-14-03, cert. ef. 7-1-03; BEELS 2-2004, f. & cert. ef. 7-14-04; BEELS 2-2005(Temp), f. & cert. ef. 6-9-05 thru 12-5-05; BEELS 4-2005, f. & cert. ef. 9-23-05; BEELS 1-2007(Temp), f. & cert. ef. 3-23-07 thru 6-30-07

Rule Caption: Adoption of new language to rules located in Division 10 and 20.

Adm. Order No.: BEELS 2-2007

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

Certified to be Effective: 4-5-07

Notice Publication Date: 2-1-07

Rules Adopted: 820-010-0621

Rules Amended: 820-010-0010, 820-010-0210, 820-010-0230, 820-010-0231, 820-010-0635, 820-010-0720, 820-020-0015

Subject: OAR 820-010-0010 — Defines “Responsible Charge.” Housekeeping.

OAR 820-010-0210 — Removes invalid language.

OAR 820-010-0230 — Additional language broadens the rule to accept additional experience from Profession Engineer applicants at the discretion of the board.

OAR 820-010-0231 — Additional language broadens the rule to accept additional experience from Professional Land Surveyor applicants at the discretion of the board.

OAR 820-010-0620 — Clarifies requirements for official seals and designates a seal for Photogrammetrists.

OAR 820-010-0621 — Further defines and clarifies “Final Documents.”

OAR 820-010-0635 — Additional language clarifies the Professional Development Hours (PDH) required for Oregon registrants who hold a license in another state. Housekeeping.

OAR 820-010-0720 — Clarifies requirements for advertising for or offering professional services (Engineering, Land Surveying and Photogrammetry).

OAR 820-020-0015 — Additional language broadens the rule to inform registrants of their professional duty of affixing their seal and signature on any final document under their supervision and control.

Rules Coordinator: Mari Lopez—(503) 362-2666

820-010-0010

Definitions

The following definitions and guides have been adopted by the Board to assist registrants and the general public in their interpretation of specific portions of ORS 672.002 to 672.325.

(1) “Board” means the Oregon State Board of Examiners for Engineering and Land Surveying provided by ORS 672.240.

(2) “Practice of engineering” refers to ORS 672.005 and 672.007.

(3) “Technician work” means the time spent on work where the personal responsibility and technical knowledge required are small; that is, where the individual performance of a task, set and supervised by others, is all that is required. It shall also include all time spent in work before an applicant is 18 years old “Technician work” does not include engineering work as described in section (4), land surveying work as described in sec-

tion (7) or photogrammetric work as described in section (10). Engineering “technician work” includes, but is not limited to, work as an inspector, a laboratory assistant, a design assistant, a survey technician, or a draftsman. Land Surveying “technician work” includes, but is not limited to, work as a survey technician, a draftsman, an instrument plotter, or computation work under close supervision and not requiring the exercise of judgment in survey or map design, or decisions on boundary location. Photogrammetric mapping “technician work” includes but is not limited to, work as a photogrammetric mapping technician to perform technical photogrammetric or remote sensing tasks to extract spatial data from photographic imagery, digital imagery or other remotely-sensed data under close supervision and not requiring the exercise of judgment in project design or decisions related to authoritative photogrammetric measurements.

(4) “Engineering work,” is work performed after a person is 18 years old and involves work of a higher grade and responsibility than that defined as “technician work.” Credit for engineering work will only be given for time worked such that persons performing work for more than one entity during a given period of time will not receive multiple credit for dates worked. Time spent in engineering teaching subsequent to graduation shall be listed as “engineering work.” Work performed in conjunction with a course of study provided by a community college, college, university, or any other educational program, for which tuition or similar payment is made, credit is earned, or as a requirement of the program, will not be considered “engineering work.”

(5) “Responsible charge,” as used in ORS 672.002(9), means to have supervision and control over engineering work as defined in ORS 672.005(1), land surveying work, and photogrammetric mapping, as evidenced by performing substantially the following:

(a) Establishing the manner or method by which services are rendered;

(b) Establishing quality controls for the services rendered;

(c) Communicating with clients;

(d) Reviewing designs, calculations, plans, surveys or maps;

(e) Supplying deficiencies found in or correcting errors contained in designs, calculations, plans, surveys or maps;

(f) Making changes to documents, including but not limited to, designs, plans, plats, surveys or maps; and

(g) With respect to land surveying, reviewing field evidence and making final decisions concerning the placement of survey monuments and surveyed lines.

(6) “Supervision and control,” as used in ORS 672.002(10), means establishing the nature of, directing and guiding the preparation of, and approving the work product and accepting responsibility for the work product, as evidenced by performing the following:

(a) Spending time directly supervising the work to assure that the person working under the licensee is familiar with the significant details of the work;

(b) Providing oversight, inspection, observation and direction regarding the work being performed;

(c) Providing adequate training for persons rendering services and working on projects under the licensee;

(d) Maintaining readily accessible contact with the person providing services or performing work by direct proximity or by frequent communication about the services provided or the work performed. Communications between the licensee and persons under the licensee’s supervision and control include face-to-face communications, electronic mail, and telephone communications and similar, other communications that are immediate and responsive; and

(e) Applying the licensee’s seal and signature to a document.

(7) “Practice of land surveying” refers to ORS 672.005(2) and 672.007.

(8) “Land surveying work” is work performed after a person is 18 years old and involves work of a higher grade and responsibility than that defined as “technician work”. Engineering work, not related to the practice of land surveying, is not land surveying work. Credit for land surveying work will only be given for time worked such that persons performing work for more than one entity during a given period of time will not receive multiple credit for dates worked. Work performed in conjunction with a course of study provided by a community college, college, university, or any other educational program, for which tuition or similar payment is made, credit is earned, or as a requirement of the program, will not be considered “land surveying work.”

(9) “Practice of photogrammetric mapping” or “practice of photogrammetry” refers to ORS 672.002(7).

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(10) "Photogrammetric work" is work performed after a person is 18 years old and involves work of a higher grade and responsibility than that defined as "technician work." Credit for photogrammetric work will only be given for time worked such that persons performing work for more than one entity during a given period of time will not receive multiple credit for dates worked. Time spent teaching photogrammetric mapping after graduation is "photogrammetric work." Work performed in conjunction with a course of study provided by a community college, college, university, or any other educational program, for which tuition or similar payment is made, credit is earned, or as a requirement of the program, will not be considered "photogrammetric work."

(11) Professional Development Hour (PDH) — A contact hour (nominal) of instruction or presentation. The common denominator for other units of credit.

(12) Continuing Education Unit (CEU) — Unit of credit customarily used for continuing education courses. One continuing education unit equals 10 hours of class in an approved continuing education course.

(13) College/Unit Semester/Quarter Hour — Credit for course work in an approved program or other related college course approved in accordance with article (e) of this section.

(14) Course/Activity — Any qualifying course or activity with a clear purpose and objective which will maintain, improve or expand the skills and knowledge relevant to the licensee's field of practice.

(15) Multiple Registrant means a person who is registered as both a land surveyor and an engineer or is registered as an engineer in two or more disciplines.

(16) Active Status means the registrant is authorized to engage in the professional practice of engineering, land surveying or photogrammetric mapping, and is in good standing with regard to payment of annual renewal fees and Continuing Professional Development requirements.

(17) Exempt Status means the registrant has notified the Board that they are not providing or offering to provide professional engineering, land surveying or photogrammetric mapping services to the public of the State of Oregon and requests exemption from Continuing Professional Development requirements.

(18) Inactive Status means the registrant is not holding out as a professional engineer, land surveyor or photogrammetrist and is not authorized to engage in the professional practice of engineering, land surveying or photogrammetric mapping until such time the Board determines otherwise.

(19) Retired status means an engineer or land surveyor meeting the requirements of ORS 672.180, who has notified the Board that they are not providing engineering or land surveying services to the public of the State of Oregon and who requests the retired status.

(20) Delinquent Status means the registrant has not renewed their license or has not completed the Continuing Professional Development requirements.

(21) Nonresident engineer means a nonresident engineer as used in ORS 672.050 shall mean an engineer who does not meet the residence requirements of OAR 820-010-0616(1).

(22) Acronyms:

(a) ABET — Accreditation Board for Engineering and Technology, Inc.;

(b) ACCE — American Council for Construction Education;

(c) ASAC — Applied Science Accreditation Commission of ABET;

(d) CPEES — Center for Professional Engineering Education Services;

(e) EAC — Engineering Accreditation Commission of ABET;

(f) ECE — Education Credential Evaluators, Inc.;

(g) EI — Engineering Intern;

(h) ELSSES — Engineering Land Surveying Examination Services;

(i) FE — Fundamentals of Engineering;

(j) FLS — Fundamentals of Land Surveying;

(k) LSI — Land Surveying Intern;

(l) NCEES — National Council of Examiners for Engineering and Surveying;

(m) TAC — Technology Accreditation Commission of ABET.

Stat. Auth.: ORS 670.310 & 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: EE 13, f. 3-29-72, ef. 4-15-72; EE 16, f. 3-5-74, ef. 3-25-74; EE 17, f. 4-22-74, ef. 5-11-74; EE 20, f. & ef. 12-15-77; EE 1-1987, f. & ef. 1-5-87; EE 1-1992, f. & cert. ef. 2-3-92; EE 1-1995, f. 8-15-95, cert. ef. 9-1-95; BEELS 1-1998, f. & cert. ef. 2-10-98; BEELS 1-2000, f. & cert. ef. 1-14-00; BEELS 4-2000, f. & cert. ef. 8-4-00; BEELS 5-2000, f. & cert. ef. 10-19-00; BEELS 1-2001, f. & cert. ef. 5-22-01; BEELS 1-2002, f. & cert. ef. 3-13-02; BEELS 1-2004, f. & cert. ef. 1-26-04; BEELS 2-2004, f. & cert. ef. 7-14-04; BEELS 1-2005, f. & cert. ef. 3-16-05; BEELS 6-2005, f. & cert. ef. 12-13-05; BEELS 2-2006, f. & cert. ef. 11-21-06; BEELS 2-2007, f. & cert. ef. 4-5-07

820-010-0210

Application for Enrollment as an Engineering Intern (EI) and Land Surveying Intern (LSI)

Applications may be made for admission to examination for enrollment as an EI or LSI as provided in ORS 672.255. Applications must be submitted by the dates specified in OAR 820-010-0440 to be considered by the Board.

Stat. Auth.: ORS 670.310, 672.105, 672.118 & 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: EE 13, f. 3-29-72, ef. 4-15-72; EE 20, f. & ef. 12-15-77; EE 1-1995, f. 8-15-95, cert. ef. 9-1-95; BEELS 2-1999, f. & cert. ef. 9-15-99; BEELS 2-2007, f. & cert. ef. 4-5-07

820-010-0230

Information to be Furnished by Professional Engineer Applicants

(1) Applicants for admission to examination for registration as professional engineers will be required to submit evidence to show qualification of eligibility consisting of current enrollment as an EI meeting the requirements of the State of Oregon at the time of enrollment and the following practice experience:

(a) Applicants qualified under OAR 820-010-0225(3)(a), (3)(d), or (3)(f) shall complete four or more years of active practice in engineering work in addition to the requirements for admission to examination for enrollment as an EI. Applicants will be allowed to submit as qualifying work experience that work experience obtained based on employment up to the date of the PE examination;

(b) Applicants qualified under OAR 820-010-0225(3)(b), (3)(c) or (3)(e) shall complete six or more years of active practice in engineering work in addition to the requirements for admission to examination for enrollment as an EI. The six years of active practice year requirement may be reduced to four years provided that the applicant completes at least 21 semester/32 quarter hours in a curriculum including: Differential Equations, Physics, Statistics, Statics, Dynamics, Thermodynamics, Fluid Mechanics, Electrical Fundamentals and Strength of Materials.

(2) Active practice in engineering work shall be in the applicant's area of competence and under the supervision and control of a licensed engineer or be active practice in engineering satisfactory to the Board.

(3) Graduation from a post-baccalaureate degree program in engineering at a college or university that has an EAC of ABET accredited undergraduate degree program in the same field as the post-baccalaureate degree program may be substituted for one year of the four years of active practice required by this rule so long as the degree was not the basis for admission to the fundamental examination under OAR 820-010-0225(3)(d).

(4) Experience as a full-time assistant professor, or above, in a Board approved engineering curriculum, may be considered at the discretion of the Board as qualifying experience.

Stat. Auth.: ORS 670.310 & 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: EE 13, f. 3-29-72, ef. 4-15-72; EE 20, f. & ef. 12-15-77; EE 1-1995, f. 8-15-95, cert. ef. 9-1-95; BEELS 1-1998, f. & cert. ef. 2-10-98; BEELS 1-2001, f. & cert. ef. 5-22-01; BEELS 1-2002, f. & cert. ef. 3-13-02; BEELS 6-2005, f. & cert. ef. 12-13-05; BEELS 2-2006, f. & cert. ef. 11-21-06; BEELS 2-2007, f. & cert. ef. 4-5-07

820-010-0231

Information to be Furnished by Professional Land Surveyor Applicants

(1) Applicants for admission to examination for registration as professional land surveyors will be required to submit evidence to show qualification of eligibility consisting of current enrollment as an LSI, meeting the requirements of the State of Oregon at the time of enrollment and the following practice experience:

(a) Applicants qualified under OAR 820-010-0226(3)(a), (3)(b), (3)(c), (3)(d), (3)(e), (3)(f), (3)(g) or (3)(j) shall complete four or more years of active practice in land surveying work in addition to the requirements for admission to examination for enrollment as an LSI. Applicants will be allowed to submit as qualifying work experience that work experience obtained based on employment up to the date of the PLS examination;

(b) Applicants qualified under OAR 820-010-0226(3)(h) shall complete six or more years of active practice in land surveying work in addition to the requirements for admission to examination for enrollment as an LSI.

(2) Active practice in land surveying work shall be under the supervision and control of a licensed land surveyor or be active practice in land surveying satisfactory to the Board.

(3) Graduation from a post-baccalaureate degree program in engineering or surveying at a college or university which has an ABET accredited undergraduate degree program in the same field as the post-baccalaureate degree program may be substituted for one year of the four years of active practice required by this rule so long as the degree was not the basis

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for admission to the fundamental examination under OAR 820-010-0226(3)(g).

(4) Experience as a full-time assistant professor, or above, in a Board approved land surveying curriculum, may be considered at the discretion of the Board as qualifying experience.

Stat. Auth.: ORS 670.310 & 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: BEELS 2-2006, f. & cert. ef. 11-21-06; BEELS 2-2007, f. & cert. ef. 4-5-07

820-010-0621

Final Documents

(1) In addition to the final documents identified in ORS 672.020(2) and 672.025(2), final documents include plats, design information, and calculations. All final documents will bear the seal and signature of the registrant under whose supervision and control they were prepared.

(2) Documents that are not final documents must be marked as "preliminary", "not for construction", "review copy", "draft copy, subject to change", or with some similar wording to indicate that the documents are not intended to represent the final work product of the registrant. Such documents, if clearly marked as non-final documents and submitted to a client, customer, public entity, or any other person, do not need to have the seal and signature of the registrant under whose supervision and control they were prepared. However, any document, regardless of how marked, that is submitted to a public jurisdiction for approval is a final document and requires the seal and signature of the registrant.

Stat. Auth.: ORS 670.310 & 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: BEELS 3-2006(Temp), f. & cert. ef. 12-5-06 thru 6-3-07; BEELS 2-2007, f. & cert. ef. 4-5-07

820-010-0635

Continuing Professional Development

The purpose of professional development requirements is to demonstrate a continuing level of competency of professional land surveyors, engineers and photogrammetrists. Every registrant shall meet the professional development requirements as a condition of registration renewal.

(1) Requirements. Every registrant is required to obtain 30 PDH units during each biennial renewal period. Registrants who are licensed for a part of a renewal period shall obtain a prorated amount of PDH. If a registrant exceeds the annual requirement in any renewal period, a maximum of 15 PDH units in courses/activities may be carried forward into the next renewal period.

(2) PDH units may be earned as follows:

(a) Successful completion of college courses;

(b) Successful completion of short courses, tutorials, correspondence, web based courses, televised and videotaped courses;

(c) Active participation in seminars, in-house courses, workshops, and professional conventions;

(d) Teaching or instructing in (a) through (c) above;

(e) Authoring or co-authoring published papers, articles or books;

(f) Active participation in professional or technical societies;

(g) Self study;

(h) Mentoring of engineering, land surveying, or photogrammetry topics;

(i) Non-technical educational activities related to the registrants employment;

(j) Passing a board prepared take home test.

(3) PDH units for each renewal period may be obtained as follows:

(a) 1 College Semester hour equals 45 PDH;

(b) 1 College Quarter hour equals 30 PDH;

(c) 1 Continuing Education unit equals 10 PDH;

(d) 1 hour of professional education in course work, seminars, professional conventions, workshops equals 1 PDH;

(e) For teaching, apply multiple of 2 (teaching credit is valid for teaching a given course or seminar one time only and does not apply to full time faculty teaching college courses);

(f) For authoring or co-authoring a paper, article or book, appearing in a recognized professional or technical publication, up to a maximum of 10 PDH;

(g) 2 PDH for active participation in a professional or technical society. Up to a maximum of 6 PDH per renewal period;

(h) Self study of relevant materials such that the registrant's knowledge of the subject significantly improves the registrant's ability to work in the subject area. Up to a maximum of 6 PDH;

(i) Mentoring of nonlicensed individuals not under your supervision in the field of engineering, land surveying, or photogrammetry. Each 10

hours spent mentoring will provide 1 PDH with a maximum of 2 PDH per year;

(j) 1 PDH per hour for developing, writing, or scoring an Oregon Specific examinations. Up to a maximum of 8 PDH per renewal period.

(4) Determination of Credit. The Board has final authority with respect to approval of courses, credit, PDH values for courses and other methods of earning credit. The Board may maintain a list of courses and activities which it has approved. The Board will approve without listing courses which are sponsored by nationally recognized technical societies and those technical societies listed in 820-001-0000(2)(b)(A) through (E) and (2)(c)(A) through (G). Criteria for determination of credit shall follow these guidelines:

(a) Credit for college or community college approved courses will be based upon course credit established by the college;

(b) Credit for qualifying seminars and workshops will be based on one PDH unit for each hour of attendance. Attendance at qualifying programs presented at professional and/or technical society meetings will earn PDH units for the actual time of each program;

(c) Credit determination for activities (3)(f) and (3)(h) is the responsibility of the registrant and is subject to review by the Board.

(5) Record keeping. Each registrant is charged with the responsibility of maintaining records of his/her own professional education activities. Every registrant shall report their professional education activities on a form approved by the Board only when requested by the Board to do so. The duty of maintaining records to support credits claimed is the responsibility of the registrant. Records required include, but are not limited to:

(a) A record showing the activity claimed, sponsoring organization, date, location, duration, instructor's or speaker's name, and PDH units earned; and

(b) Attendance verification records in the form of completion certificates, paid receipts, or other documents supporting evidence of attendance. These records must be retained for three (3) years. Copies may be requested by the Board for audit verification purposes.

(6) Exemptions. A registrant may be exempted from the professional development requirements for one of the following reasons:

(a) A registrant serving on active duty in the armed forces of the United States for a period of time exceeding one hundred twenty (120) consecutive days in a calendar year shall be exempt from obtaining the PDH units required for that year;

(b) Registrants experiencing physical disability, illness or other extenuating circumstances as reviewed and approved by the Board may be exempt. Supporting documentation must be furnished to the Board;

(c) Registrants who are listed as "Retired" or those who have requested an Exempt Status and certify they are no longer providing professional engineering, land surveying, or photogrammetry services shall be exempt from the PDH units required. A registrant may bring an exempt license to active status by obtaining all delinquent PDH units. However, if the total number required to become current exceeds 30, then 30 shall be the maximum number required.

(7) In the event a registrant holds a license in another state that has a lesser PDH requirement than Oregon or no PDH requirement, the registrant will need to satisfy Oregon's 30 PDH requirement to renew the Oregon license. In the event a registrant holds a license in another state that has a higher PDH requirement than Oregon, the registrant will be able to renew registration in Oregon upon fulfilling the other jurisdiction's higher requirement.

(8) Multiple Registrants. The number of PDH units required shall remain a total of 30 PDH per renewal period for persons who hold registration as an engineer, land surveyor, or photogrammetrist or more than one discipline of engineering. At least one third (1/3) of the PDH units required in courses/activities shall be related to each registration.

Stat. Auth.: ORS 670.310 & 672.255

Stats. Implemented: ORS 672.002 - 672.375

Hist.: BEELS 2-2000, f. & cert. ef. 2-17-00; BEELS 5-2000, f. & cert. ef. 10-19-00; BEELS 3-2002, f. & cert. ef. 11-13-02; BEELS 1-2003, f. & cert. ef. 1-28-03; BEELS 6-2005, f. & cert. ef. 12-13-05; BEELS 2-2006, f. & cert. ef. 11-21-06; BEELS 2-2007, f. & cert. ef. 4-5-07

820-010-0720

Advertising for or Offering to Perform Services without Employing a Licensee; Engineering, Land Surveying and Photogrammetry Offices

(1) A licensee or firm, partnership, corporation, limited liability company, joint stock company, or other organization shall not advertise for or offer to perform or perform professional services for which a license is required unless the licensee or organization has a full-time partner, manager, officer or employee licensed to practice in the discipline for which a license is required.

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(2) Licensees and organizations shall not advertise for or offer to perform or perform professional services for which a license is required but for which they do not hold, or have a qualified person who holds, a license and thereafter seek to employ persons who hold a qualifying license.

(3) As used in this rule, a "full-time partner, manager, officer or employee" refers to a person who:

(a) Is physically present at least one half of the person's working time in the offices of the licensee or organization during normal business hours unless the full-time partner's, manager's, officer's or employee's professional duties require that the person be elsewhere; and

(b) Is not working for the licensee or organization under a contract or as a consultant for specific projects.

(4) A licensee or person employing or having a licensee as its partner, manager, or officer, may operate a project office for which no licensed professional engineer, land surveyor or photogrammetrist is physically present at least one half of the person's working time, provided that the project office qualifies under this section and that no services are advertised or offered making reference to or in connection with the project office, its address or phone number. For purposes of this section, a project office is a workstation for a specific project, the use of which will not extend beyond the scope or duration of the specific project.

Stat. Auth.: ORS 670.310 & 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: EE 2-1980, f. & ef. 5-14-80; EE 2-1985, f. 12-4-85, ef. 12-16-85; EE 4-1987, f. & ef. 12-1-87; EE 1-1992, f. & cert. ef. 2-3-92; BEELS 1-1998, f. & cert. ef. 2-10-98; BEELS 3-2001, f. & cert. ef. 11-26-01; Renumbered from 820-010-0016; BEELS 2-2007, f. & cert. ef. 4-5-07

820-020-0015

Registrants Shall Hold Paramount the Safety, Health and Welfare of the Public in the Performance of their Professional Duties

(1) Registrants shall at all times recognize that their primary obligation is to protect the safety, health, property and welfare of the public. If their professional judgment is overruled under circumstances where the safety, health, property or welfare of the public are endangered, they shall notify their employer or client and such other authority as may be appropriate.

(2) Registrants shall approve and seal only those design documents and surveys which are safe for public health, property and welfare in conformity with accepted engineering and land surveying standards.

(3) Registrants shall not reveal facts, data or information obtained in a professional capacity without the prior consent of the client, or employer except as authorized or required by law.

(4) Registrants shall not permit the use of their name or firm name nor associate in business ventures with any person or firm which they have reason to believe is engaging in fraudulent or dishonest business or professional practices.

(5) Registrants having knowledge of any alleged violation of any of these Rules of Professional Conduct, shall cooperate with the Board in furnishing such information or assistance as may be required.

(6) Conviction of a felony without restoration of civil rights, or the revocation or suspension of the license of a registrant in another jurisdiction, if for a cause which in the State of Oregon would constitute a violation of ORS 672.020 to 672.310 or of these rules, shall be grounds for a charge of violation of these rules.

(7) Registrants shall continue their professional development throughout their careers; and they shall provide opportunities for the professional development of individuals under their supervision. The Board may require, as a condition for license renewal, that registrants provide documentation to support actions taken to maintain their professional competency.

(8) Registrants shall cooperate with the Board on all matter subject to the Board's jurisdiction.

(9) Registrants must apply a seal of the type, kind, size and wording, and affix their signature as required by OAR 820-010-0620.

(10) Registrants must affix a seal and sign any final document prepared under their supervision and control. Any document not clearly marked as a preliminary document under OAR 820-010-0621(2) is a final document that must bear the seal and signature of the registrant under whose supervision and control the document was prepared.

Stat. Auth.: ORS 670.310 & 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: EE 2-1981, f. 5-19-81, ef. 6-1-81; EE 1-1995, f. 8-15-95, cert. ef. 9-1-95; BEELS 3-2001, f. & cert. ef. 11-26-01; BEELS 2-2007, f. & cert. ef. 4-5-07

Bureau of Labor and Industries Chapter 839

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

Adm. Order No.: BLI 7-2007

Filed with Sec. of State: 3-28-2007

Certified to be Effective: 3-30-07

Notice Publication Date:

Rules Amended: 839-025-0700

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

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

839-025-0700

Prevailing Wage Rate Determination/Amendments to Determination

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

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

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

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

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

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

(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 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-

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06; BLI 45-2006, f. 12-26-06, cert. ef. 1-1-07; BLI 5-2007, f. 1-30-07, cert. ef. 1-31-07; BLI 6-2007, f. & cert. ef. 3-5-07; BLI 7-2007, f. 3-28-07, cert. ef. 3-30-07

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

Adm. Order No.: BLI 8-2007

Filed with Sec. of State: 3-29-2007

Certified to be Effective: 4-1-07

Notice Publication Date:

Rules Amended: 839-025-0700

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

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

839-025-0700

Prevailing Wage Rate Determination/Amendments to Determination

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

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

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

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

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

(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 of Labor and Industries, 800 NE Oregon Street #1045, Portland, Oregon 97232; (971) 673-0839.

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

Stats. Implemented: ORS.279C.815

Hist.: BLI 7-1998(Temp), f. & cert. ef. 10-29-98 thru 4-27-99; BLI 1-1999, f. 1-8-99, cert. ef. 1-15-99; BLI 4-1999, f. 6-16-99, cert. ef. 7-1-99; BLI 6-1999, f. & cert. ef. 7-23-99; BLI 9-1999, f. 9-14-99, cert. ef. 10-1-99; BLI 16-1999, f. 12-8-99, cert. ef. 1-1-00; BLI 4-2000, f. & cert. ef. 2-1-00; BLI 9-2000, f. & cert. ef. 3-1-00; BLI 10-2000, f. 3-17-00, cert. ef. 4-1-00; BLI 22-2000, f. 9-25-00, cert. ef. 10-1-00; BLI 26-2000, f. 12-14-00 cert. ef. 1-1-01; BLI 1-2001, f. & cert. ef. 1-5-01; BLI 3-2001, f. & cert. ef. 3-15-01; BLI 4-2001, f. 3-27-01, cert. ef. 4-1-01; BLI 5-2001, f. 6-21-01, cert. ef. 7-1-01; BLI 8-2001, f. & cert. ef. 7-20-01; BLI 14-2001, f. 9-26-01, cert. ef. 10-1-01; BLI 16-2001, f. 12-28-01, cert. ef. 1-1-02; BLI 2-2002, f. 1-16-02, cert. ef. 1-18-02; BLI 8-2002, f. 3-25-02, cert. ef. 4-1-02; BLI 12-2002, f. 6-19-02 cert. ef. 7-1-02; BLI 16-2002, f. 12-24-02 cert. ef. 1-1-03; BLI 1-2003, f. 1-29-03, cert. ef. 2-14-03; BLI 3-2003, f. & cert. ef. 4-1-03; BLI 4-2003, f. 6-26-03, cert. ef. 7-1-03; BLI 5-2003, f. 9-17-03, cert. ef. 10-1-03; BLI 9-2003, f. 12-31-03, cert. ef. 1-5-04; BLI 1-2004, f. 4-9-04, cert. ef. 4-15-04; BLI 6-2004, f. 6-25-04, cert. ef. 7-1-04; BLI 11-2004, f. & cert. ef. 10-1-04; BLI 17-2004, f. 12-10-04 cert. ef. 12-13-04; BLI 18-2004, f. 12-20-04, cert. ef. 1-1-05; Renumbered from 839-016-0700, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05; BLI 8-2005, f. 3-29-05, cert. ef. 4-1-05; BLI 18-2005, f. 9-19-05, cert. ef. 9-20-05; BLI 19-2005, f. 9-23-05, cert. ef. 10-1-05; BLI 26-2005, f. 12-23-05, cert. ef. 1-1-06; BLI 1-2006, f. 1-24-06, cert. ef. 1-25-06; BLI 2-2006, f. & cert. ef. 2-9-06; BLI 4-2006, f. 2-23-06, cert. ef. 2-24-06; BLI 14-2006, f. 3-30-06, cert. ef. 4-1-06; BLI 20-2006, f. & cert. ef. 6-16-06; BLI 21-2006, f. 6-16-06 cert. ef. 7-1-06; BLI 23-2006, f. 6-27-06 cert. ef. 6-29-06; BLI 25-2006, f. & cert. ef. 7-11-06; BLI 26-2006, f. & cert. ef. 7-13-06; BLI 28-2006, f. 7-21-06, cert. ef. 7-24-06; BLI 29-2006, f. 8-8-06, cert. ef. 8-9-06; BLI 32-2006, f. & cert. ef. 9-13-06; BLI 33-2006, f. 9-28-06, cert. ef. 10-1-06; BLI 36-2006, f. & cert. ef. 10-4-06; BLI 37-2006, f. & cert. ef. 10-19-06; BLI 40-2006, f. 11-17-06, cert. ef. 11-20-06; BLI 43-2006, f. 12-7-06, cert. ef. 12-8-06; BLI 45-2006, f. 12-26-06, cert. ef. 1-1-07; BLI 5-2007, f. 1-30-07, cert. ef. 1-31-07; BLI 6-2007, f. & cert. ef. 3-5-07; BLI 7-2007, f. 3-28-07, cert. ef. 3-30-07; BLI 8-2007, f. 3-29-07, cert. ef. 4-1-07

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

Adm. Order No.: BLI 9-2007

Filed with Sec. of State: 4-2-2007

Certified to be Effective: 4-2-07

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:

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

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

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

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

(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 of Labor and Industries, 800 NE Oregon Street #1045, Portland, Oregon 97232; (971) 673-0839.

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

Stats. Implemented: ORS.279C.815

Hist.: BLI 7-1998(Temp), f. & cert. ef. 10-29-98 thru 4-27-99; BLI 1-1999, f. 1-8-99, cert. ef. 1-15-99; BLI 4-1999, f. 6-16-99, cert. ef. 7-1-99; BLI 6-1999, f. & cert. ef. 7-23-99; BLI 9-1999, f. 9-14-99, cert. ef. 10-1-99; BLI 16-1999, f. 12-8-99, cert. ef. 1-1-00; BLI 4-2000, f. & cert. ef. 2-1-00; BLI 9-2000, f. & cert. ef. 3-1-00; BLI 10-2000, f. 3-17-00, cert. ef. 4-1-00; BLI 22-2000, f. 9-25-00, cert. ef. 10-1-00; BLI 26-2000, f. 12-14-00 cert. ef. 1-1-01; BLI 1-2001, f. & cert. ef. 1-5-01; BLI 3-2001, f. & cert. ef. 3-15-01; BLI 4-2001, f. 3-27-01, cert. ef. 4-1-01; BLI 5-2001, f. 6-21-01, cert. ef. 7-1-01; BLI 8-2001, f. & cert. ef. 7-20-01; BLI 14-2001, f. 9-26-01, cert. ef. 10-1-01; BLI 16-2001, f. 12-28-01, cert. ef. 1-1-02; BLI 2-2002, f. 1-16-02, cert. ef. 1-18-02; BLI 8-2002, f. 3-25-02, cert. ef. 4-1-02; BLI 12-2002, f. 6-19-02 cert. ef. 7-1-02; BLI 16-2002, f. 12-24-02 cert. ef. 1-1-03; BLI 1-2003, f. 1-29-03, cert. ef. 2-14-03; BLI 3-2003, f. & cert. ef. 4-1-03; BLI 4-2003, f. 6-26-03, cert. ef. 7-1-03; BLI 5-2003, f. 9-17-03, cert. ef. 10-1-03; BLI 9-2003, f. 12-31-03, cert. ef. 1-5-04; BLI 1-2004, f. 4-9-04, cert. ef. 4-15-04; BLI 6-2004, f. 6-25-04, cert. ef. 7-1-04; BLI 11-2004, f. & cert. ef. 10-1-04; BLI 17-2004, f. 12-10-04 cert. ef. 12-13-04; BLI 18-2004, f. 12-20-04, cert. ef. 1-1-05; Renumbered from 839-016-0700, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05; BLI 8-2005, f. 3-29-05, cert. ef. 4-1-05; BLI 18-2005, f. 9-19-05, cert. ef. 9-20-05; BLI 19-2005, f. 9-23-05, cert. ef. 10-1-05; BLI 26-2005, f. 12-23-05, cert. ef. 1-1-06; BLI 1-2006, f. 1-24-06, cert. ef. 1-25-06; BLI 2-2006, f. & cert. ef. 2-9-06; BLI 4-2006, f. 2-23-06, cert. ef. 2-24-06; BLI 14-2006, f. 3-30-06, cert. ef. 4-1-06; BLI 20-2006, f. & cert. ef. 6-16-06; BLI 21-2006, f. 6-16-06 cert. ef. 7-1-06; BLI 23-2006, f. 6-27-06 cert. ef. 6-29-06; BLI 25-2006, f. & cert. ef. 7-11-06; BLI 26-2006, f. & cert. ef. 7-13-06; BLI 28-2006, f. 7-21-06, cert. ef. 7-24-06; BLI 29-2006, f. 8-8-06, cert. ef. 8-9-06; BLI 32-2006, f. & cert. ef. 9-13-06; BLI 33-2006, f. 9-28-06, cert. ef. 10-1-06; BLI 36-2006, f. & cert. ef. 10-4-06; BLI 37-2006, f. & cert. ef. 10-

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19-06; BLI 40-2006, f. 11-17-06, cert. ef. 11-20-06; BLI 43-2006, f. 12-7-06, cert. ef. 12-8-06; BLI 45-2006, f. 12-26-06, cert. ef. 1-1-07; BLI 5-2007, f. 1-30-07, cert. ef. 1-31-07; BLI 6-2007, f. & cert. ef. 3-5-07; BLI 7-2007, f. 3-28-07, cert. ef. 3-30-07; BLI 8-2007, f. 3-29-07, cert. ef. 4-1-07; BLI 9-2007, f. & cert. ef. 4-2-07

Department of Agriculture Chapter 603

Rule Caption: Amending Oregon's Pine Shoot Moth Quarantine/Extending the Notification Requirement for Imported Trees and Shrubs.

Adm. Order No.: DOA 5-2007

Filed with Sec. of State: 3-16-2007

Certified to be Effective: 3-16-07

Notice Publication Date: 2-1-07

Rules Amended: 603-052-0136, 603-054-0027

Subject: One proposed amendment would modify Oregon's European pine shoot moth quarantine to allow pine nursery stock to be imported from area determined to be free of the pest by negative survey. Neighboring states allow imports of pine nursery stock from Oregon based on negative survey, so this change would harmonize regulations in the region. The second proposed amendment would eliminate the sunset clause of the notification requirement for imported shipments of trees and shrubs.

Rules Coordinator: Sue Gooch—(503) 986-4583

603-052-0136

Conditions Governing Shipment of Regulated Articles

Except as provided by OAR 603-052-0138:

(1) Regulated articles shall not be shipped or moved from any regulated area into the State of Oregon.

(2) Regulated articles shall not be shipped or moved from nonregulated areas into the State of Oregon unless each shipment is accompanied by a certificate issued by a duly authorized inspector of the state of origin of the shipment certifying that the regulated articles being shipped were actually produced in a nonregulated area in which European pine shoot moth is not known to exist.

(3) Origin Certificate from Noninfested Areas. Shipment of articles and commodities covered may be certified provided the origin certificate is issued after the growing site or growing area has been trapped for European pine shoot moth (EPSM) as prescribed below (a-d):

(a) The pheromone of the EPSM has been determined to be "trans-9-dodecenyl acetate." This pheromone is available from Chem. Samples, P.O. Box 20305, Columbus, Ohio 43220. "Trans-9-dodecenyl acetate" pheromone should be used according to manufacturer instructions;

(b) For restricted articles and commodities to qualify for certificate, traps must be deployed at the density of one pheromone trap for each four acres of plantation of pine trees, or nursery property containing pin stock. No less than two traps will be deployed regardless of how small the growing area. Trapping and trap maintenance must continue during the entire period based upon historical data and existing degree day modeling for EPSM emergence;

(c) Trapping plans shall be approved by the recognized state agriculture agency at origin and the traps shall be read by a state, or state-approved, entomologist who is familiar with the adult stage of EPSM;

(d) To ship pine trees or parts into Oregon from plantations, nurseries, or other properties in areas under quarantine where trapping was conducted as described above, the certificate shall affirm the trapping results as:

(i) Negative and that trapping was conducted during the current growing season; or

(ii) No more than two moths were trapped during the current growing season and the area was effectively treated with dimethoate, chlorpyrifos or phosmet as directed by the origin regulatory agency. Shipment cannot be certified if three or more EPSM are trapped during the current growing season.

(4) Persons shipping regulated articles into the State of Oregon shall notify the State Department of Agriculture of the State of Oregon, Plant Industry Division, Salem, OR, of each shipment, its expected date of arrival, and the name of the receiver. The person to whom the regulated articles are shipped shall hold the articles until they are inspected and released by a duly appointed inspector of the State of Oregon.

(5) This rule shall not apply to cut pine trees, branches, or twigs for ornamental purposes shipped into Oregon during the period October 20 to December 31.

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 654, f. 3-28-61; AD 699, f. 3-13-62; AD 819(7-66), f. 5-3-66, ef. 5-15-66; DOA 5-2007, f. & cert. ef. 3-16-07

603-054-0027

Notification of Imported Trees and Shrubs

(1) Recipients of tree and shrub nursery stock imported into the state of Oregon from any out-of-state source are required to notify the Oregon Department of Agriculture. Notification shall be via mail, FAX or e-mail to: Nursery Program Supervisor, Plant Division, Oregon Department of Agriculture, 635 Capitol St. NE, Salem, OR 97301; FAX 503-986-4564; quarantine@oda.state.or.us.

(2) For purposes of this section, "tree and shrub nursery stock" means woody forest and ornamental trees, shrubs and vines grown or kept for propagation or sale, including bareroot, balled and burlaped, and containerized plants, liners, budwood, seedlings and cuttings. Fruit, seeds and tissue culture plantlets are not considered tree and shrub nursery stock.

(3) Notice under (1) of this section in advance of arrival of the shipment is encouraged but must be no later than two business days (Monday through Friday) after its arrival. Notification shall include the species of plant(s), quantities, source, and recipient's contact information. Copies of regular shipping documents, e.g. load lists, with this information are encouraged. ODA may approve alternative notification systems if such systems allow ODA at least one business day to determine if an inspection is necessary.

(4) ODA will contact nurseries within one business day of receipt of notification if the tree and shrub nursery stock must be held for inspection under ORS 571.220 and 570.305. Recipients are not obligated to hold the imported tree and shrub nursery stock for inspection unless contacted directly by an ODA inspector, except that the imported tree and shrub nursery stock must not be sold or distributed to untraceable buyers, e.g. final consumers, for one business day after notifying ODA.

(5) Failure to comply with this rule could result in criminal penalties authorized in 571.991 of up to \$5,000. Violation of this rule by a licensed nursery may also result in license suspension or revocation.

Stat. Auth.: ORS 570.305 & 571.220

Stats. Implemented: ORS 561.190

Hist.: DOA 9-2004, f. & cert. ef. 3-12-04; DOA 5-2007, f. & cert. ef. 3-16-07

Rule Caption: Virus Certification of Nursery Stock rules require updating to include new grower practices.

Adm. Order No.: DOA 6-2007

Filed with Sec. of State: 3-16-2007

Certified to be Effective: 3-16-07

Notice Publication Date: 1-1-07

Rules Amended: 603-051-0856, 603-051-0857, 603-051-0858, 603-051-0859

Subject: The proposed amendments add rules for producing virus-certified scion blocks of *Malus*, *Pyrus*, *Prunus*, *Cydonia*, and *Chaenomeles* as containerized nursery stock and from tissue culture (OAR 603-051-0857). New record-keeping rules have been added and the rules for removing virus-infected plants from virus-certified scion-blocks and stool beds have been clarified (OAR 603-051-0857). The name of the source of virus-free stock for foundation blocks has been updated (OAR 603-051-0857 and 603-051-0858). The application date for participation in the program has been updated (OAR 603-051-0859). Definitions have been added to clarify language specific to the proposed amendments (OAR 603-051-0856). References to *Crataegus* have been removed, as nurseries no longer grow this species as virus-certified (OAR 603-051-0856 through 603-051-0859).

Rules Coordinator: Sue Gooch—(503) 986-4583

603-051-0856

Definitions

As used in OAR 603-051-0855 to 603-051-0859, unless the context requires otherwise:

(1) "Block" means a contiguous grouping of plants separated by at least 10-feet from other contiguous groupings of plants.

(2) "Clean cultivation" means the site is bare earth or is planted with a grass (Gramineae) or another crop approved in writing by the Department in which broad-leaved weeds are actively controlled.

(3) "Department" means the State Department of Agriculture.

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(4) "Index" means to determine virus infection by means of inoculation from the plant to be tested to an indicator plant or by other scientifically acceptable means of detection.

(5) "Indicator Plant" means any herbaceous or woody plant used to index or determine virus infection.

(6) "Off-Type" means different from the cultivar as stated on the application for certification.

(7) "Oregon Certified Nursery Stock" means nursery-grown seedlings, clonal root-stocks originating from registered trees, nursery-grown trees propagated by using top-stock from registered trees, and root-stock originating from registered trees, but is limited to the genera *Chaenomeles*, *Cydonia*, *Malus*, *Prunus*, and *Pyrus*.

(8) "Oregon Certified Seed" means seed produced on registered seed trees.

(9) "Registered Tree" means a tree or clonal planting that has a registration number assigned to it by the Department, and that has been inspected and tested in accordance with the provisions of OAR 603-051-0855 to 603-051-0859.

(10) "Scion-Block" means a planting of registered trees which serves as a source of scionwood for the propagation of Oregon Certified Nursery Stock.

(11) "Seed-Block" means a planting of registered seed trees which serves as a source of seed for producing rootstock used in the propagation of Oregon Certified Nursery Stock.

(12) "Stool Bed" means a clonal planting of self-rooted registered trees for the specific purpose of producing vegetatively propagated root-stock used in the propagation of Oregon Certified Nursery Stock.

(13) "Virus" means virus and virus-like pathogens including phytoplasmas, viroids, and graft transmissible agents.

(14) "Virus Affected" means the presence of a harmful virus in a plant or plant part.

(15) "Virus-Like" means either a genetic disorder or nontransmissible entity.

(16) "Tissue culture" means a general term for the cultivation of plants (cells, tissues, or organs) under aseptic conditions in a synthetic medium in vitro. It also refers to the cultures themselves.

(17) "Tested" means having been subjected to an official examination, other than visual, to determine if pests are present or to identify pests.

Stat. Auth.: ORS 561, 571 & 632

Stats. Implemented: ORS 561, 571 & 632

Hist.: AD 17-1977, f. & ef. 7-15-77; DOA 14-2004, f. & cert. ef. 6-1-04; DOA 6-2007, f. & cert. ef. 3-16-07

603-051-0857

Requirements and Conditions for Certification

Certification by the Department shall not imply or be construed as any warranty of the Department or their employees as to the condition of nursery stock. The following requirements and conditions shall be met in order to qualify for consideration of certification of nursery stock:

(1) The applicant for certification shall be responsible for the selection of the location and the proper maintenance of all plantings being grown. The applicant shall also be responsible for maintaining the identity of all nursery stock. Any planting entered in this certification program shall be kept in a thrifty growing condition and free of plant pests.

(2) Trees may be registered for certification as rootstock and top-stock sources for the propagation of Oregon Certified Nursery Stock when inspected, tested and found to be discernably free from harmful virus and virus-like diseases of regulatory concern and having varietal purity, in accordance with the procedures prescribed in OAR 603-051-0855 to 603-051-0859.

(3) No budding, grafting, or top-working of registered trees in a scion-block, seed-block, or stool bed shall be permitted. Use of a certified nursery stock for scionwood shall only be allowed upon receiving permission from the Department and shall be subject to departmental supervision. Any plant found to be infected by a virus or virus-like disease and officially confirmed by the Department, or found to be off-type, or in root or foliar contact with a confirmed infected plant shall be removed immediately from any planting and destroyed after notification is rendered by the Department. For scion blocks, if a positive plant is present the following growing season, all plants growing within 30-feet of the infected plant within the same block will not be certified. For stool beds, if a positive plant is present the following growing season, all plants growing within 10-feet of the infected plant within the same block will not be certified. The certification of these plants may be regained if Departmentally-approved corrective action is taken.

(4) Prior to planting, all registered plant growing areas and their contiguous border areas of not less than ten feet shall be fumigated in accordance with the rates and practices recommended by Oregon State University. Such treatment shall be carried out under the supervision of the Department.

(5) Applicants shall be responsible for maintaining varietal purity of certified nursery stock produced from registered plants. The applicant shall develop a written program, in cooperation with the Department, so as to provide for monitoring of each cultivar for varietal purity.

(6) A participating nursery must maintain the following records of all nursery stock in this program for a minimum of two (2) years:

(a) Records indicating the Latin name, variety or cultivar, rootstock, origin, date of introduction of the plant materials to the facility, date of propagation in the registered block, and field location including nursery row and planting;

(b) Records of sale and copies of all phytosanitary certificates issued;

(c) Maps of the facility or nursery indicating the virus certified planting blocks.

(7) The following requirements specifically apply to scion-blocks:

(a) A scion-block shall be located not less than 100 feet from any non-registered cultivated plant of the Rosaceae family. The ground in a scion-block, and for a distance of 20-feet surrounding it, shall be kept either clean-cultivated or in an approved, properly controlled ground cover. Registered scion-block trees shall be planted and maintained in a manner, and at sufficient distances, so that branches of different varieties do not overlap. Each tree shall bear a permanent registration number;

(b) The rootstock and top-stock sources of the scion-block trees shall have originated from foundation trees established under this certification program or from virus-tested trees originating through the National Research Support Project No. 5 or other departmentally approved virus-tested sources. If the tree is scion-rooted, its source shall have met the above-mentioned requirements. Only registered trees shall be permitted in the scion-block.

(8) The following requirements specifically apply to stool beds:

(a) A stool bed shall be located not less than 50-feet from any non-registered cultivated plant of the Rosaceae family. However, nonregistered stool beds may be located not less than ten feet from registered stool bed plantings if such plantings are in production when they become subject to this certification program. The ground in a stool bed, and for a distance of ten feet surrounding it, shall be kept clean-cultivated;

(b) Existing stool beds that index clean on the commonly used virus indicators shall qualify as registered stool beds. New stool beds (those planted after July 1, 1980) shall have originated from foundation stock established under this certification program, or from virus-tested plants originating through the National Research Support Project No. 5 or other departmentally approved virus-tested sources, and shall be located not less than 50 feet from nonregistered rosaceous hosts and not less than ten feet from registered rosaceous plants. If the tree is scion-rooted, its source shall have met the requirements of this certification program. Only registered trees shall be permitted in the stool bed.

(9) The following requirements specifically apply to seed-blocks:

(a) A *Prunus* seed-block shall be located not less than 100-feet from any nonregistered plant of the *Prunus* species. The ground in a seed-block and for a distance of 20-feet surrounding the seed-block shall be kept clean-cultivated or in an approved, controlled ground cover;

(b) The rootstock and top-stock sources of the seed-tree shall have originated from foundation trees established under this program or from virus-tested trees originating through the National Research Support Project No. 5 or other Department approved virus-tested sources. If the tree is scion-rooted, its source shall have met the above requirements. Only registered trees shall be permitted in the seed-block.

(11) The following requirements specifically apply to scion blocks of containerized *Malus*, *Pyrus*, *Cydonia*, *Chaenomeles*, or *Prunus* species. All other requirements for growing scion blocks also apply (see (7)):

(a) The roots of trees being containerized must be free of soil prior to planting in the containers;

(b) The growing medium must consist of non-soil material, including but not limited to, expanded or baked clay pellets, ground coconut husks, coffee hulls, cocoa pods or rice husks, peat, perlite, sawdust, sphagnum, volcanic ash, cinder or vermiculite. The components of the growing medium must not have been previously used for growing plants or other agricultural purposes. The components of the growing medium must be mixed and maintained under conditions which preclude soil contamination or contamination by water run-off. Samples of the growing medium may be taken to verify the absence of soil;

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(c) The containers must be set on a barrier that prevents the roots of the plants from permeating the soil or prevents direct contact with the soil, such as plastic, hard-packed clay, pavement, or a minimum of two (2) inches of coarse gravel. The site must be located so as to preclude soil contamination, either directly or through water run-off from drainage, flooding, irrigation, or other means.

(12) The following requirements apply specifically to tissue culture plant materials grown for scion. These requirements are in addition to the requirements specifically for scion blocks described in (7):

(a) Scion plants (explants) used to produce callus for tissue culture must be tested or indexed annually as required by this program;

(b) Plantlets (rooted shoots) regenerated from the tissue culture callus must be grown in a greenhouse and all measures and precautions must be taken to prevent the presence of any vectors in the greenhouse. Records of such measures taken, if they include pesticide use, must be maintained as required by OAR 603-057-0405 through 603-057-0410 and other Oregon Administrative Rules for licensed pesticide applicators as applicable;

(c) One regeneration of plantlets from the tissue culture callus will be certified under this program with no further testing or indexing provided all other requirements are met. This certification will last one (1) year from the date of introduction of the plantlets into the greenhouse.

(13) The following requirements specifically apply to nursery stock:

(a) All nursery stock grown for certification shall be on rootstocks from registered trees except for stone fruit trees grown on peach seedlings. Such peach rootstocks shall be acceptable only if the seed transmissible virus content does not exceed five percent, and upon the prior approval of the Department being obtained. Clonal rootstocks used in the production of Oregon Certified Nursery Stock shall originate from registered stool beds;

(b) Nursery stock grown for certification shall be planted sufficiently apart to maintain its identity and shall be kept clean-cultivated. Such nursery stock shall be designated as to rootstock, top-stock, and interstock sources. Rebudding or regrafting of nursery row stock shall not be allowed unless such stock is reworked with budwood from the same registered scion-block;

(c) An official certification tag shall be utilized to designate trees produced from registered scion-source trees and which have been propagated on rootstocks produced from registered seed sources or stool bed trees, or which are self-rooted.

Stat. Auth.: ORS 561, 571 & 632

Stats. Implemented: ORS 561, 571 & 632

Hist.: AD 17-1977, f. & ef. 7-15-77; DOA 14-2004, f. & cert. ef. 6-1-04; DOA 6-2007, f. & cert. ef. 3-16-07

603-051-0858

Procedures for Certification

(1) In accordance with OAR 603-051-0855, certification and the supervision of activities relating thereto shall be in the Department. Inspection and testing procedures prescribed in this certification program may be carried out by the Washington State Department of Agriculture or the Department, and shall be conducted at such times and in such manner as is acceptable to the Department.

(2) The methods and procedures used for virus indexing shall conform to National Research Support Project No. 5 standards and shall be conducted in the manner and times determined by the Department.

(3) The Department reserves the right to visually inspect and test nursery rootstock in a planting for certification throughout the growing season. At the request of the Department, any undesirable rootstock may be rogued before propagation.

(4) All nursery stock meeting the requirements of this certification program shall have the variety, interstock and rootstock designated upon any tag evidencing the same as Oregon Certified Nursery Stock.

(5) The Department shall authorize the use of official certification tags for the identification of nursery stock or seed meeting the requirements of OAR 603-051-0855 to 603-051-0859, and therefore certified as Oregon Certified Nursery Stock. Such official certification tags shall be furnished by the Department to the qualified applicants therefore upon payment of the established cost of the Department for the tags so furnished.

(6) Any person selling, or offering for sale, any nursery stock or seed identified by tagging as Oregon Certified Nursery Stock shall be deemed to be responsible for the identity of such stock. All Oregon Certified Nursery Stock offered for sale shall be handled in accordance with accepted commercial practices and shall be identified by the tags described in the subsection.

(7) Certification shall be refused if plants have been propagated from registered trees determined to be affected by a virus or virus-like disease, or if other provisions of this certification program have been violated.

(8) A list of participating nurseries and certified nursery stock shall be provided to all participating nurseries and to other interested parties upon request.

Stat. Auth.: ORS 561, 571 & 632

Stats. Implemented: ORS 561, 571 & 632

Hist.: AD 17-1977, f. & ef. 7-15-77; DOA 14-2004, f. & cert. ef. 6-1-04; DOA 6-2007, f. & cert. ef. 3-16-07

603-051-0859

Application for Certification and Fees

(1) An application for certification shall be made on a form prescribed by the Department and shall be submitted to the Department by March 31 of each year so as to provide sufficient time for inspection and indexing of registered scion and seed trees and for the inspection of nursery stock to be submitted for certification. The nursery participation fee (see (4)) must be submitted with the application for certification by March 31 of each year.

(2) The application shall contain the information required thereon, including the consent of the applicant for the Department to obtain propagating wood or expanded leaf tissues from any tree for inspection and testing purposes.

(3) Except as otherwise provided, fees charged by the certifying agency for certification are payable on or before July 1 of each year, and are for the sole purpose of defraying expenses incurred by the Department in the inspection, approval, or certification procedures provided for in this certification program, and for providing funds to the Department to support appropriate plant virus survey programs. Payment thereof shall not be construed as granting any right or privilege to the applicant.

(4) The fees payable under this section shall be determined in accordance with the fee schedule (see (4)(a)-(d)). Testing of *Prunus*, *Malus*, *Pyrus*, *Chaenomeles*, and *Cydonia*, materials will be performed annually by the Department. These fees shall be payable upon request of the Department:

(a) The fee for participation shall be \$200 annually per participating nursery;

(b) The fee shall be \$10.00 per sample per Ilarvirus (*Prunus necrotic ring spot virus*, *prune dwarf virus*, and *apple mosaic virus*) test requested;

(c) The fee shall be \$7.00 per sample per *Tomato ring spot virus* test requested;

(d) The fee shall be \$7.00 per sample per each additional virus test requested.

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

Stat. Auth.: ORS 561, 571 & 632

Stats. Implemented: ORS 561, 571 & 632

Hist.: AD 17-1977, f. & ef. 7-15-77; AD 17-1994, f. & cert. ef. 11-10-94; DOA 14-2004, f. & cert. ef. 6-1-04; DOA 6-2007, f. & cert. ef. 3-16-07

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Rule Caption: Updates *Phytophthora ramorum* quarantines: adds newly detected sites in Curry County, new hosts, and protocols.

Adm. Order No.: DOA 7-2007

Filed with Sec. of State: 3-27-2007

Certified to be Effective: 3-27-07

Notice Publication Date: 2-1-07

Rules Amended: 603-052-1230, 603-052-1250

Subject: The proposed amendments would bring the state's *Phytophthora ramorum* rules into line with current federal regulations and survey results. The area under quarantine for *Phytophthora ramorum* in Curry County would increase to 26.25 square miles, to include two newly detected sites approximately 1 mile east and west of the existing quarantined area. References to USDA's official host list and confirmed nursery protocol in Oregon *Phytophthora ramorum* quarantine (603-052-1230) and *Phytophthora ramorum* regulated area for nursery stock (603-052-1250) would be updated to the latest versions.

Rules Coordinator: Sue Gooch—(503) 986-4583

603-052-1230

Quarantine: *Phytophthora ramorum*

(1) Establishing a quarantine: A quarantine is established against *Phytophthora ramorum*, the cause of sudden oak death and other plant diseases. This quarantine is established under ORS 561.510 and 561.540 to protect Oregon's agricultural industries and natural resources from the artificial spread of *P. ramorum*. This pathogen causes mortality in susceptible oak (*Quercus spp.*), tanoak (*Lithocarpus spp.*), Rhododendron (*Rhododendron spp.*), viburnum (*Viburnum spp.*) and evergreen huckleberry (*Vaccinium ovatum*). In other susceptible plants it causes leaf spots, twig

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dieback and/or stem cankers. Methods for exclusion of commodities potentially infected with this disease and procedures for eradication of incipient infections are prescribed in this quarantine.

(2) Area under quarantine:

(a) The following counties in California: Alameda, Contra Costa, Humboldt, Lake, Marin, Mendocino, Monterey, Napa, San Francisco, San Mateo, Santa Clara, Santa Cruz, Solano, and Sonoma;

(b) The following portion of Curry County, Oregon: T39S, R13W, sections 32, 33, and 34; T40S R13W sections 3, 4, 5, 8, 9, 10, the southeastern quartersection of 11, the southwestern quartersection of 12, the northwestern quartersection of 13, and the northeastern quartersection of 14, 15, 16, 17, the eastern half of section 18, the eastern half of section 19, 20, 21, 22, 27, 28, 29, the northeastern quarter of section 30, 32, 33, and 34; T40S R14W the southeastern quartersection of 23, the southwestern quartersection of 24, the northwestern quartersection of 25, and the northeastern quartersection of 26;

(c) Any country, state, county, province or area covered by federal quarantine, 7 CFR 301.92 through 301.92-11, *Phytophthora ramorum*; quarantine and regulations or federal order;

(d) Any property in Oregon where *P. ramorum* is found, including a buffer-zone of up to 0.5 miles surrounding the infected site during any eradication program.

(3) The following definitions apply to ORS 603-052-1230:

(a) "Hosts and associated plants" means plants on USDA's official list of *P. ramorum* hosts and associated plants, last revised September 11, 2006.

(NOTE: This list is available from the Oregon Department of Agriculture, 635 Capitol St. NE, Salem, OR 97301, telephone 503-986-4644);

(b) "Nursery stock" is defined in ORS 571.005. Tissue culture plantlets in sealed, sterile containers are exempt from this regulation.

(4) Commodities covered:

(a) All plants and plant parts of hosts and associated plants: Examples of covered commodities include all above ground portions of the plants including, but not limited to nursery stock, logs, bark, wood chips, mulch, firewood, sawdust, green waste, other plant products that may contain bark or foliage;

(b) Any other plant found to be naturally infected with *P. ramorum*, any product or article that an official inspector determines to present a risk of spreading *P. ramorum*. All life stages of *P. ramorum*.

(5) Provisions of the quarantine: Covered commodities originating from the area under quarantine, and any other area found to be infested with *P. ramorum* during the life of this quarantine, are prohibited unless one of the following requirements has been met:

(a) All regulated commodities must be kiln-dried or heat-treated to 71.1°C (160°F) for 75 minutes measured at the core prior to shipment. Treatments must be officially verified. The official certificate must include the following additional declaration "The (type of covered commodity) from (name of county) County has been treated for *Phytophthora ramorum* as required prior to shipment." The length and temperature of the treatment must be recorded on the official certificate;

(b) Nursery stock grown in a quarantined county or area may be eligible for shipment to Oregon providing the nursery is part of an official certification program and has been inspected and tested annually for *P. ramorum*. The official certificate must include the following additional declaration: "The (covered commodity) from (name of county) County has met the *Phytophthora ramorum* quarantine requirements for shipment into Oregon."

(NOTE: Recipients of tree and shrub nursery stock imported into the state must notify the ODA no later than two business days after its arrival as required by OAR 603-054-0027.

(c) Soil and potting media from the quarantine area at a known infected site or from within five meters of an infected host plant must be sterilized before shipment. The soil or potting media must reach a minimum temperature of 60°C (135°F) for 1 hour measured at the center of the mass of soil or potting media. Soil or potting media that has never been associated with the covered commodities is exempt. Treatments must be officially verified. The official certificate must include the following additional declaration "The (soil or potting media) from (name of county) County has been treated for *Phytophthora ramorum* as required prior to shipment." The length and temperature of the treatment must be recorded on the official certificate.

(6) Infected properties in Oregon: Confirmation of a *P. ramorum* infection must be made by the ODA or an official cooperator. The disease must be eradicated from the property as quickly as possible in accordance with USDA's Confirmed Residential and Landscape Protocol, last revised Nov. 8, 2004 or the APHIS Response Protocol for Forest and Wildland Environments, June 16, 2006.

(NOTE: These protocols are available from the Oregon Department of Agriculture,

635 Capitol St. NE, Salem, OR 97301, telephone 503-986-4644.) Affected property owners will be issued infection location and eradication requirements in the form of an Administrative Order. For public and private forested lands, the Oregon Departments of Agriculture (ODA) and Forestry (ODF) will work with the landowner to develop an eradication plan that will be based on the best available science. The program may include some or all of the following activities: cutting and piling susceptible trees and shrubs, burning the wood and plant debris when safe to do so, herbicide spraying of stumps and sprouts, fungicide spraying, sampling and monitoring.

(7) Infected nurseries in Oregon: Confirmation of a *P. ramorum* infection must be made by the ODA or an official cooperator. Nurseries are required to eradicate the disease as quickly as possible in accordance with USDA's Confirmed Nursery Protocol, last revised September 1, 2006 (version 7.0)

(NOTE: This list is available from the Oregon Department of Agriculture, 635 Capitol St. NE, Salem, OR 97301, telephone 503-986-4644.). The ODA will work with the nursery owner to implement an eradication and monitoring program utilizing protocols prescribed by USDA (Confirmed Nursery Protocol).

(8) Special permits: The Department, upon receipt of an application in writing, may issue a special permit allowing entry into this state and transport within this state of quarantined commodities for research purposes only. Movement of such commodities will be subject to any conditions or restrictions stipulated in the permit.

(9) Violation of quarantine: Violation of this quarantine may result in a fine, if convicted, of not less than \$500 no more than \$5,000, as provided by ORS 561.990. In addition, violators will be subject to civil penalties of up to \$10,000 as provided by ORS 561.995. 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.

Stat. Auth.: ORS 561.190 & 561.560

Stats. Implemented: ORS 561.560

Hist.: DOA 1-2001(Temp), f. & cert. ef. 1-5-01 thru 4-4-01, DOA 5-2001, f. & cert. ef. 3-27-01; DOA 1-2005, f. & cert. ef. 1-24-05; DOA 4-2006, f. & cert. ef. 3-10-06; DOA 7-2007, f. & cert. ef. 3-27-07

603-052-1250

Phytophthora ramorum Regulated Area for Nursery Stock

(1) A regulated area is established as authorized under ORS 570.305, 571.015 and 571.145, to protect Oregon from introduction of *Phytophthora ramorum* (sudden oak death, ramorum canker and blight). This pathogen causes leaf blight, dieback or death in certain trees and shrubs including tanoak, rhododendron, viburnum and camellia. Susceptible plants include species important to Oregon's native forests, horticultural landscapes and nursery industry.

(2) This regulated area includes the entire state of Oregon.

(3) The following definitions apply to OAR 603-052-1250:

(a) "Hosts and associated plants" means plants on USDA's official list of *P. ramorum* hosts and associated plants, last revised September 11, 2006.

(NOTE: This list is available from the Oregon Department of Agriculture, 635 Capitol St. NE, Salem, OR 97301, telephone 503-986-4644);

(b) "Grower" and "nursery stock" are defined in ORS 571.005;

(c) Tissue culture plantlets in sealed, sterile containers are exempt from this regulation. Also exempt are: seeds; turf or sod, bulbs; tubers, corms or rhizomes (except those species listed as hosts or associated plants); greenhouse grown cactus, succulents and orchids; aquarium grown aquatic plants; and greenhouse, container or field grown palms and cycads.

(4) All growers of host and associated plants in the regulated area shall enter into compliance agreements with the department and/or USDA, APHIS as described in section (6). Before growers can enter into a compliance agreement they must be inspected, tested and certified free of *P. ramorum*, as described in sections (5) or (7).

(5) Growers in the certification program shall be inspected and tested annually for *P. ramorum* in accordance with USDA's Emergency Federal Order of Dec. 21, 2004.

(NOTE: This list is available from the Oregon Department of Agriculture, 635 Capitol St. NE, Salem, OR 97301, telephone 503-986-4644.) Inspection and sampling procedures will meet or exceed USDA standards for nurseries in regulated areas not under quarantine. The department, using state and federally approved laboratory protocols, will test the samples.

(6) Growers who enter compliance agreements will be required to:

(a) Comply with OAR 603-054-0027 that requires all recipients of shipments of tree and shrub nursery stock imported from out-of-state, to notify the department within two business days of arrival of the shipment;

(b) Purchase hosts and associated hosts only from certified sources when such purchases originate in a Federally quarantined or regulated areas where official *P. ramorum* certification programs acceptable to the department exist;

(c) Have an official inspector inspect and test for *P. ramorum*, hosts and associated hosts purchased from sources in Federally quarantined or regulated areas where no official certification program exists; these plants must be safeguarded, segregated and held off sale until test results are complete;

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(d) Maintain records of all incoming and outgoing shipments of hosts and associated hosts for a minimum of 24 months;

(e) Include appropriate Federal or State certification with all host nursery stock and associated plants shipped interstate.

(7) Alternately, such nurseries may be inspected, sampled and tested through an official "State Nursery Stock Cleanliness Program" (SNSCP), which documents inspection of all nursery stock for the presence of *P. ramorum*, at the appropriate time of year. The SNSCP inspection, sampling, and testing program must be approved by USDA, APHIS. Until testing is completed and the nursery is found free of evidence of *P. ramorum* the following plants must be withheld from interstate shipment:

- (a) All host nursery stock and associated plants;
 - (b) All plants within same genus as any host or associated plant; and
 - (c) Any plants located within 10 meters of a host or associated plant.
- (8) Failure to comply with all articles of a compliance agreement will result in revocation of the compliance agreement and decertification.

(9) Growers of nursery stock that is not on the list of hosts and associated plants must be inspected annually for any evidence of *P. ramorum*. Plants showing symptoms of *P. ramorum* infection upon inspection will be sampled and tested. If symptomatic plants are found upon inspection, the following plants must be withheld from interstate shipment until testing is completed and the nursery is found free of evidence of *P. ramorum*:

- (a) All symptomatic plants;
- (b) Any plants located in the same lot as the suspect plant; and
- (c) Any plants located within 2 meters of this lot of plants.

(10) A list of growers compliant with these rules will be maintained on the department's web site. The department will update the list as necessary to maintain an accurate accounting of growers participating in the program.

(11) If *P. ramorum* is found, delimitation and eradication procedures as outlined in USDA's Confirmed Nursery Protocol, as amended September 1, 2006 will be implemented immediately.

(NOTE: This protocol is available from the Oregon Department of Agriculture, 635 Capitol St. NE, Salem, OR 97301, telephone 503-986-4644.) Hosts and associated hosts shall not be moved from the nursery/growing site until all conditions of the protocol are met and the department releases the plants.

(12) Unless renewed, or revised and re-issued, this order shall be considered revoked when the Federal Order expires, currently three years from enactment, December 21, 2004.

(13) Violators of this regulated area are subject to the penalties provided by ORS 570.410 and 570.990 and 570.995, including civil penalties up to \$10,000.

Stat. Auth.: ORS 561.510 & 570.305
Stats. Implemented: ORS 561.190
Hist.: DOA 13-2005, f. & cert. ef. 3-25-05; DOA 4-2006, f. & cert. ef. 3-10-06; DOA 7-2007, f. & cert. ef. 3-27-07

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**Department of Agriculture,
Oregon Grains Commission
Chapter 679**

Rule Caption: Amend to assess for oilseeds canola and mustard.

Adm. Order No.: GRAIN 1-2007

Filed with Sec. of State: 3-28-2007

Certified to be Effective: 3-28-07

Notice Publication Date: 2-1-07

Rules Amended: 679-010-0010

Subject: The amended rules make changes to the documents required for the Oregon Grains Commission to collect assessments for Canola and Mustard harvested on or after February 21, 2007.

Rules Coordinator: Tammy Matney Dennee—(541) 276-4609

679-010-0010

Assessments

Any first purchaser shall deduct and withhold an assessment of the following amounts for all of the named grains and oilseeds grown in Oregon:

- (1) Barley — \$1 per ton.
- (2) Rye — \$1 per ton.
- (3) Triticale — \$1 per ton.
- (4) Canola — \$.05 per hundredweight
- (5) Mustard — \$.05 per hundredweight

Stat. Auth.: ORS 576.044 - 576.595
Stats. Implemented: ORS 576
Hist.: GC 1-1989, f. & cert. ef. 9-25-89; GRAIN 1-2000, f. & cert. ef. 8-4-00; GRAIN 1-2004, f. & cert. ef. 1-20-04; GRAIN 1-2007, f. & cert. ef. 3-28-07

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

Rule Caption: Reduces waiting period to retake the supervising electrician exam from 90 days to 30 days.

Adm. Order No.: BCD 2-2007

Filed with Sec. of State: 3-30-2007

Certified to be Effective: 4-1-07

Notice Publication Date: 3-1-07

Rules Amended: 918-030-0060

Subject: This rule reduces the examination retake 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 the Building Codes Division.

Rules Coordinator: Marianne Manning—(503) 373-7438

918-030-0060

Reapplying After Failed Examination

(1) An applicant who fails an examination may reapply for the license at any time as provided in OAR 918-030-0020. There is no waiting period to reapply after a failed exam.

(2) An applicant who reappplies is not required to re-qualify for examination or provide work history information unless the requirements for the license have changed since the applicant originally applied for the license.

(3) Exam retakes are scheduled no less than 30 days from the date of the failed exam.

Stat. Auth.: ORS 183.335
Stat. Implemented: ORS 183.335
Hist.: BCD 16-2006(Temp), f. 6-30-06, cert. ef. 7-1-06 thru 12-28-06; BCD 13-2006, f. 9-29-06, cert. ef. 10-1-06; BCD 2-2007, f. 3-30-07, cert. ef. 4-1-07

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Rule Caption: Expands existing electrical license exemption for immediate family to include a spouse or domestic partner.

Adm. Order No.: BCD 3-2007

Filed with Sec. of State: 3-30-2007

Certified to be Effective: 4-1-07

Notice Publication Date: 2-1-07

Rules Amended: 918-251-0090, 918-261-0040

Subject: This rule expands the exemption from electrical license requirements under ORS 479.540(1) for electrical installations on a person's residential or farm property. The rule adds "spouse" and "domestic partner" to the definition of an owner's immediate family for the purpose of qualifying for the exemption.

Rules Coordinator: Marianne Manning—(503) 373-7438

918-251-0090

Definitions

For purposes of OAR chapter 918, divisions 251 through 311, unless otherwise specified, the following shall apply:

(1) "Appliance" as applied to the limited maintenance specialty contractor license established by ORS 479.630, means any built-in or permanently-connected electrical utilization equipment, not including lighting fixtures, other than industrial, that is installed or connected as a unit to perform one or more functions such as clothes washing, air conditioning, food mixing, deep frying, etc.

(2) "Approved" when referring to electrical product certification means approved in Oregon or for Oregon by the Electrical and Elevator Board.

(3) "Balance of system" as it relates to renewable electrical energy systems are those products, equipment and systems for the conversion, control and storage of electrical energy.

(4) "Board" means Electrical and Elevator Board.

(5) "Building" means a structure that stands alone or that is isolated from adjoining structures by area separation walls as identified in **Section 504.6** of the **Oregon Structural Specialty Code** adopted in OAR chapter 918, division 460, with all openings therein protected by approved fire doors as required.

(6) "Certification Mark" is identification on an electrical product indicating that the product has been certified under ORS 479.760.

(7) "Certified Electrical Product" is an electrical product certified under ORS 479.760 to which a label or other identifying mark.

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(8) "Continuously Employ" means a person, including a person leased from a worker leasing company licensed under ORS 656.850, during time periods when electrical work for which they are responsible is performed, devotes their entire time of employment to tasks of supervising, designing, laying out, planning, controlling and making electrical installations for the electrical contractor for which the supervisor is registered as signing supervisor.

(9) "Custom Made" means electrical products that are designed for a specific purpose and location.

(10) "Document" means prepare records itemizing what was checked, why it was checked, when it was done, how it was checked, what was determined and who did the work.

(11) "Electrical Specialty Code" means the National Electrical Code with Oregon amendments.

(12) "Electrical Specialty Code Inspector," formerly referred to as "A-Level Electrical Inspector," is a person certified to inspect under the **Electrical Specialty Code**.

(13) "Energy generation," as it relates to renewable electrical energy generation equipment, are those products, equipment and systems in renewable electrical energy systems that produce or convert electrical energy.

(14) "Engineer" is an individual who has completed a minimum four-year degree program in electrical engineering or electrical technology with power specialty, from an accredited college or university and has received a Bachelor of Science degree.

(15) "Field Evaluation" means the evaluation of electrical products by an approved field evaluation firm.

(16) "Indorsement" is a designation within the restricted energy electrical area showing qualifications and training regarding a product area. It determines the scope of restricted energy electrical activity authorized under a restricted energy electrical license.

(17) "Industrial Electronic Equipment" means a device, appliance, motor, or machine regulated, operated, or controlled through fiber optics or by a combination of electron tubes, capacitors, resistors, impedance transformer, and relays; the control circuit, and/or the power circuits having electrons flowing through a vacuum, metallic vapor, gas tubes, or transistors as used in an industrial plant.

(18) "Industrial Plant", for purposes of licensing and electrical master permit inspection program means an establishment engaged in industrial production, or service, or a school, hospital, sewer plant, water plant, commercial office building, building occupied by the state or a local government entity, or an institution. For purposes of the elevator program, "industrial plant" does not include a school, hospital, commercial office building, building occupied by the state or a local government entity, or an institution where the elevators are accessible to and used by persons other than the employees of that building.

(19) "Installation" includes external and field wiring, service contracts or warranties by the seller or manufacturer concerning the longevity of the equipment or parts after the original installation. It does not include "start-up" activities where new equipment is placed in service, and that type of work related to delivering and setting in place a piece of machinery.

(20) "Inverter", as it relates to renewable electrical energy generation equipment, is a product, equipment or system that converts direct current into alternating current.

(21) "Jurisdictional Inspector" is a state or municipal inspector having inspection responsibility within their jurisdiction over electrical products or their installation, or both.

(22) "Labeled" means a label, symbol or other identifying mark of a Nationally Recognized Testing Laboratory (NRTL), field evaluation firm or the division that is attached to an electrical product indicating the product is manufactured according to approved standards and tested or evaluated for specific end uses or both.

(23) "Lighting Fixture" is a complete lighting unit consisting of a lamp or lamps together with the parts designed to distribute the light, to position and protect the lamps, and to connect the lamp to the power supply.

(24) "Limited Energy System" means those systems that include Class 1, Class 2 or Class 3 systems as defined by **Section 725.2 of NFPA 70 (National Electrical Code)** and audio systems, communication systems and power-limited fire alarm systems, covered in the Oregon Electrical Specialty Code.

(25) "Listed Product" means a product was examined and accepted by a Nationally Recognized Testing Laboratory (NRTL) to meet a particular product standard and is maintained on a list of the listing laboratory.

(26) "Maintain" means to preserve electrical equipment in a good sound condition.

(27) "Maintenance" Compare with repair, replacement, and maintain for definition.

(28) "Minimum Electrical Installation Safety Code" means the adopted **Oregon Electrical Specialty Code**.

(29) "Nationally Recognized Testing Laboratory (NRTL)" means a laboratory recognized by the Federal Occupational Safety and Health Administration (OSHA) under 29 CFR 1910.7.

(30) "NEMA" means the National Electrical Manufacturers Association.

(31) "Off grid system" is a stand-alone system, connected to a structure, whose electrical systems are not connected to a utility-supplied electrical production and distribution network.

(32) "On grid system" is an electrical power system connected to a structure whose electrical systems are also connected to a utility-supplied electrical production and distribution network.

(33) "Plug-in Replacement" is a part, component or assembly designed to be inserted directly into a mating receptacle or socket such as printed circuit boards, control relays, control harnesses or other equipment connected by a cord or cable and plug assembly. A plug-in replacement does not have any field wiring that is connected to the plug-in part or assembly.

(34) "Power Circuitry" means that portion of the system, other than control, that provides electrical power to utilization equipment.

(35) "Registered Professional Electrical Engineer" is an individual licensed by the State of Oregon Board of Engineering Examiners as a professional electrical engineer under OAR chapter 820, division 10.

(36) "Renewable Electrical Energy System" as it relates to electrical energy generation, is the total components and subsystems that, in combination, convert wind energy, solar energy, micro-hydroelectricity, photovoltaic energy or fuel cell energy into electrical energy suitable for connection to a utilization load.

(37) "Repair" means to restore worn or damaged parts to a good, sound condition by means other than replacement.

(38) "Replacement" means substitution of complete units of damaged or worn equipment with similar new or used equipment of a size and rating that does not exceed the design capacity of the existing product.

(39) "Signing Supervising Electrician" or "Signing Supervisor" is a licensed supervising electrician who has been authorized by the electrical contractor to sign permits.

(40) "Similar Equipment," as applied to the limited maintenance specialty contractor license established by ORS 479.630(12), means components of light fixtures other than ballasts.

(41) "Special Deputy" means a person certified by the board or Chief Electrical Inspector to perform special deputy inspections allowed under ORS 479.760.

(42) "Stand-alone system" is a renewable electrical energy system that supplies power independently of an electrical production and distribution network.

(43) "Up to the load side of the inverter", as it relates to electrical energy generation equipment, is the renewable electrical energy system equipment up to the alternating current connection terminals of the inverter.

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

Stat. Auth.: ORS 479.630

Stats. Implemented: ORS 479.730

Hist.: DC 10, f. 4-13-72, ef. 5-1-72; DC 12-1981, f. 9-29-81, ef. 10-1-81; DC 10-1982, f. & ef. 3-1-82; Renumbered from 814-022-0105; BCA 44-1991, f. & cert. ef. 12-26-91; BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96, Renumbered from 918-260-0005; BCD 4-1999, f. & cert. ef. 4-1-99; BCD 23-2000, f. 9-29-00, cert. ef. 10-1-2000; BCD 5-2001, f. 6-7-01, cert. ef. 7-1-01; BCD 23-2001(Temp), f. 12-28-01, cert. ef. 1-1-02 thru 6-29-02; BCD 9-2002, f. 3-29-02, cert. ef. 4-1-02; BCD 21-2002(Temp), f. 8-30-02, cert. ef. 9-1-02 thru 2-27-03; BCD 23-2002, f. 9-13-02 cert. ef. 10-1-02; BCD 34-2002, f. 12-20-02, cert. ef. 1-1-03; BCD 12-2003(Temp), f. & cert. ef. 6-24-03 thru 10-31-03; BCD 15-2003, f. & cert. ef. 10-1-03; BCD 4-2004, f. 3-31-04, cert. ef. 4-1-04; BCD 3-2007, f. 3-30-07, cert. ef. 4-1-07

918-261-0040

Interpretation of "Owner" in ORS 479.540(1)

For the purposes of ORS 479.540(1):

(1) The owner of property to which this exemption applies shall be a natural person and not a business entity such as a corporation or partnership.

(2) The members of the owner's immediate family are defined in section (3). Persons whose only relationship is as an officer, stockholder, partner or employee of a business entity to which the owner is affiliated are not included.

(3) "Immediate family" of an owner includes the owner's:

(a) Parent;

(b) Step-parent or parent's domestic partner;

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- (c) Sibling and sibling's spouse or domestic partner;
- (d) Child and child's spouse or domestic partner;
- (e) Spouse or domestic partner;
- (f) Spouse's or domestic partner's child and the child's spouse or domestic partner;

- (g) Grandchild; and
- (h) Grandparent.

(4) "Immediate family" of an owner does not include the owner's step-sibling, aunt, uncle, cousin, step-grandchild, or step-grandparent.

(5) "Domestic partner" means a person in a relationship with another person, each of whom:

(a) Is at least 18 years of age and capable of entering into a civil contract or, if 17, has the written consent of a parent or guardian to enter into the domestic partnership;

(b) Is not a first cousin or any nearer kin to the other person, whether of the whole or half blood, and whether by blood or adoption, except for a first cousin by adoption only;

(c) Desires a relationship of marriage under Oregon law and would enter into marriage with the other person, and only with the other person, if Oregon law permitted such a marriage;

(d) Acknowledges and accepts financial obligations to the other person and to third parties similar to the financial obligations that arise by reason of a marriage recognized under Oregon law and has joint financial accounts, and joint financial responsibilities;

(e) Is not married and has no similar commitment and responsibility to any other person; and

(f) Has continuously lived with the other person for six (6) months in an exclusive relationship that each intends to maintain for the rest of their lives.

Stat. Auth.: ORS 455.117, 479.540, 479.680, 479.730

Stats. Implemented: ORS 479.540, 479.680

Hist.: BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96; BCD 23-2000, f. 9-29-00, cert. ef. 10-1-00; BCD 3-2007, f. 3-30-07, cert. ef. 4-1-07

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

Adm. Order No.: BCD 4-2007

Filed with Sec. of State: 3-30-2007

Certified to be Effective: 4-1-07

Notice Publication Date: 3-1-07

Rules Adopted: 918-030-0015

Rules Amended: 918-225-0700

Subject: 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 BCD contractor's license if the licensee fails to maintain the required CCB license.

Rules Coordinator: Marianne Manning—(503) 373-7438

918-030-0015

Contractor Licenses

(1) This rule applies to contractors' licenses issued by the division for the following: boiler contractors, electrical contractors, elevator contractors, and plumbing contractors.

(2) These contractors must possess or maintain a Construction Contractors Board license under ORS Chapter 701 or OAR Chapter 812. Possession of a Construction Contractors Board license does not replace any license required by the division or the appropriate board.

(3) Any applicant for a division-issued contractor's license must provide verification of appropriate Construction Contractors Board licensing.

(4) The division or appropriate board may suspend, revoke, or refuse to renew any contractor license if the licensee fails to maintain a required Construction Contractors Board license. Failure to maintain a required Construction Contractors Board license includes, but is not limited to, suspension, termination, or revocation by the Construction Contractors Board, or failure to renew with the Construction Contractors Board.

Stat. Auth.: ORS 447.040, 455.110, 455.117, 480.545, 479.730, & 670.310

Stats. Implemented: ORS 447.040, 455.110, 455.117, 480.545, 479.730, & 670.310

Hist.: BCD 4-2007, f. 3-30-07, cert. ef. 4-1-07

918-225-0700

Responsibility of Boiler Contractors

(1) Persons licensed by the division for the business of installing, repairing or altering boilers, pressure vessels or pressure piping must cor-

rect any condition or deficiency resulting from installations, repairs or alterations, which are determined by any deputy, special inspector or process piping inspector to be a violation of the minimum safety standards of the **Oregon Boiler and Pressure Vessel Specialty Code**.

(2) Contractors must prepare and submit any documentation required by construction codes, repair and alteration standards or the authority having jurisdiction.

(3) Boiler contractors are directly responsible for assuring that all persons they employ have correct certification and are properly supervised in the installation, repair or alteration of boilers, pressure vessels or pressure piping systems. Supervisors of persons holding a Class 1 or Class 6 certification must meet the requirements of OAR 918-225-0691.

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

Stat. Auth.: ORS 480.545

Stats. Implemented: ORS 480.545

Hist.: BCD 36-2000, f. 12-29-00, cert. ef. 1-1-01; BCD 6-2003, f. 3-14-03, cert. ef. 7-1-03;

BCD 4-2007, f. 3-30-07, cert. ef. 4-1-07

Department of Environmental Quality Chapter 340

Rule Caption: Portland-Vancouver and Salem Ozone Maintenance Plan and Supporting Rule Revisions.

Adm. Order No.: DEQ 3-2007

Filed with Sec. of State: 4-12-2007

Certified to be Effective: 4-12-07

Notice Publication Date: 5-1-06

Rules Amended: 340-200-0025, 340-200-0040, 340-202-0090, 340-204-0010, 340-204-0030, 340-204-0040, 340-224-0050, 340-224-0060, 340-225-0090, 340-232-0010, 340-232-0020, 340-242-0010, 340-242-0020, 340-242-0030, 340-242-0040, 340-242-0050, 340-242-0070, 340-242-0080, 340-242-0090, 340-242-0110, 340-242-0120, 340-242-0160, 340-242-0180, 340-242-0190, 340-242-0200, 340-242-0210, 340-242-0220, 340-242-0240, 340-242-0260, 340-242-0270, 340-242-0280, 340-242-0290, 340-242-0400, 340-242-0410, 340-242-0420, 340-242-0430, 340-242-0440

Rules Repealed: 340-242-0100, 340-242-0130

Subject: The Oregon Department of Environmental Quality (DEQ) updated the clean air plan for maintaining compliance with the federal 8-hour ozone ambient air quality standard in the Portland area, and developed a maintenance plan for the Salem area, as required by the federal Clean Air Act. This rulemaking also updated DEQ's rules to reflect the federal ozone ambient air quality standard, designated Salem as an ozone "maintenance" area under state rules, modified Salem's new source review requirements for new and expanding major industry, modified Portland-area rules regarding Employee Commute Options, updated rules for the Industrial Emission Management program in Portland, and made housekeeping changes to clarify the spelling of the Salem-Keizer Area Transportation Study air quality area.

Table 1 associated with OAR 340-242-0130 was repealed with this rulemaking.

Rules Coordinator: Larry McAllister—(503) 229-6412

340-200-0025

Abbreviations and Acronyms

- (1) "ACDP" means Air Contaminant Discharge Permit.
- (2) "ACT" means Federal Clean Air Act.
- (3) "AE" means Actual Emissions.
- (4) "AICPA" means Association of Independent Certified Public Accountants.
- (5) "AQCR" means Air Quality Control Region.
- (6) "AQMA" means Air Quality Maintenance Area.
- (7) "ASME" means American Society of Mechanical Engineers.
- (8) "ASTM" means American Society for Testing & Materials.
- (9) "ATETP" means Automotive Technician Emission Training Program.
- (10) "AWD" means all wheel drive.
- (11) "BACT" means Best Available Control Technology.
- (12) "BLS" means black liquor solids.
- (13) "CAA" means Clean Air Act.
- (14) "CAR" means control area responsible party.
- (15) "CBD" means central business district.

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cert. ef. 7-1-94; DEQ 25-1994, f. & cert. ef. 11-2-94; DEQ 9-1995, f. & cert. ef. 5-1-95; DEQ 10-1995, f. & cert. ef. 5-1-95; DEQ 14-1995, f. & cert. ef. 5-25-95; DEQ 17-1995, f. & cert. ef. 7-12-95; DEQ 19-1995, f. & cert. ef. 9-1-95; DEQ 20-1995 (Temp), f. & cert. ef. 9-14-95; DEQ 8-1996(Temp), f. & cert. ef. 6-3-96; DEQ 15-1996, f. & cert. ef. 8-14-96; DEQ 19-1996, f. & cert. ef. 9-24-96; DEQ 22-1996, f. & cert. ef. 10-22-96; DEQ 23-1996, f. & cert. ef. 11-4-96; DEQ 24-1996, f. & cert. ef. 11-26-96; DEQ 10-1998, f. & cert. ef. 6-22-98; DEQ 15-1998, f. & cert. ef. 9-23-98; DEQ 16-1998, f. & cert. ef. 9-23-98; DEQ 17-1998, f. & cert. ef. 9-23-98; DEQ 20-1998, f. & cert. ef. 10-12-98; DEQ 21-1998, f. & cert. ef. 10-12-98; DEQ 1-1999, f. & cert. ef. 1-25-99; DEQ 5-1999, f. & cert. ef. 3-25-99; DEQ 6-1999, f. & cert. ef. 5-21-99; DEQ 10-1999, f. & cert. ef. 7-1-99; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-020-0047; DEQ 15-1999, f. & cert. ef. 10-22-99; DEQ 2-2000, f. 2-17-00, cert. ef. 6-f1-01; DEQ 6-2000, f. & cert. ef. 5-22-00; DEQ 8-2000, f. & cert. ef. 6-6-00; DEQ 13-2000, f. & cert. ef. 7-28-00; DEQ 16-2000, f. & cert. ef. 10-25-00; DEQ 17-2000, f. & cert. ef. 10-25-00; DEQ 20-2000 f. & cert. ef. 12-15-00; DEQ 21-2000, f. & cert. ef. 12-15-00; DEQ 2-2001, f. & cert. ef. 2-5-01; DEQ 4-2001, f. & cert. ef. 3-27-01; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 15-2001, f. & cert. ef. 12-26-01; DEQ 16-2001, f. & cert. ef. 12-26-01; DEQ 17-2001, f. & cert. ef. 12-28-01; DEQ 4-2002, f. & cert. ef. 3-14-02; DEQ 5-2002, f. & cert. ef. 5-3-02; DEQ 11-2002, f. & cert. ef. 10-8-02; DEQ 5-2003, f. & cert. ef. 2-6-03; DEQ 14-2003, f. & cert. ef. 10-24-03; DEQ 19-2003, f. & cert. ef. 12-12-03; DEQ 1-2004, f. & cert. ef. 4-14-04; DEQ 10-2004, f. & cert. ef. 12-15-04; DEQ 1-2005, f. & cert. ef. 1-4-05; DEQ 2-2005, f. & cert. ef. 2-10-05; DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 7-2005, f. & cert. ef. 7-12-05; DEQ 9-2005, f. & cert. ef. 9-9-05; DEQ 2-2006, f. & cert. ef. 3-14-06; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06; DEQ 3-2007, f. & cert. ef. 4-12-07

340-202-0090

Ozone

Concentrations of ozone in ambient air as measured by an approved method must not exceed 0.08 ppm as a daily maximum eight-hour average concentration. This standard is attained when, at any site the average of the annual fourth-highest daily maximum eight-hour average ozone concentration is equal to or less than 0.08 as determined by the method of **Appendix I, 40 CFR 50.**

NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

Stat. Auth.: ORS 468 & 468A

Stats. Implemented: ORS 468A.025

Hist.: DEQ 37, f. 2-15-72, ef. 3-1-72; DEQ 15-1979, f. & ef. 6-22-79; DEQ 7-1980, f. & ef. 3-5-80; DEQ 4-1982, f. & ef. 1-29-82; DEQ 8-1988, f. & cert. ef. 5-19-88 (corrected 9-30-88); DEQ 24-1991, f. & cert. ef. 11-13-91; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-031-0030; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 3-2007, f. & cert. ef. 4-12-07

340-204-0010

Definitions

The definitions in OAR 340-200-0020 and this rule apply to this division. If the same term is defined in this rule and OAR 340-200-0020, the definition in this rule applies to this division. Definitions of boundaries in this rule also apply to OAR 340 Division 200 through 268 and throughout the State of Oregon Clean Air Act Implementation Plan adopted under OAR 340-200-0040.

(1) "AQCR" means Air Quality Control Region.

(2) "AQMA" means Air Quality Maintenance Area.

(3) "CO" means Carbon Monoxide.

(4) "CBD" means Central Business District.

(5) "Criteria Pollutant" means any of the six pollutants set out by the Clean Air Act (sulfur oxides, particulate matter, ozone, carbon monoxide, nitrogen dioxide, and lead) for which the EPA has promulgated standards in 40 CFR 50.4 through 50.12 (July, 1993).

(6) "Eugene-Springfield UGA" means the area within the bounds beginning at the Willamette River at a point due east from the intersection of East Beacon Road and River Loop No.1; thence southerly along the Willamette River to the intersection with Belt Line Road; thence easterly along Belt Line Road approximately one-half mile to the intersection with Delta Highway; thence northwesterly and then northerly along Delta Highway and on a line north from the Delta Highway to the intersection with the McKenzie River; thence generally southerly and easterly along the McKenzie River approximately eleven miles to the intersection with Marcola Road; thence southwesterly along Marcola Road to the intersection with 42nd Street; thence southerly along 42nd Street to the intersection with the northern branch of US Highway 126; thence easterly along US Highway 126 to the intersection with 52nd Street; thence north along 52nd Street to the intersection with High Banks Road; thence easterly along High Banks Road to the intersection with 58th Street; thence south along 58th Street to the intersection with Thurston Road; thence easterly along Thurston Road to the intersection with the western boundary of Section 36, T17S, R2W; thence south to the southwest corner of Section 36, T17S, R2W; thence west to the Springfield City Limits; thence following the Springfield City Limits southwesterly to the intersection with the western boundary of Section 2, T18S, R2W; thence on a line southwest to the Private Logging Road approximately one-half mile away; thence south-

easterly along the Private Logging Road to the intersection with Wallace Creek; thence southwesterly along Wallace Creek to the confluence with the Middle Fork of the Willamette River; thence generally northwesterly along the Middle Fork of the Willamette River approximately seven and one-half miles to the intersection with the northern boundary of Section 11, T18S, R3W; thence west to the northwest corner of Section 10, T18S, R3W; thence south to the intersection with 30th Avenue; thence westerly along 30th Avenue to the intersection with the Eugene City Limits; thence following the Eugene City Limits first southerly then westerly then northerly and finally westerly to the intersection with the northern boundary of Section 5, T18S, R4W; thence west to the intersection with Greenhill Road; thence north along Greenhill Road to the intersection with Barger Drive; thence east along Barger Drive to the intersection with the Eugene City Limits (Ohio Street); thence following the Eugene City Limits first north then east then north then east then south then east to the intersection with Jansen Drive; thence east along Jansen Drive to the intersection with Belt Line Road; thence northeasterly along Belt Line Road to the intersection with Highway 99; thence northwesterly along Highway 99 to the intersection with Clear Lake Road; thence west along Clear Lake Road to the intersection with the western boundary of Section 9, T17S, R4W; thence north to the intersection with Airport Road; thence east along Airport Road to the intersection with Highway 99; thence northwesterly along Highway 99 to the intersection East Enid Road; thence east along East Enid Road to the intersection with Prairie Road; thence southerly along Prairie Road to the intersection with Irvington Road; thence east along Irvington Road to the intersection with the Southern Pacific Railroad Line; thence southeasterly along the Southern Pacific Railroad Line to the intersection with Irving Road; thence east along Irving Road to the intersection with Kalmia Road; thence northerly along Kalmia Road to the intersection with Hyacinth Road; thence northerly along Hyacinth Road to the intersection with Irvington Road; thence east along Irvington Road to the intersection with Spring Creek; thence northerly along Spring Creek to the intersection with River Road; thence northerly along River Road to the intersection with East Beacon Drive; thence following East Beacon Drive first east then south then east to the intersection with River Loop No.1; thence on a line due east to the Willamette River and the point of beginning.

(7) "Grants Pass CBD" means the area within the City of Grants Pass enclosed by "B" Street on the north, 8th Street to the east, "M" Street on the south, and 5th Street to the west.

(8) Grants Pass Control Area means the area of the state beginning at the northeast corner of Section 35, T35S, R5W; thence south to the southeast corner of Section 11, T37S, R5W; thence west to the southwest corner of Section 9, T37S, R6W; thence north to the northwest corner of Section 33, T35S, R6W; thence east to the point of beginning.

(9) "Grants Pass UGB" as shown on the Plan and Zoning maps for the City of Grants Pass as of Feb. 1, 1988 is the area within the bounds beginning at the NW corner of Sec. 7, T36S, R5W; thence south to the SW corner of Sec. 7; thence west along the southern boundary of Sec. 12, T36S, R5W approx. 2000 feet; thence south approx. 100 feet to the northern right of way of the Southern Pacific Railroad Line (SPRR Line); thence southeasterly along said right of way approx. 800 feet; thence south approx. 400 feet; thence west approx. 1100 feet; thence south approx. 700 feet to the intersection with the Hillside Canal; thence west approx. 100 feet; thence south approx. 550 feet to the intersection with Upper River Road; thence southeasterly along Upper River Road and continuing east along Old Upper River Road approx. 700 feet; thence south approx. 1550 feet; thence west approx. 350 feet; thence south approx. 250 feet; thence west approx. 1000 feet; thence south approx. 600 feet to the north end of Roguella Lane; thence east approx. 400 feet; thence south approx. 1400 feet to the intersection with Lower River Road; thence west along Lower River Road approx. 1400 feet; thence south approx. 1350 feet; thence west approx. 25 feet; thence south approx. 1200 feet to the south bank of the Rogue River; thence northwesterly along said bank approx. 2800 feet; thence on a line southwesterly and parallel to Parkhill Place approx. 600 feet; thence northwesterly at a 90 degree angle approximately 300 feet to the intersection with Parkhill Place; thence southwesterly along Parkhill Place approx. 250 feet; thence on a line southeasterly forming a 90 degree angle approximately 300 feet to a point even with Leonard Road; thence west approx. 1500 feet along Leonard Road; thence north approx. 200 feet; thence west to the west side of Schroeder Lane; thence north approx. 150 feet; thence west approx. 200 feet; thence south to the intersection with Leonard Road; thence west along Leonard Road approx. 450 feet; thence north approx. 300 feet; thence east approx. 150 feet; thence north approx. 400 feet; thence west approx. 500 feet; thence south approx. 300 feet; thence west to the intersection with

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Coutant Lane; thence south along Coutant Lane to the intersection with Leonard Road; thence west along Leonard Road to the intersection with Buena Vista Lane; thence north along the west side of Buena Vista Lane approx. 200 feet; thence west approx. 150 feet; thence north approx. 150 feet; thence west approx. 200 feet; thence north approx. 400 feet; thence west approx. 600 feet to the intersection with the western boundary of Sec. 23, T36S, R6W; thence south to the intersection with Leonard Road; thence west along Leonard Road approx. 300 feet; thence north approx. 600 feet to the intersection with Darneille Lane; thence northwesterly along Darneille Lane approx. 200 feet; thence west approx. 300 feet; thence south approx. 600 feet to the intersection with Leonard Road; thence west along Leonard Road approx. 700 feet; thence south approx. 1350 feet; thence east approx. 1400 feet to the intersection with Darneille Lane; thence south along Darneille Lane approx. 600 feet; thence west approx. 300 feet; thence south to the intersection with Redwood Avenue; thence east along Redwood Avenue to the intersection with Hubbard Lane and the western boundary of Sec. 23, T36S, R6W; thence south along Hubbard Lane approx. 1850 feet; thence west approx. 1350 feet; thence south to the south side of U.S. Highway 199; thence westerly along U.S. 199 approx. 1600 feet to the intersection with the north-south midpoint of Sec. 27, T36S, R6W; thence south approx. 2200 feet; thence east approx. 1400 feet; thence north approx. 1000 feet; thence east approx. 300 feet; thence north approx. 250 feet to the intersection with the Highline Canal; thence northerly along the Highline Canal approx. 900 feet; thence east to the intersection with Hubbard Lane; thence north along Hubbard Lane approximately 600 feet; thence east approx. 200 feet; thence north approx. 400 feet to a point even with Canal Avenue; thence east approx. 550 feet; thence north to the south side of U.S. 199; thence easterly along the southern edge of U.S. 199 to the intersection with Willow Lane; thence south along Willow Lane to the intersection with Demaray Drive; thence easterly along Demaray Drive and continuing along the southern edge of U.S. 199 to the intersection with Dowell Road; thence south along Dowell Road approx. 550 feet; thence easterly approx. 750 feet; thence north to the intersection with the South Canal; thence easterly along the South Canal to the intersection with Schutzwahl Lane; thence south approx. 1300 feet to a point even with West Harbeck Road; thence east approx. 2000 feet to the intersection with Allen Creek; thence southerly along Allen Creek approx. 1400 feet to a point even with Denton Trail to the west; thence west to the intersection with Highline Canal; thence southerly along Highline Canal to the intersection with the southern boundary of Sec. 25, T36S, R6W; thence east to the intersection with Allen Creek; thence southerly along Allen Creek to the intersection with the western boundary of Sec. 31, T36S, R5W; thence south to the SW corner of Sec. 31; thence east to the intersection with Williams Highway; thence southeasterly along Williams Highway approx. 1300 feet; thence east approx. 200 feet; thence north approx. 400 feet; thence east approx. 700 feet; thence north to the intersection with Espey Road; thence west along Espey Road approx. 150 feet; thence north approx. 600 feet; thence east approx. 300 feet; thence north approx. 2000 feet; thence west approx. 2100 feet; thence north approx. 1350 feet; thence east approx. 800 feet; thence north approx. 2800 feet to the east-west midline of Sec. 30, T36S, R5W; thence on a line due NE approx. 600 feet; thence north approx. 100 feet; thence east approx. 600 feet; thence north approx. 100 feet to the intersection with Highline Canal; thence easterly along Highline Canal approx. 1300 feet; thence south approx. 100 feet; thence east to the intersection with Harbeck Road; thence north along Harbeck Road to the intersection with Highline Canal; thence easterly along Highline Canal to a point approx. 250 feet beyond Skyway Road; thence south to the intersection with Skyway Road; thence east to the intersection with Highline Canal; thence southeasterly along Highline Canal approx. 1200 feet; thence on a line due SW to the intersection with Bluebell Lane; thence southerly along Bluebell Lane approx. 150 feet; thence east to the intersection with Sky Crest Drive; thence southerly along Sky Crest Drive to the intersection with Harper Loop; thence southeasterly along Harper Loop to the intersection with the east-west midline of Sec. 29, T36S, R5W; thence east approx. 400 feet; thence south approx. 1300 feet to a point even with Troll View Road to the east; thence east to the intersection with Hamilton Lane; thence north along Hamilton Lane to the intersection with the Highline Canal; thence northeasterly along the Highline Canal to the northern boundary of Sec. 28, T36S, R5W; thence east approx. 1350 feet to the transmission line; thence north to the intersection with Fruitdale Drive; thence southwesterly along Fruitdale Drive approx. 700 feet; thence north to the northern edge of U.S. 199; thence easterly along the northern edge of U.S. 199 approx. 50 feet; thence north to the north bank of the Rogue River; thence northeasterly along the north bank of the Rogue River approx. 2100 feet to a point even

with Ament Road; thence north to Ament Road and following Ament Road to U.S. Interstate Highway 5 (U.S. I-5); thence continuing north to the 1200 foot contour line; thence following the 1200 foot contour line northwesterly approx. 7100 feet to the city limits and a point even with Savage Street to the west; thence north following the city limits approx. 400 feet; thence west to the intersection with Beacon Street; thence north along Beacon Street and the city limits approx. 250 feet; thence east along the city limits approx. 700 feet; thence north along the city limits approx. 2200 feet; thence southwesterly along the city limits approximately 800 feet to the intersection with the 1400 foot contour line; thence northerly and northwesterly along the 1400 foot contour line approx. 900 feet to the intersection with the northern boundary of Sec. 9, T36S, R5W; thence west along said boundary approx. 100 feet to the NW corner of Sec. 9; thence south along the western boundary of Sec. 9 approx. 700 feet; thence west approx. 1400 feet; thence north approx. 2400 feet; thence west approx. 1350 feet; thence north approx. 1100 feet to the city limits; thence following the city limits first west approx. 1550 feet, then south approx. 800 feet, then west approx. 200 feet, then south approx. 200 feet, then east approx. 200 feet, then south approx. 300 feet, and finally westerly approx. 1200 feet to the intersection with the western boundary of Sec. 5, T36S, R5W; thence south along said boundary to the northern side of Vine Avenue; thence northwesterly along the northern side of Vine Avenue approx. 3150 feet to the intersection with the west fork of Gilbert Creek; thence north to the intersection with the southern right of way of U.S. I-5; thence northwesterly along said right of way approx. 1600 feet; thence south to the intersection with Old Highland Avenue; thence northwesterly along Highland Avenue approx. 650 feet; thence west approx. 350 feet; thence south approx. 1400 feet; thence east approx. 700 feet; thence south approx. 1000 feet; thence on a line SW approx. 800 feet; thence south approx. 1400 feet to the intersection with the northern boundary of Sec. 7, T36S, R5W; thence west to the NW corner of Sec. 7, the point of beginning.

(10) Klamath Falls Control Area means the area of the state beginning at the northeast corner of Section 8, T38S, R10E, thence south to the southeast corner of Section 5, T40S, R10E; thence west to the southwest corner of Section 3, T40S, R8E; thence north to the northwest corner of Section 10, T38S, R8E; thence east to the point of beginning.

(11) "Klamath Falls UGB" means the area within the bounds beginning at the southeast corner of Section 36, Township 38 South, Range 9 East; thence northerly approximately 4500 feet; thence westerly approximately 1/4 mile; thence northerly approximately 3/4 mile into Section 25, T38S, R9E; thence westerly approximately 1/4 mile; thence northerly approximately 1/2 mile to the southern boundary of Section 24, T38S, R9E; thence westerly approximately 1/2 mile to the southeast corner of Section 23, T38S, R9E; thence northerly approximately 1/2 mile; thence westerly approximately 1/4 mile; thence northerly approximately 1/2 mile to the southern boundary of Section 14, T38S, R9E; thence generally northwesterly along the 5000 foot elevation contour line approximately 3/4 mile; thence westerly 1 mile; thence north to the intersection with the northern boundary of Section 15, T38S, R9E; thence west 1/4 mile along the northern boundary of Section 15, T38S, R9E; thence generally southeasterly following the 4800 foot elevation contour line around the old Oregon Institute of Technology Campus to meet with the westerly line of Old Fort Road in Section 22, T38S, R9E; thence southwesterly along the westerly line of Old Fort Road approximately 1 and 1/4 miles to Section 27, T38S, R9E; thence west approximately 1/4 mile; thence southwesterly approximately 1/2 mile to the intersection with Section 27, T38S, R9E; thence westerly approximately 1/2 mile to intersect with the Klamath Falls City Limits at the northerly line of Loma Linda Drive in Section 28, T38S, R9E; thence northwesterly along Loma Linda Drive approximately 1/4 mile; thence southwesterly approximately 1/8 mile to the Klamath Falls City Limits; thence northerly along the Klamath Falls City Limits approximately 1 mile into Section 21, T38S, R9E; thence westerly approximately 1/4 mile; thence northerly approximately 1 mile into Section 17, T38S, R9E; thence westerly approximately 3/4 mile into Section 17, T38S, R9E; thence northerly approximately 1/4 mile; thence westerly approximately 1 mile to the west boundary of Highway 97 in Section 18, T38S, R9E; thence southeasterly along the western boundary of Highway 97 approximately 1/2 mile; thence southwesterly away from Highway 97; thence southeasterly to the intersection with Klamath Falls City Limits at Front Street; thence westerly approximately 1/4 mile to the western boundary of Section 19, T38S, R9E; thence southerly approximately 1 and 1/4 miles along the western boundary of Section 19, T38S, R9E and the Klamath Falls City Limits to the south shore line of Klamath Lake; thence northwesterly along the south shore line of Klamath Lake approximately 1 and 1/4 miles across Section 25, T38S, R9E

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and Section 26, T38S, R9E; thence westerly approximately 1/2 mile along Section 26, T38S, R9E; thence southerly approximately 1/2 mile to Section 27, T38S, R9E to the intersection with eastern boundary of Orindale Draw, thence southerly along the eastern boundary of Orindale Draw approximately 1 and 1/4 miles into Section 35, T38S, R9E; thence southerly approximately 1/2 mile into Section 2, T39S, R8E; thence easterly approximately 1/4 mile; thence northerly approximately 1/4 mile to the southeast corner of Section 35, T38S, R8E and the Klamath Falls City Limits; thence easterly approximately 1/2 mile to the northern boundary of Section 1, T38S, R8E; thence southeasterly approximately 1/2 mile to Orindale Road; thence north 500 feet along the west side of an easement; thence easterly approximately 1 and 1/4 miles through Section 1, T38S, R8E to the western boundary of Section 6, T39S, R9E; thence southerly approximately 3/4 mile to the southwest corner of Section 6, T39S, R9E; thence easterly approximately 1/8 mile to the western boundary of Highway 97; thence southwesterly along the Highway 97 right-of-way approximately 1/4 mile; thence westerly approximately 1/2 mile to Agate Street in Section 7, T39S, R8E; thence northerly approximately 1/4 mile; thence westerly approximately 3/4 mile to Orindale Road in Section 12, T39S, R8E; thence northerly approximately 1/4 mile into Section 1, T39S, R8E; thence westerly approximately 3/4 mile to the Section 2, T39S, R8E boundary line; thence southerly approximately 3/4 mile along the Section 2, T39S, R8E boundary line to the northwest corner of Section 12, T39S, R8E; thence westerly approximately 1/8 mile into Section 11, T39S, R8E; thence southerly approximately 1/8 mile; thence northeasterly approximately 3/4 mile to the southern boundary of Section 12, T39S, R8E at Balsam Drive; thence southerly approximately 1/4 mile into Section 12, T39S, R8E; thence easterly approximately 1/4 mile to Orindale Road; thence southeasterly approximately 500 feet to Highway 66; thence southwesterly approximately 1/2 mile along the boundary of Highway 66 to Holiday Road; thence southerly approximately 1/2 mile into Section 13, T39S, R8E; thence northeasterly approximately 1/4 mile to the eastern boundary of Section 13, T39S, R8E; thence northerly approximately 1/4 mile along the eastern boundary of Section 13, T39S, R8E; thence westerly approximately 1/4 mile to Weyerhaeuser Road; thence northerly approximately 1/8 mile; thence easterly approximately 1/8 mile; thence northerly approximately 1/8 mile; thence westerly approximately 1/8 mile to Farrier Avenue; thence northerly approximately 1/4 mile; thence easterly approximately 1/4 mile to the eastern boundary of Section 13, T39S, R8E; thence northerly approximately 1/8 mile along the eastern boundary of Section 13, T39S, R8E; thence easterly approximately 1/4 mile along the northern section line of Section 18, T39S, R8E; thence southerly approximately 1/4 mile; thence easterly approximately 1/2 mile to the boundary of Highway 97; thence southerly approximately 1/3 mile to the Burlington Northern Right-of-Way; thence northeasterly approximately 1 and 1/3 miles along the high water line of the Klamath River to the Southside Bypass in Section 8, T39S, R9E; thence southeasterly along the Southside Bypass to the Southern Pacific Right-of-Way in Section 9, T39S, R9E; thence southerly approximately 1/2 mile along the Southern Pacific Right-of-Way; thence southwesterly approximately 1/4 mile along the Midland Highway; thence southeasterly approximately 1/4 mile to the old railroad spur; thence easterly 1/4 mile along the old railroad spur; thence southerly approximately 1/4 mile in Section 16, T39S, R9E; thence westerly approximately 1/3 mile; thence southerly approximately 1/4 mile; thence easterly approximately 1/16 mile in Section 21, T39S, R9E; thence southerly approximately 1/8 mile to the Lost River Diversion Channel; thence southeasterly approximately 1/4 mile along the northern boundary of the Lost River Diversion Channel; thence easterly approximately 3/4 mile along Joe Wright Road into Section 22, T39S, R9E; thence southeasterly approximately 1/8 mile on the eastern boundary of the Southern Pacific Right-of-Way; thence southeasterly approximately 1 mile along the western boundary of the Southern Pacific Right-of-Way across Section 22, T39S, R9E and Section 27, T39S, R9E to a point 440 yards south of the northern boundary of Section 27, T39S, R9E; thence easterly to Kingsley Field; thence southeasterly approximately 3/4 mile to the southern boundary of Section 26, T39S, R9E; thence east approximately 1/2 mile along the southern boundary of Section 26, T39S, R9E to a pond; thence north-northwesterly for 1/2 mile following the Klamath Falls City Limits; thence north 840 feet; thence east 1155 feet to Homedale Road; thence north along Homedale Road to a point 1/4 mile north of the southern boundary of Section 23, T39S, R9E; thence west 1/4 mile; thence north 1 mile to the Southside Bypass in Section 14, T39S, R9E; thence east 1/2 mile along the Southside Bypass to the eastern boundary of Section 14, T39S, R9E; thence north 1/2 mile; thence east 900 feet into Section 13, T39S, R9E; thence north 1320 feet along the USBR 1-C 1-A to the south-

ern boundary of Section 12, T39S, R9E; thence north 500 feet to the USBR A Canal; thence southeasterly 700 feet along the southern border of the USBR A Canal back into Section 13, T39S, R9E; thence southeast 1600 feet to the northwest parcel corner of an easement for the Enterprise Irrigation District; thence east-northeast 2200 feet to the eastern boundary of Section 13, T39S, R9E; thence north to the southeast corner of Section 12, T39S, R9E; thence along the Enterprise Irrigation Canal approximately 1/2 mile to Booth Road; thence east 1/2 mile to Vale Road; thence north 1 mile to a point in Section 6, T39S, R10E that is approximately 1700 feet north of the southern boundary of Section 6, T39S, R10E; thence west approximately 500 feet; thence south approximately 850 feet; thence west approximately 200 feet; thence north approximately 900 feet; thence west approximately 1600 feet to the western boundary of Section 6, T39S, R10E; thence north approximately 1/2 mile to the southeast corner of Section 36, T38S, R9E, the point of beginning.

(12) "LaGrande UGB" means the area within the bounds beginning at the point where U.S. Interstate 84 (I-84) intersects Section 31, Township 2 South, Range 38 East; thence east along I-84 to the Union County Fairgrounds; thence north and then east on a line encompassing the Union County Fairgrounds to the intersection with Cedar Street; thence further east approximately 500 feet, encompassing two (2) residential properties; thence on a line south to the intersection with the northern bank of the Grande Ronde River; thence westerly along the northern bank of the Grande Ronde River to the intersection with the western edge of Mount Glenn Road and Riverside Park; thence north along the western edge of Mount Glenn Road and Riverside Park to the intersection with Fruitdale Road; thence east along Fruitdale Road and the northern boundary of Riverside Park to the eastern boundary of Riverside Park; thence south along the eastern boundary of Riverside Park to the north bank of the Grande Ronde River; thence on a line southeast to the intersection with the northern edge of I-84; thence easterly along the northern edge of I-84 to May Street; thence easterly along May Street to the intersection with State Highway 82; thence northeasterly along State Highway 82 to the a point approximately 1/4 mile from the eastern edge of Section 4, T3S, R38E; thence south to the intersection with Section 9, T3S, R38E, and the southern edge of Buchanan Avenue; thence west along the southern edge of Buchanan Avenue to the intersection with the northern edge of I-84; thence on a line south to the southern edge of I-84; thence southeasterly along the southern edge of I-84 approximately 2500 feet; thence on a line due west approximately 1400 feet; thence on a line due south to the intersection with the Union Pacific Railroad Line; thence southeasterly along the Union Pacific Railroad Line to the intersection with Gekeler Lane; thence west along Gekeler Lane to the intersection with U.S. Highway 30; thence southeast along U.S. Highway 30 to the intersection with the western boundary of Section 15, T3S, R38E; thence on a line west following existing property boundaries approximately 2900 feet; thence on a line north following existing property boundaries approximately 250 feet; thence on a line east following existing property boundaries approximately 650 feet; thence north on a line to the intersection with Gekeler Lane; thence west along Gekeler Lane to the intersection with 20th Avenue; thence south along 20th Avenue to the intersection with Foothill Road; thence southeasterly along Foothill Road approximately 2900 feet; thence on a line west following existing property boundaries approximately 1250 feet; thence on a line south following existing property boundaries approximately 1250 feet; thence on a line west following existing property boundaries approximately 1250 feet; thence on a line north following existing property boundaries approximately 450 feet to the intersection with the southernmost part of the La Grande City Limits; thence westerly and northwesterly along the southernmost part of the La Grande City Limits approximately 1100 feet to the intersection with the 3000 foot elevation contour line; thence westerly following the 3000 foot elevation contour line and existing property boundaries approximately 2200 feet; thence on a line north following existing property boundaries approximately 1900 feet; thence on a line west following existing property boundaries approximately 500 feet; thence on a line north to the La Grande City Limits; thence west along the La Grande City Limits and following existing property boundaries approximately 650 feet; thence on a line south following existing property boundaries approximately 900 feet; thence on a line west following existing property boundaries approximately 1250 feet; thence on a line north to the intersection with the La Grande City Limits; thence west along the southern boundary of the La Grande City Limits to the intersection with the western boundary of the La Grande City Limits; thence north along the western boundary of the La Grande City Limits and following existing property lines approximately 500 feet; thence on a line west following existing property bound-

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aries approximately 200 feet; thence on a line north following existing property boundaries approximately 700 feet; thence east to the first 3000 foot elevation contour line west of the La Grande City Limits; thence northerly following that 3000 foot elevation contour line to the intersection with Deal Canyon Road; thence easterly along Deal Canyon Road to the intersection with the western boundary of the La Grande City Limits; thence northerly along the western boundary of the La Grande City Limits to the intersection with U.S. Highway 30; thence northwesterly along U.S. Highway 30 and following existing property boundaries approximately 1400 feet; thence on a line west to the intersection with the western boundary of Section 6, T3S, R38E; thence north along the western boundaries of Section 6, T3S, R38E and Section 31, T2S, R38E to the point of beginning.

(13) "Lakeview UGB" means the area beginning at the corner common to sections 21, 22, 27, and 28, T39S, R20E; thence north on the section line between section 21 and 22 to the section corner common to section 15, 16, 21, and 22; thence west along the section line between section 21 and 16 to the section corner common to sections 16, 17, 20, and 21; thence north along the section line between section 16 and 17 approximately 3550 feet to the east branch of Thomas Creek; thence northwesterly along the east branch of Thomas Creek to the center line of Highway 140; thence east along the center line of Highway 140 to the section corner common to sections 8, 9, 16, and 17, T39S, R20E; thence north along the section line between sections 8 and 9 to the section corner common to sections 4, 5, 8, and 9, T39S, R20E; thence north along the section line between section 4 and 5 to the section corner common to section 4 and 5, T39S, R20E and sections 32 and 33, T38S, R20E; thence east along the section line between sections 4 and 33 to the section corner common to sections 3 and 4, T39S, R20E and sections 33 and 34, T38S, R20E; thence south along the eastern boundary of section 4 approximately 4,1318.6 feet; thence S 89 degrees, 11 minutes W 288.28 feet to the east right of way line of the old Paisley/Lakeview Highway; thence S 21 degrees, 53 minutes E along the eastern right of way of the old Paisley/Lakeview Highway 288.4 feet; thence S 78 degrees, 45 minutes W 1375 feet; thence S 3 degrees, 6 minutes, and 30 seconds W 200 feet; thence S 77 degrees, 45 minutes W 136 feet to the east right of way line of U.S. Highway 395; thence southeasterly along the east right of way line of U.S. Highway 395 53.5 feet; thence N 77 degrees, 45 minutes E 195.6 feet; thence S 38 degrees, 45 minutes E 56.8 feet; thence S 51 degrees, 15 minutes W 186.1 feet to the east right of way of U.S. Highway 395; thence southeast along the eastern right of way line of U.S. Highway 395 2310 feet; thence N 76 degrees, 19 minutes 54.7 feet; thence S 13 degrees, 23 minutes, 21 seconds E 400 feet; thence N 63 degrees, 13 minutes E 243.6 feet to the western line of the old American Forest Products Logging Road; thence southeast along the old American Forest Products Logging Road to the western line of the northeast quadrant of the northwest quadrant of section 10, T39S, R20E; thence southeast to a point on the south line of the northeast quadrant of the northwest quadrant of Section 10, T39S, R20E (this point also bears N 89 degrees, 33 minutes E 230 feet from the center line of U.S. Highway 395); thence south on a line parallel to the east right of way line of U.S. Highway 395 to the south line of the northwest quadrant of section 10, T39S, R20E; thence south 491 feet to the east right of way of U.S. Highway 395; thence southeasterly following the east right of way of U.S. Highway 395 255 feet to the south line of the northeast quadrant of the northeast quadrant of the southwest quadrant of section 10, T39S, R20E; thence east along that south line to the center line of section 10, T39S, R20E; thence continuing east along the same south line to the eastern boundary of section 10, T39S, R20E; thence south along the eastern boundary of section 10 to the section corner common to sections 10, 11, 14, and 15, T39S, R20E; thence south along the section line between section 14 and 15 to the section corner common to sections 14, 15, 22, and 23, T39S, R20E; thence west along the section line between sections 15 and 22 to the northwest corner of the northeast quadrant of the northeast quadrant of section 22, T39S, R20E; thence south along the eastern line of the western half of the eastern half of section 22 to the southern boundary of section 22, T39S, R20E; thence west along the southern boundary of section 22 to the point of beginning.

(14) "Maintenance Area" means any area that was formerly nonattainment for a criteria pollutant but has since met EPA promulgated standards and has had a maintenance plan to stay within the standards approved by the EPA pursuant to 40 CFR 51.110 (July, 1993).

(15) "Medford-Ashland Air Quality Maintenance Area" (AQMA) means the area defined as beginning at a point approximately two and quarter miles northeast of the town of Eagle Point, Jackson County, Oregon at the northeast corner of Section 36, Township 35 South, Range 1 West (T35S, R1W); thence South along the Willamette Meridian to the southeast

corner of Section 25, T37S, R1W; thence southeast along a line to the southeast corner of Section 9, T39S, R2E; thence south-southeast along line to the southeast corner of Section 22, T39S, R2E; thence South to the southeast corner of Section 27, T39S, R2E; thence southwest along a line to the southeast corner of Section 33, T39S, R2E; thence West to the southwest corner of Section 31, T39S, R2E; thence northwest along a line to the northwest corner of Section 36, T39S, R1E; thence West to the southwest corner of Section 26, T39S, R1E; thence northwest along a line to the southeast corner of Section 7, T39S, R1E; thence West to the southwest corner of Section 12, T39S, R1W, T39S, R1W; thence northwest along a line to southwest corner of Section 20, T38S, R1W; thence West to the southwest corner of Section 24, T38S, R2W; thence northwest along a line to the southwest corner of Section 4, T38S, R2W; thence West to the southwest corner of Section 6, T38S, R2W; thence northwest along a line to the southwest corner of Section 31, T37S, R2W; thence North and East along the Rogue River to the north boundary of Section 32, T35S, R1W; thence East along a line to the point of beginning.

(16) "Medford-Ashland CBD" means the area beginning at the intersection of Crater Lake Highway (Highway 62) south on Biddle Road to the intersection of Fourth Street, west on Fourth Street to the intersection with Riverside Avenue (Highway 99), south on Riverside Avenue to the intersection with Tenth Street, west on Tenth Street to the intersection with Oakdale Avenue, north on Oakdale Avenue to the intersection with Fourth Street, east on Fourth Street to the intersection with Central Avenue, north on Central Avenue to the intersection with Court Street, north on Court Street to the intersection with Crater Lake Highway (Highway 62) and east on Crater Lake Highway to the point of beginning, with extensions along McAndrews Road east from Biddle Road to Crater Lake Avenue, and along Jackson Street east from Biddle Road to Crater Lake Avenue.

NOTE: This definition also marks the area where indirect sources are required to have indirect source construction permits in the Medford area. See OAR 340-254-0040.

(17) "Medford UGB" means the area beginning at the line separating Range 1 West and Range 2 West at a point approximately 1/4 mile south of the northwest corner of Section 31, T36S, R1W; thence west approximately 1/2 mile; thence south to the north bank of Bear Creek; thence west to the south bank of Bear Creek; thence south to the intersection with the Medford Corporate Boundary; thence following the Medford Corporate Boundary west and southwesterly to the intersection with Merriman Road; thence northwesterly along Merriman Road to the intersection with the eastern boundary of Section 10, T36S, R2W; thence south along said boundary line approximately 3/4 mile; thence west approximately 1/3 mile; thence south to the intersection with the Hopkins Canal; thence east along the Hopkins Canal approximately 200 feet; thence south to Rossanley Drive; thence east along Rossanley Drive approximately 200 feet; thence south approximately 1200 feet; thence west approximately 700 feet; thence south approximately 1400 feet; thence east approximately 1400 feet; thence north approximately 100 feet; thence east approximately 700 feet; thence south to Finley Lane; thence west to the end of Finley Lane; thence approximately 1200 feet; thence west approximately 1300 feet; thence north approximately 150 feet; thence west approximately 500 feet; thence south to Highway 238; thence west along Highway 238 approximately 250 feet; thence south approximately 1250 feet to a point even with the end of Renault Avenue to the east; thence east approximately 2200 feet; thence south approximately 1100 feet to a point even with Sunset Court to the east; thence east to and along Sunset Court to the first (nameless) road to the south; thence approximately 850 feet; thence west approximately 600 feet; thence south to Stewart Avenue; thence west along Stewart Avenue approximately 750 feet; thence south approximately 1100 feet; thence west approximately 100 feet; thence south approximately 800 feet; thence east approximately 800 feet; thence south approximately 1000 feet; thence west approximately 350 feet to a point even with the north-south connector street between Sunset Drive and South Stage Road; thence south to and along said connecting road and continuing along South Stage Road to Fairlane Road; thence south to the end of Fairlane Road and extending beyond it approximately 250 feet; thence east approximately 250 feet; thence south approximately 250 feet to the intersection with Judy Way; thence east on Judy Way to Griffin Creek Road; thence north on Griffin Creek Road to South Stage Road; thence east on South Stage Road to Orchard Home Drive; thence north on Orchard Home Drive approximately 800 feet; thence east to Columbus Avenue; thence south along Columbus Avenue to South Stage Road; thence east along South Stage Road to the first road to the north after Sunnyview Lane; thence north approximately 300 feet; thence east approximately 300 feet; thence north approximately 700 feet; thence east to King's Highway; thence north along King's Highway to

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Experiment Station Road; thence east along Experiment Station Road to Marsh Lane; thence east along Marsh Lane to the northern boundary of Section 6, T38S, R1W; thence east along said boundary approximately 1100 feet; thence north approximately 1200 feet; thence east approximately 1/3 mile; thence north approximately 400 feet; thence east approximately 1000 feet to a drainage ditch; thence following the drainage ditch southeasterly approximately 500 feet; thence east to the eastern boundary of Section 31, T37S, R1W; thence south along said boundary approximately 1900 feet; thence east to and along the loop off of Rogue Valley Boulevard, following that loop to the Southern Pacific Railroad Line (SPRR); thence following SPRR approximately 500 feet; thence south to South Stage Road; thence east along South Stage Road to SPRR; thence southeasterly along SPRR to the intersection with the west fork of Bear Creek; thence northeasterly along the west fork of Bear Creek to the intersection with U.S. Highway 99; thence southeasterly along U.S. Highway 99 approximately 250 feet; thence east approximately 1600 feet; thence south to East Glenwood Road; thence east along East Glenwood Road approximately 1250 feet; thence north approximately 1/2 mile; thence west approximately 250 feet; thence north approximately 1/2 mile to the Medford City Limits; thence east along the city limits to Phoenix Road; thence south along Phoenix Road to Coal Mine Road; thence east along Coal Mine Road approximately 9/10 mile to the western boundary of Section 35, T37S, R1W; thence north to the midpoint of the western boundary of Section 35, T37S, R1W; thence west approximately 800 feet; thence north approximately 1700 feet to the intersection with Barnett Road; thence easterly along Barnett Road to the southeast corner of Section 27, T37S, R1W; thence north along the eastern boundary line of said section approximately 1/2 mile to the intersection with the 1800 foot contour line; thence east to the intersection with Cherry Lane; thence following Cherry Lane southeasterly and then northerly to the intersection with Hillcrest Road; thence east along Hillcrest Road to the southeast corner of Section 23, T37S, R1W; thence north to the northeast corner of Section 23, T37S, R1W; thence west to the midpoint of the northern boundary of Section 22, T37S, R1W; thence north to the midpoint of Section 15, T37S, R1W; thence west to the midpoint of the western boundary of Section 15, T37S, R1W; thence south along said boundary approximately 600 feet; thence west approximately 1200 feet; thence north approximately 600 feet; thence west to Foothill Road; thence north along Foothill Road to a point approximately 500 feet north of Butte Road; thence west approximately 300 feet; thence south approximately 250 feet; thence west on a line parallel to and approximately 250 feet north of Butte Road to the eastern boundary of Section 8, T37S, R1W; thence north approximately 2200 feet; thence west approximately 1800 feet; thence north approximately 2000 feet; thence west approximately 500 feet; thence north to Coker Butte Road; thence east along Coker Butte Road approximately 550 feet; thence north approximately 1250 feet; thence west to U.S. Highway 62; thence north approximately 3000 feet; thence east approximately 400 feet to the 1340 foot contour line; thence north approximately 800 feet; thence west approximately 200 feet; thence north approximately 250 feet to East Vilas Road; thence east along East Vilas Road approximately 450 feet; thence north approximately 2000 feet to a point approximately 150 feet north of Swanson Creek; thence east approximately 600 feet; thence north approximately 850 feet; thence west approximately 750 feet; thence north approximately 650 feet; thence west approximately 2100 feet; thence on a line southeast approximately 600 feet; thence east approximately 450 feet; thence south approximately 1600 feet; thence west approximately 2000 feet to the continuance of the private logging road north of East Vilas Road; thence south along said logging road approximately 850 feet; thence west approximately 750 feet; thence south approximately 150 feet; thence west approximately 550 feet to Peace Lane; thence north along Peace Lane approximately 100 feet; thence west approximately 350 feet; thence north approximately 950 feet; thence west approximately 1000 feet to the western boundary of Section 31, T36S, R1W; thence north approximately 1300 feet along said boundary to the point of beginning.

(18) "Nonattainment Area" means any area that has been designated as not meeting the standards established by the U.S. Environmental Protection Agency (EPA) pursuant to 40 CFR 51.52 (July, 1993) for any criteria pollutant.

(19) "O3" means Ozone.

(20) "Oakridge UGB" means the area enclosed by the following: Beginning at the northwest corner of Section 17, T21S, R3E and the city limits; thence south along the western boundary of Section 17, T21S, R3E along the city limits approximately 800 feet; thence southwest following the city limits approximately 750 feet; thence west along the city limits

approximately 450 feet; thence northwesterly along the city limits approximately 450 feet; thence on a line south along the city limits approximately 250 feet; thence on a line east along the city limits approximately 100 feet; thence southwest along the city limits approximately 200 feet; thence on a line east along the city limits approximately 400 feet; thence on a line south along the city limits to the channel of the Willamette River Middle Fork; thence south-easterly up the Willamette River Middle Fork along the city limits approximately 7200 feet; thence exiting the Willamette River Middle Fork with the city limits in a northerly manner and forming a rough semicircle with a diameter of approximately one-half mile before rejoining the Willamette River Middle Fork; thence diverging from the city limits upon rejoining the Willamette River Middle Fork and moving south-easterly approximately 5600 feet up the Willamette River Middle Fork to a point on the river even with the point where Salmon Creek Road intersects with U.S. Highway 58; thence on a line east from the channel of the Willamette River Middle Fork across the intersection of Salmon Creek Road and U.S. Highway 58 to the intersection with the Southern Pacific Railroad Line; thence northerly along the Southern Pacific Railroad Line to the intersection with the northern boundary of Section 22, T21S, R3E; thence west along the northern boundary of Section 22, T21S, R3E to the intersection with Salmon Creek Road; thence on a line north to the intersection with the Southern Pacific Railroad Line; thence east along the Southern Pacific Railroad Line approximately 600 feet; thence on a line north to the intersection with High Prairie Road; thence on a line west approximately 400 feet; thence on a line north to the intersection with the northern boundary of Section 15, T21S, R3E; thence west along the northern boundary of Section 15, T21S, R3E to the intersection with the southeastern corner of Section 9, T21S, R3E; thence north along the eastern boundary of Section 9, T21S, R3E approximately 1300 feet; thence on a line west approximately 1100 feet; thence on a line south to the intersection with West Oak Road; thence northwesterly along West Oak Road approximately 2000 feet; thence on a line south to the intersection with the northern boundary line of the city limits; thence westerly and northwesterly approximately 8000 feet along the city limits to the point of beginning.

(21) "Particulate Matter" means all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by an applicable reference method with the Department's Source Sampling Manual, (January, 1992).

(22) PM10:

(a) When used in the context of emissions, means finely divided solid or liquid material, including condensable water, other than combined water, with an aerodynamic diameter less than or equal to a nominal 10 microns, emitted to the ambient air as measured by an applicable reference method in accordance with the Department's Source Sampling Manual (January, 1992);

(b) When used in the context of ambient concentration, means airborne finely divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal 10 microns as measured in accordance with 40 CFR Part 50, Appendix J (July, 1993).

(23) "Portland AQMA" means the area within the bounds beginning at the point starting on the Oregon-Washington state line in the Columbia River at the confluence with the Willamette River, thence east up the Columbia River to the confluence with the Sandy River, thence southerly and easterly up the Sandy River to the point where the Sandy River intersects the Clackamas County-Multnomah County line, thence west along the Clackamas County-Multnomah County line to the point where the Clackamas County-Multnomah County line is intersected by H. Johnson Road (242nd), thence south along H. Johnson Road to the intersection with Kelso Road (Boring Highway), thence west along Kelso Road to the intersection with Deep Creek Road (232nd), thence south along Deep Creek Road to the point of intersection with Deep Creek, thence southeasterly along Deep Creek to the confluence with Clackamas River, thence easterly along the Clackamas River to the confluence with Clear Creek, thence southerly along Clear Creek to the point where Clear Creek intersects Springwater Road then to Forsythe Road, thence easterly along Forsythe Road to the intersection with Bradley Road, thence south along Bradley Road to the intersection with Redland Road, thence west along Redland Road to the intersection with Ferguson Road, thence south along Ferguson Road to the intersection with Thayler Road, thence west along Thayler Road to the intersection with Beaver Creek Road, thence southeast along Beaver Creek Road to the intersection with Henrici Road, thence west along Henrici Road to the intersection with State Highway 213 (Mollala Avenue), thence southeast along State Highway 213 to the point of intersection with Beaver Creek, thence westerly down Beaver Creek to the con-

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fluence with the Willamette River, thence southerly and westerly up the Willamette River to the point where the Willamette River intersects the Clackamas County-Yamhill County line, thence north along the Clackamas County-Yamhill County line to the point where it intersects the Washington County-Yamhill County line, thence west and north along the Washington County-Yamhill County line to the point where it is intersected by Mount Richmond Road, thence northeast along Mount Richmond Road to the intersection with Patton Valley Road, thence easterly and northerly along Patton Valley Road to the intersection with Tualatin Valley State Highway, thence northerly along Tualatin Valley State Highway to the intersection with State Highway 47, thence northerly along State Highway 47 to the intersection with Dilley Road, thence northwesterly and northerly along Dilley Road to the intersection with Stringtown Road, thence westerly and northwesterly along Stringtown Road to the intersection with Gales Creek Road, thence northwesterly along Gales Creek Road to the intersection with Timmerman Road, thence northerly along Timmerman Road to the intersection with Wilson River Highway, thence west and southwesterly along Wilson River Highway to the intersection with Narup Road, thence north along Narup Road to the intersection with Cedar Canyon Road, thence westerly and northerly along Cedar Canyon Road to the intersection with Banks Road, thence west along Banks Road to the intersection with Hahn Road, thence northerly and westerly along Hahn Road to the intersection with Mountindale Road, thence southeasterly along Mountindale Road to the intersection with Glencoe Road, thence east-southeasterly along Glencoe Road to the intersection with Jackson Quarry Road, thence north-northeasterly along Jackson Quarry Road to the intersection with Helvetia Road, thence easterly and southerly along Helvetia Road to the intersection with Bishop Road, thence southerly along Bishop Road to the intersection with Phillips Road, thence easterly along Phillips Road to the intersection with the Burlington Northern Railroad Track, thence north-easterly along the Burlington Northern Railroad Line to the intersection with Rock Creek Road, thence east-southeasterly along Rock Creek Road to the intersection with Old Cornelius Pass Road, thence northeasterly along Old Cornelius Pass Road to the intersection with Skyline Boulevard, thence easterly and southerly along Skyline Boulevard to the intersection with Newberry Road, thence northeasterly along Newberry Road to the intersection with State Highway 30 (St. Helens Road), thence northeast on a line over land across State Highway 30 to the Multnomah Channel, thence east-southeasterly up the Multnomah Channel to the diffuence with the Willamette River, thence north-northeasterly down the Willamette River to the confluence with the Columbia River and the Oregon-Washington state line (the point of beginning).

(24) "Portland Metropolitan Service District Boundary" or "Portland Metro" means the boundary surrounding the urban growth boundaries of the cities within the Greater Portland Metropolitan Area. It is defined in the Oregon Revised Statutes (ORS) 268.125 (1989).

(25) "Portland Vehicle Inspection Area" means the area of the state included within the following census tracts, block groups, and blocks as used in the 1990 Federal Census. In Multnomah County, the following tracts, block groups, and blocks are included: Tracts 1, 2, 3.01, 3.02, 4.01, 4.02, 5.01, 5.02, 6.01, 6.02, 7.01, 7.02, 8.01, 8.02, 9.01, 9.02, 10, 11.01, 11.02, 12.01, 12.02, 13.01, 13.02, 14, 15, 16.01, 16.02, 17.01, 17.02, 18.01, 18.02, 19, 20, 21, 22.01, 22.02, 23.01, 23.02, 24.01, 24.02, 25.01, 25.02, 26, 27.01, 27.02, 28.01, 28.02, 29.01, 29.02, 29.03, 30, 31, 32, 33.01, 33.02, 34.01, 34.02, 35.01, 35.02, 36.01, 36.02, 36.03, 37.01, 37.02, 38.01, 38.02, 38.03, 39.01, 39.02, 40.01, 40.02, 41.01, 41.02, 42, 43, 44, 45, 46.01, 46.02, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60.01, 60.02, 61, 62, 63, 64.01, 64.02, 65.01, 65.02, 66.01, 66.02, 67.01, 67.02, 68.01, 68.02, 69, 70, 71, 72.01, 72.02, 73, 74, 75, 76, 77, 78, 79, 80.01, 80.02, 81, 82.01, 82.02, 83.01, 83.02, 84, 85, 86, 87, 88, 89, 90, 91, 92.01, 92.02, 93, 94, 95, 96.01, 96.02, 97.01, 97.02, 98.01, 98.02, 99.01, 99.02, 99.03, 100, 101, 102, 103.01, 103.02, 104.02, 104.04, 104.05, 104.06, 104.07; Block Groups 1, 2 of Tract 105; Blocks 360, 361, 362 of Tract 105; that portion of Blocks 357, 399 of Tract 105 beginning at the intersection of the Oregon-Washington State Line ("State Line") and the northeast corner of Block Group 1 of Tract 105, thence east along the State Line to the intersection of the State Line and the eastern edge of Section 26, Township 1 North, Range 4 East, thence south along the section line to the centerline of State Highway 100 to the intersection of State Highway 100 and the western edge of Block Group 2 of Tract 105. In Clackamas County, the following tracts, block groups, and blocks are included: Tracts 201, 202, 203.01, 203.02, 204.01, 204.02, 205.01, 205.02, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216.01, 216.02, 217, 218, 219, 220, 221.01, 221.02, 222.02, 223, 224, 225, 226, 227.01, 227.02, 228, 229, 230, 231, 232, 233, 234.01,

234.02, 235, 236, 237; Block Groups 1, 2 of Tract 241; Block Groups 1, 2, 3, 4 of Tract 242; Block Groups 1, 2 of Tract 243.02. In Yamhill County, the following tract is included: Tract 301, except those areas in Tract 301 that lie within the Newberg City Limits defined as of July 12, 1996, and the following blocks within Tract 301: 102B, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121D, 122B, 122C, 123, 126, and 127B. In Washington County the following tracts, block groups, and blocks are included: Tracts 301, 302, 303, 304.01, 304.02, 305.01, 305.02, 306, 307, 308.01, 308.02, 309, 310.03, 310.04, 310.05, 310.06, 311, 312, 313, 314.01, 314.02, 315.01, 315.04, 315.05, 315.06, 315.07, 315.08, 316.03, 316.04, 316.05, 316.06, 316.07, 317.02, 317.03, 317.04, 318.01, 318.02, 318.03, 319.01, 319.03, 319.04, 320, 321.01, 321.02, 322, 323, 324.02, 324.03, 324.04, 325, 326.01, 326.02, 328, 329, 330, 331, 332, 333; Block Groups 1, 2 of Tract 327; Block Group 1 of Tract 334; Block Group 2 of Tract 335; Block Group 1 of Tract 336. In Columbia County the following tracts, block groups, and blocks are included: Tract 9710.98; Block Groups 2, 3 of Tract 9709.98; Blocks 146B, 148, 152 of Tract 9709.98.

(26) "Rogue Basin" means the area bounded by the following line: Beginning at the NE corner of T32S, R2E, W.M., thence south along range line 2E to the SE corner of T39S; thence west along township line 39S to the NE corner of T40S, R7W; thence south to the SE corner of T40S, R7W; thence west to the SE corner of T40S, R9W; thence north on range line 9W to the NE corner of T39S, R9W; thence east to the NE corner of T39S, R8W; thence north on range line 8W to the SE corner of Section 1, T33S, R8W on the Josephine-Douglas County line; thence east on the Josephine-Douglas and Jackson-Douglas County lines to the NE corner of T32S, R1W; thence east along township line 32S to the NE corner of T32S, R2E to the point of beginning.

(27) "Salem-Keizer Area Transportation Study" or "SKATS" means the area within the bounds beginning at the intersection of U.S. Interstate Highway 5 (I-5) with Battle Creek Road SE and Wiltsey Road, south along I-5 to the intersection with the western boundary of Section 24, T8S, R3W; thence due south on a line to the intersection with Delaney Road; thence easterly along Delaney Road to the intersection with Sunnyside Road; thence north along Sunnyside Road to the intersection with Hylo Road SE; thence west along Hylo Road SE to the intersection with Liberty Road; thence north along Liberty Road to the intersection with Cole Road; thence west along Cole Road to the intersection with Bates Road; thence northerly and easterly along Bates Road to the intersection with Jory Hill Road; thence west along Jory Hill Road to the intersection with Stone Hill Avenue; thence north along Stone Hill Avenue to the intersection with Vita Springs Road; thence westerly along Vita Springs Road to the Willamette River; thence northeasterly downstream the Willamette River to a point adjacent to where the western boundary of Section 30, T7S, R3W intersects the Southern Pacific Railroad Line; thence westerly along the Southern Pacific Railroad Line to the intersection with State Highway 51; thence northeasterly along State Highway 51 to the intersection with Oak Grove Road; thence northerly along Oak Grove Road to the intersection with State Highway 22; thence west on State Highway 22 to the intersection with Oak Grove Road; thence north along Oak Grove Road to the intersection with Orchard Heights Road; thence east and north along Orchard Heights Road to the intersection with Eagle Crest Drive; thence northerly along Eagle Crest Drive to the intersection with Hunt Road; thence north along Hunt Road to the intersection with Fourth Road; thence east along Fourth Road to the intersection with Spring Valley Road; thence north along Spring Valley to the intersection with Oak Knoll Road; thence east along Oak Knoll Road to the intersection with Wallace Road; thence south along Wallace Road to the intersection with Lincoln Road; thence east along Lincoln Road on a line to the intersection with the Willamette River; thence northeasterly downstream the Willamette River to a point adjacent to where Simon Street starts on the East Bank; thence east and south along Simon Street to the intersection with Salmon; thence east along Salmon to the intersection with Ravena Drive; thence southerly and easterly along Ravena Drive to the intersection with Wheatland Road; thence northerly along Wheatland Road to the intersection with Brooklake Road; thence southeast along Brooklake Road to the intersection with 65th Avenue; thence south along 65th Avenue to the intersection with Labish Road; thence east along Labish Road to the intersection with the West Branch of the Little Pudding River; thence southerly along the West Branch of the Little Pudding River to the intersection with Sunnyview Road; thence east along Sunnyview Road to the intersection with 63rd Avenue; thence south along 63rd Avenue to the intersection with State Street; thence east along State Street to the intersection with 62nd Avenue; thence south along 62nd Avenue to the intersection with Deer Park Drive; thence southwest along Deer Park Drive

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to the intersection with Santiam Highway 22; thence southeast along Santiam Highway 22 to the point where it intersects the Salem Urban Growth Boundary (SUGB); thence following the southeast boundary of the SUGB generally southerly and westerly to the intersection with Wiltsey Road; thence west along Wiltsey Road to the intersection with I-5 (the point of beginning).

(28) "UGA" means Urban Growth Area.

(29) "UGB" means Urban Growth Boundary.

(30) "Umpqua Basin" means the area bounded by the following line: Beginning at the SW corner of Section 2, T19S, R9W, on the Douglas-Lane County lines and extending due south to the SW corner of Section 14, T32S, R9W, on the Douglas-Curry County lines, thence easterly on the Douglas-Curry and Douglas-Josephine County lines to the intersection of the Douglas, Josephine, and Jackson County lines; thence easterly on the Douglas-Jackson County line to the intersection of the Umpqua National Forest boundary on the NW corner of Section 32, T32S, R3W; thence northerly on the Umpqua National Forest boundary to the NE corner of Section 36, T25S, R2W; thence west to the NW corner of Section 36, T25S, R4W; thence north to the Douglas-Lane County line; thence westerly on the Douglas-Lane County line to the starting point.

NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

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

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: DEQ 14-1995, f. & cert. ef. 5-25-95; DEQ 18-1996, f. & cert. ef. 8-19-96; DEQ 1-1999, f. & cert. ef. 1-25-99; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-031-0500; DEQ 1-2005, f. & cert. ef. 1-4-05; DEQ 3-2007, f. & cert. ef. 4-12-07

340-204-0030

Designation of Nonattainment Areas

The following areas are designated as Nonattainment Areas:

(1) Carbon Monoxide Nonattainment Areas: The Salem Nonattainment Area for Carbon Monoxide is the Salem-Keizer Area Transportation Study as defined in OAR 340-204-0010.

(2) PM10 Nonattainment Areas:

(a) The Eugene Nonattainment Area for PM10 is the Eugene-Springfield UGB as defined in OAR 340-204-0010.

(b) The Oakridge Nonattainment Area for PM10 is the Oakridge UGB as defined in OAR 340-204-0010.

NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: DEQ 14-1995, f. & cert. ef. 5-25-95; DEQ 18-1996, f. & cert. ef. 8-19-96; DEQ 1-1998, f. & cert. ef. 9-23-98; DEQ 1-1999, f. & cert. ef. 1-25-99; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-031-0520; DEQ 15-1999, f. & cert. ef. 10-22-99; DEQ 16-2000, f. & cert. ef. 10-25-00; DEQ 6-2001, f. & cert. ef. 6-18-01, cert. ef. 7-1-01; DEQ 11-2002, f. & cert. ef. 10-8-02; DEQ 1-2005, f. & cert. ef. 1-4-05; DEQ 9-2005, f. & cert. ef. 9-9-05; DEQ 3-2007, f. & cert. ef. 4-12-07

340-204-0040

Designation of Maintenance Areas

The following areas are designated as Maintenance Areas:

(1) Carbon Monoxide Maintenance Areas:

(a) The Eugene Maintenance Area for Carbon Monoxide is the Eugene-Springfield AQMA as defined in OAR 340-204-0010.

(b) The Portland Maintenance Area for Carbon Monoxide is the Portland Metropolitan Service District as referenced in OAR 340-204-0010.

(c) The Medford Carbon Monoxide Maintenance Area is the Medford UGB as defined in OAR 340-204-0010.

NOTE: EPA maintenance plan approval and redesignation pending.

(d) The Grants Pass Carbon Monoxide Maintenance Area is the Grants Pass CBD as defined in OAR 340-204-0010.

(e) The Klamath Falls Carbon Monoxide Maintenance Area is the Klamath Falls UGB as defined in OAR 340-204-0010.

(2) Ozone Maintenance Areas:

(a) The Medford Maintenance Area for Ozone is the Medford-Ashland AQMA as defined in OAR 340-204-0010.

(b) The Oregon portion of the Portland-Vancouver Interstate Maintenance Area for Ozone is the Portland AQMA, as defined in OAR 340-204-0010.

(c) The Salem Maintenance Area for Ozone is the Salem-Keizer Area Transportation Study as defined in OAR 340-204-0010.

(3) PM10 Maintenance Areas:

(a) The Grants Pass PM10 Maintenance Area is the Grants Pass UGB as defined in OAR 340-204-0010.

(b) The Klamath Falls PM10 Maintenance Area is the Klamath Falls UGB as defined in OAR 340-204-0010.

(c) The Medford-Ashland PM10 Maintenance Area is the Medford-Ashland AQMA as defined in OAR 340-204-0010.

NOTE: EPA maintenance plan approval and redesignation pending.

(d) The La Grande PM10 Maintenance Area is the La Grande UGB as defined in OAR 340-204-0010.

NOTE: EPA maintenance plan approval and redesignation pending.

(e) The Lakeview PM10 Maintenance Area is the Lakeview UGB as defined in OAR 340-204-0010.

NOTE: EPA maintenance plan approval and redesignation pending.

NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: DEQ 14-1995, f. & cert. ef. 5-25-95; DEQ 18-1996, f. & cert. ef. 8-19-96; DEQ 1-1998, f. & cert. ef. 9-23-98; DEQ 1-1999, f. & cert. ef. 1-25-99; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-031-0530; DEQ 15-1999, f. & cert. ef. 10-22-99; DEQ 16-2000, f. & cert. ef. 10-25-00; DEQ 11-2002, f. & cert. ef. 10-8-02; DEQ 1-2005, f. & cert. ef. 1-4-05; DEQ 9-2005, f. & cert. ef. 9-9-05; DEQ 3-2007, f. & cert. ef. 4-12-07

340-224-0050

Requirements for Sources in Nonattainment Areas

Proposed major sources and major modifications that would emit a nonattainment pollutant within a designated nonattainment area, including VOC or NOx in a designated Ozone Nonattainment Area must meet the requirements listed below:

(1) Lowest Achievable Emission Rate (LAER). The owner or operator must demonstrate that the source or modification will comply with the LAER for each nonattainment pollutant emitted at or above the significant emission rate (SER).

(a) For a major modification, the requirement for LAER applies only to each emissions unit that emits the pollutant in question and was installed since the baseline period or the most recent New Source Review construction approval for that pollutant, and to each modified emission unit that increases actual emissions of the pollutant in question above the netting basis.

(b) For phased construction projects, the LAER determination must be reviewed at the latest reasonable time before commencing construction of each independent phase.

(c) When determining LAER for a change that was made at a source before the current NSR application, the Department will consider technical feasibility of retrofitting required controls provided:

(A) The change was made in compliance with NSR requirements in effect when the change was made, and

(B) No limit will be relaxed that was previously relied on to avoid NSR.

(d) Individual modifications with potential to emit less than 10 percent of the SER are exempt from this section unless:

(A) They are not constructed yet;

(B) They are part of a discrete, identifiable, larger project that was constructed within the previous 5 years and is equal to or greater than 10 percent of the SER; or

(C) They were constructed without, or in violation of, the Department's approval.

(2) Offsets and Net Air Quality Benefit. The owner or operator must obtain offsets and demonstrate that a net air quality benefit will be achieved as specified in OAR 340-225-0090.

(3) Additional Requirements for Federal Major Sources:

(a) The owner or operator of a source that emits or has the potential to emit 100 tons per year of any regulated NSR pollutant must evaluate alternative sites, sizes, production processes, and environmental control techniques for the proposed source or modification and demonstrate that benefits of the proposed source or modification will significantly outweigh the environmental and social costs imposed as a result of its location, construction or modification.

(b) The owner or operator of a source that emits or has the potential to emit 100 tons per year of any regulated NSR pollutant must demonstrate that all major sources owned or operated by such person (or by an entity controlling, controlled by, or under common control with such person) in the state are in compliance, or are on a schedule for compliance, with all applicable emission limitations and standards under the Act.

(c) The owner or operator of a federal major source must meet the visibility impact requirements in OAR 340-225-0070.

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NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.
Stat. Auth.: ORS 468.020
Stats. Implemented: ORS 468A.025
Hist.: DEQ 25-1981, f. & ef. 9-8-81; DEQ 5-1983, f. & ef. 4-18-83; DEQ 27-1992, f. & cert. ef. 11-12-92; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93, Renumbered from 340-020-0240; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 10-1995, f. & cert. ef. 5-1-95; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 26-1996, f. & cert. ef. 11-26-96; DEQ 16-1998, f. & cert. ef. 9-23-98; DEQ 1-1999, f. & cert. ef. 1-25-99; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1930; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 1-2004, f. & cert. ef. 4-14-04; DEQ 3-2007, f. & cert. ef. 4-12-07

340-224-0060

Requirements for Sources in Maintenance Areas

Proposed major sources and major modifications that would emit a maintenance pollutant within a designated maintenance area, including VOC or NOx in a designated ozone maintenance area, must meet the requirements listed below:

(1) Best Available Control Technology (BACT). Except as provided in section (5) and (6) of this rule, the owner or operator must apply BACT for each maintenance pollutant emitted at a SER.

(a) For a major modification, the requirement for BACT applies only to:

(A) Each new emissions unit that emits the pollutant in question and was installed since the baseline period or the most recent New Source Review construction approval for that pollutant; and

(B) Each modified emissions unit that increases the actual emissions of the pollutant in question above the netting basis.

(b) For phased construction projects, the BACT determination must be reviewed at the latest reasonable time before commencement of construction of each independent phase.

(c) When determining BACT for a change that was made at a source before the current NSR application, the technical and economic feasibility of retrofitting required controls may be considered, provided:

(A) The change was made in compliance with NSR requirements in effect when the change was made; and

(B) No limit is being relaxed that was previously relied on to avoid NSR.

(d) Individual modifications with potential to emit less than 10 percent of the significant emission rate are exempt from this section unless:

(A) They are not constructed yet;

(B) They are part of a discrete, identifiable larger project that was constructed within the previous 5 years and that is equal to or greater than 10 percent of the significant emission rate; or

(C) They were constructed without, or in violation of, the Department's approval.

(2) Air Quality Protection:

(a) Offsets and Net Air Quality Benefit. Except as provided in subsections (b), (c), (d) and (e) of this section, the owner or operator must obtain offsets and demonstrate that a net air quality benefit will be achieved in the area as specified in OAR 340-225-0090.

(b) Growth Allowance. The requirements of this section may be met in whole or in part in an ozone or carbon monoxide maintenance area with an allocation by the Department from a growth allowance, if available, in accordance with the applicable maintenance plan in the SIP adopted by the Commission and approved by EPA. An allocation from a growth allowance used to meet the requirements of this section is not subject to OAR 340-225-0090. Procedures for allocating the growth allowances for the Oregon portion of the Portland-Vancouver Interstate Maintenance Area for Ozone and the Portland Maintenance Area for Carbon Monoxide are contained in OAR 340-242-0430 and 340-242-0440.

(c) In a carbon monoxide maintenance area, a proposed carbon monoxide major source or major modification is exempt from subsections (a) and (b) of this section if the owner or operator can demonstrate that the source or modification will not cause or contribute to an air quality impact equal to or greater than 0.5 mg/m³ (8 hour average) and 2 mg/m³ (1-hour average). The demonstration must comply with the requirements of OAR 340-225-0045.

(d) In a PM₁₀ maintenance area, a proposed PM₁₀ major source or major modification is exempt from subsection (a) of this section if the owner or operator can demonstrate, pursuant to the requirements of OAR 340-225-0045, that the source or modification will not cause or contribute to an air quality impact in excess of:

(A) 120 ug/m³ (24-hour average) or 40 ug/m³ (annual average) in the Grants Pass PM₁₀ maintenance area;

(B) 140 ug/m³ (24-hour average) or 47 ug/m³ (annual average) in the Klamath Falls PM₁₀ maintenance area; or

(C) 140 ug/m³ (24-hour average) or 45 ug/m³ (annual average) in the Lakeview PM₁₀ maintenance area. In addition, a single source impact is limited to an increase of 5 ug/m³ (24-hour average) in the Lakeview PM₁₀ maintenance area.

(e) Proposed major sources and major modifications located in or that impact the Salem Ozone Maintenance Area are exempt from OAR 340-225-0090 and section (2)(a) of this rule for VOC and NOx emissions with respect to ozone formation in the Salem Ozone Maintenance Area.

(3) The owner or operator of a source subject to this rule must provide an air quality analysis in accordance with OAR 340-225-0050(1) and (2), and 340-225-0060.

(4) Additional Requirements for Federal Major Sources: The owner or operator of a federal major source subject to this rule must provide an analysis of the air quality impacts for the proposed source or modification in accordance with OAR 340-225-0050(3) and 340-225-0070. In addition to the provisions of this section, provisions of section 340-224-0070 also apply to federal major sources.

(5) Contingency Plan Requirements. If the contingency plan in an applicable maintenance plan is implemented due to a violation of an ambient air quality standard, this section applies in addition to other requirements of this rule until the Commission adopts a revised maintenance plan and EPA approves it as a SIP revision.

(a) The requirement for BACT in section (1) of this rule is replaced by the requirement for LAER contained in OAR 340-224-0050(1).

(b) An allocation from a growth allowance may not be used to meet the requirement for offsets in section (2) of this rule.

(c) The exemption provided in subsection (2)(c) and (2)(d) of this rule for major sources or major modifications within a carbon monoxide or PM₁₀ maintenance area no longer applies.

(6) Medford-Ashland AQMA: Proposed major sources and major modifications that would emit PM₁₀ within the Medford-Ashland AQMA must meet the LAER emission control technology requirements in OAR 340-224-0050.

(7) Pending Redesignation Requests. This rule does not apply to a proposed major source or major modification for which a complete application to construct was submitted to the Department before the maintenance area was redesignated from nonattainment to attainment by EPA. Such a source is subject to OAR 340-224-0050.

NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.

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

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: DEQ 26-1996, f. & cert. ef. 11-26-96; DEQ 15-1998, f. & cert. ef. 9-23-98; DEQ 1-1999, f. & cert. ef. 1-25-99; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1935; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 11-2002, f. & cert. ef. 10-8-02; DEQ 1-2005, f. & cert. ef. 1-4-05; DEQ 9-2005, f. & cert. ef. 9-9-05; DEQ 3-2007, f. & cert. ef. 4-12-07

340-225-0090

Requirements for Demonstrating a Net Air Quality Benefit

Demonstrations of net air quality benefit for offsets must include the following:

(1) Ozone areas (VOC and NOx emissions). For sources capable of impacting a designated ozone nonattainment or maintenance area;

(a) Offsets for VOC and NOx are required if the source will be located within the designated area or within the Ozone Precursor Distance.

(b) The amount and location of offsets must be determined in accordance with this subsection:

(i) For new or modified sources locating within a designated nonattainment area, the offset ratio is 1.1:1. These offsets must come from within either the same designated nonattainment area as the new or modified source or another ozone nonattainment area (with equal or higher nonattainment classification) that contributes to a violation of the NAAQS in the same designated nonattainment area as the new or modified source.

(ii) For new or modified sources locating within a designated maintenance area, the offset ratio is 1.1:1. These offsets may come from within either the designated area or the ozone precursor distance.

(iii) For new or modified sources locating outside the designated area, but within the ozone precursor distance, the offset ratio is 1:1. These offsets may come from within either the designated area or the ozone precursor distance.

(iv) Offsets from outside the designated area but within the Ozone Precursor Distance must be from sources affecting the designated area in a

ADMINISTRATIVE RULES

comparable manner to the proposed emissions increase. Methods for determining offsets are described in the Ozone Precursor Offsets definition (OAR 340-225-0020(11)).

(c) In lieu of obtaining offsets, the owner or operator may obtain an allocation at the rate of 1:1 from a growth allowance, if available, in an applicable maintenance plan.

(d) Sources within or affecting the Medford Ozone Maintenance Area are exempt from the requirement for NOx offsets relating to ozone formation.

(e) Sources within or affecting the Salem Ozone Maintenance Area are exempt from the requirement for VOC and NOx offsets relating to ozone formation.

(2) Non-Ozone areas (PM10, SO2, CO, NOx, and Lead emissions)

(a) For a source locating within a designated nonattainment area, the owner or operator must:

(A) Obtain offsets from within the same designated nonattainment area;

(B) Provide a minimum of 1:1 offsets for emission increases over the Netting Basis;

(C) Provide a net air quality benefit within the designated nonattainment area. "Net Air Quality Benefit" means a reduction in concentration at a majority of the modeled receptors and less than a significant impact level increase at all modeled receptors;

(D) Provide offsets sufficient to demonstrate reasonable further progress toward achieving the NAAQS.

(b) For a source locating outside a designated nonattainment area but causing a significant air quality impact on the area, the owner or operator must provide offsets sufficient to reduce the modeled impacts below the significant air quality impact level (OAR 340-200-0020) at all receptors within the designated nonattainment area. These offsets may come from within or outside the designated nonattainment area.

(c) For a source locating inside or causing a significant air quality impact on a designated maintenance area, the owner or operator must either provide offsets sufficient to reduce modeled impacts below the significant air quality impact level (OAR 240-200-0020) at all receptors within the designated maintenance area or obtain an allocation from an available growth allowance as allowed by an applicable maintenance plan. These offsets may come from within or outside the designated maintenance area.

(A) Medford-Ashland AQMA: Proposed new major PM10 sources or major PM10 modifications locating within the AQMA that are required to provide emission offsets under OAR 340-224-0060(2)(a) must provide reductions in PM10 emissions equal to 1.2 times the emissions increase over the netting basis from the new or modified source, and must provide a net air quality benefit within the AQMA. "Net Air Quality Benefit" means a reduction in concentration at a majority of the modeled receptors and less than a significant impact level increase at all modeled receptors.

(B) Medford-Ashland AQMA: Proposed new major PM10 sources or major PM10 modifications located outside the Medford-Ashland AQMA that cause a significant air quality impact on the AQMA must provide reductions in PM10 emissions sufficient to reduce modeled impacts below the significant air quality impact level (OAR 240-200-0020) at all receptors within the AQMA.

(3) The emission reductions used as offsets must be of the same type of pollutant as the emissions from the new source or modification. Sources of PM10 must be offset with particulate in the same size range.

(4) The emission reductions used as offsets must be contemporaneous, that is, the reductions must take effect before the time of startup but not more than two years before the submittal of a complete permit application for the new source or modification. This time limitation may be extended through banking, as provided for in OAR 340 division 268, Emission Reduction Credit Banking. In the case of replacement facilities, the Department may allow simultaneous operation of the old and new facilities during the start-up period of the new facility, if net emissions are not increased during that time period. Any emission reduction must be federally enforceable at the time of the issuance of the permit.

(5) Offsets required under this rule must meet the requirements of Emissions Reduction Credits in OAR 340 division 268.

(6) Emission reductions used as offsets must be equivalent in terms of short term, seasonal, and yearly time periods to mitigate the effects of the proposed emissions.

NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: DEQ 25-1981, f. & ef. 9-8-81; DEQ 5-1983, f. & ef. 4-18-83; DEQ 8-1988, f. & cert. ef. 5-19-88 (and corrected 5-31-88); DEQ 22-1989, f. & cert. ef. 9-26-89; DEQ 27-1992, f. & cert. ef. 11-12-92; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93, Renumbered from 340-020-0260; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 4-1995, f. & cert. ef. 2-17-95; DEQ 26-1996, f. & cert. ef. 11-26-96; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1970; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-030-0111; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01, Renumbered from 340-224-0090 & 340-240-0260; DEQ 11-2002, f. & cert. ef. 10-8-02; DEQ 12-2002(Temp), f. & cert. ef. 10-8-02 thru 4-6-03; Administrative correction 11-10-03; DEQ 1-2004, f. & cert. ef. 4-14-04; DEQ 1-2005, f. & cert. ef. 1-4-05; DEQ 3-2007, f. & cert. ef. 4-12-07

340-232-0010

Introduction

(1) This division regulates sources of VOC which contribute to the formation of photochemical oxidant, mainly ozone.

(2) Since ozone standards are not violated in Oregon from October through April (because of insufficient solar energy), natural gas-fired afterburners may be permitted, on a case-by-case basis, to lay idle during the winter months.

(3) Sources regulated by this division are new and existing sources in the Portland and Medford AQMA's and in the Salem SKATS listed in subsections (a) through (n) of this section, including:

(a) Gasoline dispensing facilities, storage tank filling;

(b) Bulk gasoline plants and delivery vessels;

(c) Bulk gasoline terminal loading;

(d) Cutback asphalt;

(e) Petroleum refineries, petroleum refinery leaks;

(f) VOC liquid storage, secondary seals;

(g) Coating including paper coating and miscellaneous painting;

(h) Aerospace component coating;

(i) Degreasers;

(j) Asphaltic and coal tar pitch in roofing;

(k) Flat wood coating;

(l) Rotogravure and Flexographic printing;

(m) Automotive Gasoline.

(4) Emissions units not covered by the source categories listed in section (3) of this rule which emit or have the potential to emit over 100 tons of VOC per year are subject to OAR 340-232-0040(5).

NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

Stat. Auth.: ORS 468.020 & 468A.025

Stats. Implemented: ORS 468A.025

Hist.: DEQ 21-1978, f. & ef. 12-28-78; DEQ 17-1979, f. & ef. 6-22-79; DEQ 23-1980, f. & ef. 9-26-80; DEQ 3-1986, f. & ef. 2-12-86; DEQ 8-1991, f. & cert. ef. 5-16-91; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 20-1998, f. & cert. ef. 10-12-98; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-022-0100; DEQ 15-2001, f. & cert. ef. 12-26-01; DEQ 3-2007, f. & cert. ef. 4-12-07

340-232-0020

Applicability

(1) Notwithstanding the emission limitations in OAR 340 this division, all new major sources or major modifications at existing sources, located within the areas cited in section (2) of this rule, shall comply with OAR 340 division 224 (New Source Review).

(2) All new and existing sources inside the following areas shall comply with the General Emission Standards for Volatile Organic Compounds:

(a) Portland-Vancouver Air Quality Maintenance Area;

(b) Medford-Ashland Air Quality Maintenance Area;

(c) Salem-Keizer Area Transportation Study (SKATS) Area.

(3) VOC sources located outside the areas cited in section (2) of this rule are exempt from the General Emission standards for Volatile Organic Compounds.

(4) All new and existing sources in the areas identified in section (2) of this rule shall apply Reasonably Available Control Technology (RACT) subject to the categorical RACT requirements set forth in this division. Compliance with the requirements in this division shall be presumed to satisfy the RACT requirement.

NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

Stat. Auth.: ORS 468.020 & 468A.025

Stats. Implemented: ORS 468A.025

Hist.: DEQ 21-1978, f. & ef. 12-28-78; DEQ 17-1979, f. & ef. 6-22-79; DEQ 23-1980, f. & ef. 9-26-80; DEQ 3-1986, f. & ef. 2-12-86; DEQ 8-1991, f. & cert. ef. 5-16-91; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 13-1995, f. & cert. ef. 5-25-95; DEQ 7-1997(Temp), f. & cert. ef. 4-28-97; DEQ 20-1998, f. & cert. ef. 10-12-98; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-022-0104; DEQ 3-2007, f. & cert. ef. 4-12-07

ADMINISTRATIVE RULES

340-242-0010

What is the Employee Commute Options Program?

(1) The Employee Commute Options or "ECO" Program requires larger employers to provide commute options to encourage employees to reduce auto trips to the work site.

(2) ECO is one of several strategies included in the Ozone Maintenance Plan for the Portland Air Quality Maintenance Area. The Ozone Maintenance Plan will keep the area in compliance with the federal ozone standard.

NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.363

Hist.: DEQ 17-1996, f. & cert. ef. 8-14-96; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-030-0800; DEQ 3-2007, f. & cert. ef. 4-12-07

340-242-0020

Who is Subject to ECO?

ECO applies to employers within the Portland Air Quality Maintenance Area (AQMA) with more than 100 employees at a work site. The Portland Air Quality Maintenance Area is defined in Oregon Administrative Rules (OAR) 340-204-0010 and is illustrated in **Figure 1**.

NOTE: The term "employer," and several other terms, are used throughout these rules as defined in Definitions of Terms, OAR 340-242-0050.

NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

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

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.363

Hist.: DEQ 17-1996, f. & cert. ef. 8-14-96; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-030-0810; DEQ 3-2007, f. & cert. ef. 4-12-07

340-242-0030

What Does ECO Require?

Employers must provide commute options that have the potential to reduce employee commute auto trips by ten percent within three years of its baseline survey. Employers must continue to provide commute options that have the potential to achieve and maintain the reduced auto trip rate. Options are available for alternative emission reduction measures, credits for past actions, and exemptions.

NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.363

Hist.: DEQ 17-1996, f. & cert. ef. 8-14-96; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-030-0820; DEQ 3-2007, f. & cert. ef. 4-12-07

340-242-0040

How Does the Department Enforce ECO?

Enforcement procedures and civil penalties in OAR, chapter 340, division 12 apply. Under OAR 340-012-0053(2) and 340-012-0054(2)(g), violations of the ECO rules are Class Two violations. Failure to achieve a ten percent trip reduction is not a violation; failure to make a good faith effort toward, or prepare and implement a plan designed to achieve, a ten percent trip reduction is a violation. Civil penalties are determined under OAR 340-012-0045

NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.363

Hist.: DEQ 17-1996, f. & cert. ef. 8-14-96; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-030-0830; DEQ 3-2007, f. & cert. ef. 4-12-07

340-242-0050

Definitions of Terms Used in These Rules

The definitions in OAR 340-200-0020, 340-204-0010 and this rule apply to OAR 340-242-0010 through 340-242-0290. If the same term is defined in this rule and OAR 340-200-0020 or 340-204-0010, the definition in this rule applies to OAR 340-242-0010 through 340-242-0290.

(1) "AQMA" means the Portland Air Quality Maintenance Area.

(2) "Auto Trip" means a commute trip taken by vehicle to a work site.

(3) "Auto Trip Rate" means the number of commute vehicles arriving at a work site divided by the number of employees that report to the work site.

(4) "Baseline Auto Trip Rate" means the daily average auto trip rate established by the baseline survey.

(5) "Baseline Survey" means the employee survey administered at the beginning of the ECO program, or when a new or expanding employer becomes subject to the ECO rules, or when an employer relocates.

(6) "Car/Vanpool" means a motor vehicle occupied by two or more people traveling together for their commute trip that results in the reduction of a minimum of one auto trip.

(7) "Compressed Work Week" means a schedule in which employees work their regularly-scheduled number of hours in fewer days per week or over a number of weeks (for example, a 40-hour, 8 hours per day, Monday through Friday work week is compressed into a 40-hour, 10 hours a day, Monday through Thursday work week.).

(8) "Department" means the Oregon Department of Environmental Quality.

(9) "ECO Program" or "ECO Rules" means OAR 340-242-0010 through 340-242-0290.

(10) "Employee" means any person on the employer's payroll, full or part-time (part time is 80 or more hours per 28-day period), for at least six consecutive months at the same work site, including business owners, associates, partners, and partners classified as professional corporations.

(11) "Employer" means any person, business, educational institution, non-profit agency or corporation, government department or agency or other entity that employs more than 100 employees at a single work site.

(12) "Equivalent Emission Reduction" means a reduction of vehicle emissions, or other sources of volatile organic compounds (VOC) and nitrogen oxides (NOx) emissions, that results in a reduction of VOC and NOx emissions equal to the emission reduction resulting from one eliminated auto trip.

(13) "Metro" means the regional government agency that serves the Portland metropolitan area.

(14) "New Employer" means any employer establishing a work site within the Portland AQMA, or any employer within the Portland AQMA that expands employment at a single work site to more than 100 employees, after the effective date of the ECO rules.

(15) "Non-Scheduled Work Week" means a work week with no regular daily scheduled starting or ending time, no scheduled work days, or employees are on-call. This does not include employees working a traditional "8 to 5" job who may work on a flexible schedule.

(16) "Target Auto Trip Rate" means a rate ten percent less than the baseline auto trip rate.

(17) "Target Compliance Deadline" means the date by which employers must demonstrate progress toward achieving and maintaining their target auto trip rate. The initial target compliance deadline is three years following registration.

(18) "Telecommuting" means the employees perform regular work duties at home, or at a work center closer to home than to work, rather than commuting to work. The employees may telecommute full time, or commute to work on some days and telecommute on others.

(19) "Vehicle" or "Auto" means a highway vehicle powered by a gasoline or diesel internal combustion engine with fewer than sixteen adult passenger seating positions.

(20) "Work site" means a property that is owned or leased by an employer or employers under common control, including a temporary or permanent building, or grouping of buildings that are in actual physical contact or separated only by a private or public roadway or other right-of-way.

NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

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

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.363

Hist.: DEQ 17-1996, f. & cert. ef. 8-14-96; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-030-0840; DEQ 3-2007, f. & cert. ef. 4-12-07

340-242-0070

What are the Major Requirements of ECO?

To comply with ECO, employers must:

(1) Conduct a baseline survey of employees to establish a baseline auto trip rate (or provide documentation of the current auto trip rate that is at least as accurate as a survey would provide);

(2) Calculate a target auto trip rate by reducing the baseline auto trip rate by 10 percent;

(3) Submit a registration form as supplied by the Department;

(4) Design and implement a trip reduction strategy that has the potential to achieve the target auto trip rate by the target compliance deadline and the potential to maintain the target auto trip rate;

(5) Either:

ADMINISTRATIVE RULES

(a) Prepare and implement an auto trip reduction plan for each work site and submit the plan to the Department for approval; or

NOTE: Enforcement will be based upon implementing the approved plan, see OAR 340-242-0110.

(b) Provide written notice to the Department of participation in an equivalent commute trip reduction program.

NOTE: Enforcement will be based on good faith effort, see OAR 340-242-0180 and special requirements in OAR 340-242-0110.

(6) Survey employees every two years, report survey findings to the Department; and

(7) Continue to implement strategies to achieve or maintain the target auto trip rate.

NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.363

Hist.: DEQ 17-1996, f. & cert. ef. 8-14-96; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-030-0860; DEQ 3-2007, f. & cert. ef. 4-12-07

340-242-0080

What are the Registration Requirements?

(1) Employers must submit a registration form to the Department on forms provided by the Department.

(2) Employers with multiple work sites may submit one application for all work sites.

(3) Baseline survey findings must be submitted with the registration form in the format described on the registration form.

NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

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

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.363

Hist.: DEQ 17-1996, f. & cert. ef. 8-14-96; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-030-0870; DEQ 3-2007, f. & cert. ef. 4-12-07

340-242-0090

What are the Requirements for an Employee Survey?

(1) Employers may use the survey form provided by the Department or an alternate instrument. Any alternate survey instrument must be approved by the Department before use and must provide an opportunity for employees to indicate an interest in a **carpool** matching program;

(2) The employer must distribute the survey form to all employees and achieve a minimum response rate of 75 percent; If the employer cannot achieve the minimum response rate for follow-up surveys within a reasonable amount of time, the Department will assign a single occupant vehicle mode to the percentage of employees who did not respond up to the 75% rate;

(3) Employers with more than 400 employees at a work site may survey a statistically valid random sample of employees and must follow the Department's guidelines for random sampling;

(4) Survey forms must be distributed during the week following a typical work week for the employer and not bordering a holiday;

(5) The baseline survey must not be distributed to employees earlier than one year before reporting the results to the Department (older baseline surveys can be used to apply for credit, see OAR 340-242-0250);

(6) Follow-up surveys must not be distributed to employees earlier than 90 days before reporting the results to the Department;

(7) Employers must report survey findings to the Department every two years, and;

(8) An alternative method may be substituted for the survey. Alternative methods must be at least as accurate as survey findings and must be approved by the Department (such methods might include counting cars in an employee parking lot or conducting work site entrance verbal surveys).

NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

[ED. NOTE: Table referenced is available from the agency.]

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.363

Hist.: DEQ 17-1996, f. & cert. ef. 8-14-96; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-030-0880; DEQ 3-2007, f. & cert. ef. 4-12-07

340-242-0110

What if an Employer Does Not Meet the Target Auto Trip Rate?

(1) An employer with an approved plan who has fully implemented its plan yet has not achieved its target auto trip rate by the target compliance date, or does not maintain its target rate on biennial basis, must submit a revised plan within 60 days following the target compliance date in any

given year. If an employer has not fully implemented its plan, the employer is subject to an enforcement action by the Department.

(2) An employer participating in an equivalent commute trip reduction program who does not achieve its target auto trip rate by the target compliance date must demonstrate that a good faith effort was made to achieve the target rate. Requirements for documenting good faith effort are described in 340-242-0180. The employer must also submit a trip reduction plan within 60 days following the target compliance date. If an employer cannot demonstrate that a good faith effort was made, the employer is subject to an enforcement action by the Department.

(3) An employer will not be required to submit further plan revisions to its initial plan if, after fully implementing two revisions, the target auto trip rate is not reached. The employer must maintain strategies identified in its plan, or revisions to that plan, that resulted in improvements to the auto trip rate.

NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

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

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.363

Hist.: DEQ 17-1996, f. & cert. ef. 8-14-96; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-030-0900; DEQ 3-2007, f. & cert. ef. 4-12-07

340-242-0120

How Will Employers Demonstrate Progress Toward the Target Auto Trip Rate?

Employers must submit employee survey findings, including a calculated auto trip rate, to the Department. The Department will compare the reported auto trip rate with the employer's target auto trip rate.

NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.363

Hist.: DEQ 17-1996, f. & cert. ef. 8-14-96; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-030-0910; DEQ 3-2007, f. & cert. ef. 4-12-07

340-242-0160

What Should Be Included in an Auto Trip Reduction Plan?

An auto trip reduction plan must include:

(1) The results of the baseline survey (or comparable documentation);
(2) Calculation of baseline and target auto trip rates;
(3) Any employee commute option programs currently in use at the work site;

(4) New commute options to be implemented at the work site that have the potential to achieve and maintain the target auto trip rate;

(5) Empirical evidence that the commute option(s) to be offered or supported by the employer have the potential to achieve and maintain the target auto trip rate (employers may reference the Department's report Alternatives to Single Occupant Vehicle Trips or provide equivalent documentation);

(6) Any unique aspects of the business or work site influencing the trip reduction strategies selected;

(7) A schedule for implementing each of the selected commute option measures;

(8) Any alternative emission reduction proposals prepared by the employer according to OAR 340-242-0240;

(9) The name, title, telephone number, and business mailing address of the person designated by the employer as the contact for the work site (contact person does not have to be located at the work site); and a signed statement certifying that the documents and information submitted in the plan are true and correct to the best of that person's knowledge.

NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

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

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.363

Hist.: DEQ 17-1996, f. & cert. ef. 8-14-96; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-030-0950; DEQ 3-2007, f. & cert. ef. 4-12-07

340-242-0180

What is a Good Faith Effort?

Employers who participate in an equivalent commute trip reduction program and then fail to meet their target auto trip rates must demonstrate that a good faith effort was made to meet the target trip reduction. An employer must demonstrate good faith effort by submitting written documentation of the following:

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(1) Employer established a baseline auto trip rate and corresponding target auto trip rate and conducted follow-up surveys to determine employee commute patterns and progress toward achieving the target trip reduction;

(2) Employer selected trip reduction strategies that had a reasonable likelihood of success based on documentation in the Department's report Alternatives to Single Occupant Vehicle Trips or equivalent documentation (for example, auto trip reduction experience by employers in a comparable region); and

(3) Employer fully implemented all selected strategies, or their equivalent, on a schedule that would have reasonably allowed the employer to achieve the target auto trip rate by the target compliance deadline.

NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

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

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.363

Hist.: DEQ 17-1996, f. & cert. ef. 8-14-96; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-030-0970; DEQ 3-2007, f. & cert. ef. 4-12-07

340-242-0190

How Does the ECO Program Affect New Employers, Expanding Employers and Employers Relocating within the Portland AQMA?

(1) An expanding employer who increases the number of employees at any single work site within the Portland AQMA to more than 100 after the effective date of the ECO rules must comply with the ECO rules. An employer relocating a work site within the Portland AQMA is considered a new employer upon relocation and must set a new baseline and target auto trip rate and comply with the ECO rules. Relocating employers may apply for credit for existing trip reductions that carry over to the new work site. Expanding employers and new employers must meet the requirements of this rule within the following number of days after they become affected employers:

(a) Survey employees and submit survey findings and a registration form within 90 days;

(b) Select strategies that have the potential to meet the target trip reduction and submit a trip reduction plan or notice of intent to reduce trips without an approved plan within 180 days; and

(c) Conduct follow-up surveys every two years and report findings to the Department within 90 days of surveying.

(2) An employer affected by this rule may choose to demonstrate compliance through 340-242-0260(5) (*use of area average rate*).

NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.363

Hist.: DEQ 17-1996, f. & cert. ef. 8-14-96; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-030-0980; DEQ 3-2007, f. & cert. ef. 4-12-07

340-242-0200

Can a New or Relocating Employer Comply with ECO Through Restricted Parking Ratios?

An employer locating at a work site within the AQMA after the effective date of the ECO rules will be exempt from the ECO rules for that work site if:

(1) The new work site meets the requirements of the Department's Voluntary Parking Ratio rules (OAR 340-242-0300 through 340-242-0390); or

(2) If the employer provides free or subsidized parking, including leased parking, above the Department's maximum parking ratio to any employees at the work site (except to employees required to have a vehicle at the work site as a condition of employment), then either:

(a) A transportation allowance is offered to those employees provided free or subsidized parking that exceeds the Department's maximum parking ratio. The transportation allowance must be offered in lieu of the free or subsidized parking in an amount equal to or greater than the amount of the subsidy, but not to exceed the maximum allowed for transit by the Internal Revenue Service for the Qualified Transportation Fringe Benefits included under Section 132(F), Notice 94-3 of the tax code; or

(b) All employees at the work site are offered a transit subsidy or its equivalent at least equal to 50 percent of the value of a Tri-Met all-zone transit pass.

(3) An employer must submit this documentation with an exemption application to the Department by the deadline for plan or notice submittal and certify that they continue to meet these requirements every two years. Employers meeting the requirements of this rule do not need to conduct a baseline survey of employees. However, employers whose applications are

denied must then conduct a baseline survey and submit the findings to the Department within 90 days of notice by the Department.

NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.363

Hist.: DEQ 17-1996, f. & cert. ef. 8-14-96; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-030-0990; DEQ 3-2007, f. & cert. ef. 4-12-07

340-242-0210

Can an Existing Employer Comply with ECO Through Restricted Parking Ratios?

An employer will be considered to have met the target trip reduction and is exempt from the ECO rules if the employer provides documentation of the following. An employer must submit this documentation with an exemption application to the Department by the deadline for plan or notice submittal and certify that they continue to meet these requirements every two years. Employers meeting the requirements of this rule do not need to conduct a baseline survey of employees. However, employers whose applications are denied must then conduct a baseline survey and submit the findings to the Department within 90 days of notice by the Department.

(1) Work site is located in an area with maximum parking ratio requirements at least as stringent as the Department's maximum parking ratios (see OAR 340-242-0300 through 340-242-0390);

(2) Free or subsidized all-day parking is generally unavailable within a one-half mile radius of the work site; and

(3) If the employer provides free or subsidized parking, including leased parking, above the Department's maximum parking ratio to any employees at the work site (except to employees required to have a vehicle at the work site as a condition of employment), then either:

(a) A transportation allowance is offered to those employees provided free or subsidized parking that exceeds the Department's maximum parking ratio. The transportation allowance must be offered in lieu of the free or subsidized parking in an amount equal to or greater than the amount of the subsidy, but not to exceed the maximum allowed for transit by the Internal Revenue Service for the Qualified Transportation Fringe Benefits included under Section 132(F), Notice 94-3 of the tax code; or

(b) All employees at the work site are offered a transit subsidy or its equivalent at least equal to 50 percent of the value of a Tri-Met all-zone transit pass.

NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.363

Hist.: DEQ 17-1996, f. & cert. ef. 8-14-96; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-030-1000; DEQ 3-2007, f. & cert. ef. 4-12-07

340-242-0220

What if an Employer Has More Than One Work Site Within the Portland AQMA?

(1) An employer with more than one work site in the Portland AQMA may average its target trip reduction among those work sites in the AQMA. An employer must survey all included work sites every two years. Survey findings may be reported in aggregate or separately.

(2) One trip reduction plan may be developed for all work sites of an individual employer, but strategies must be selected based on the specific transportation characteristics of each work site.

(3) Work sites with 100 or fewer employees may be included in the interest of averaging trip reductions among all work sites. Those work sites must then survey and findings must be included in the employer's report to the Department.

NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.363

Hist.: DEQ 17-1996, f. & cert. ef. 8-14-96; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-030-1010; DEQ 3-2007, f. & cert. ef. 4-12-07

340-242-0240

Are There Alternatives to Trip Reduction?

Alternatives to trip reduction include:

(1) Employers may purchase surplus trip reductions from other employers required to comply with ECO to meet part or all of the target trip reduction. Surplus trips must be documented by survey before sale and must be maintained. The Department must approve proposed transactions prior to finalizing. The Department will confirm surplus trip transactions by letter to both employers.

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(2) Employers may substitute equivalent emission reductions to meet their target trip reduction. Equivalent emission reduction proposals must be included in the employer's trip reduction plan or submitted with the notice of intent to comply without an approved plan. In order to receive credit as an equivalent emission reduction, the Department must review and approve proposals before an employer implements the strategy. Employers selecting equivalent emission reduction strategies must meet the following requirements:

(a) Employer sufficiently documented emission calculations so that the Department can quantify and verify the reduction;

(b) Employer calculated equivalent emissions according to guidelines issued by the Department. The Department must approve any alternate or modified calculation methods;

(c) Employer submits, on the same schedule as the biennial survey findings, documentation of actual equivalent emissions achieved;

(d) Equivalent emission reductions may not be bought or sold between employers for the purpose of meeting the target trip reduction.

(3) Employers may contribute to an emission reduction fund at an annual rate of \$100 per employee at the work site (see OAR 340-242-0060 to determine count of employees). An employer making partial progress toward the target trip reduction may choose to contribute proportionate to the percentage of the target trip reduction yet to be achieved. The emission reduction fund will be administered through Metro for new transit service, local jurisdiction alternative mode projects, and business-based Transportation Management Association (TMA) programs that result in trip reductions. Employers must make annual payments over the compliance period. The amount will be adjusted annually according to the Consumer Price Index.

NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.363

Hist.: DEQ 17-1996, f. & cert. ef. 8-14-96; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-030-1030; DEQ 3-2007, f. & cert. ef. 4-12-07

340-242-0260

Can Employers Get Credit for Existing Trip Reduction Programs?

The Department may grant credits for documented trip reductions that occurred at an employer's work site any time before establishing a baseline auto trip rate. Credits will be granted upon approval by the Department. The Department will approve or deny the employer's request for credit by letter to the employer. If the employer objects to any condition or limitation in that letter, the employer may request a contested case hearing as described in OAR 340-242-0170.

(1) Employers must demonstrate that pre-existing trip reduction programs resulted in actual trip reductions by providing:

(a) A description of the trip reduction programs and how they were implemented;

(b) The period of time that the programs have been in place;

(c) Survey findings or comparable documentation that demonstrates a ten percent reduction in the auto trip rate for the work site; and

(d) Current survey findings or comparable documentation verifying the employer has maintained the reduced auto trip rate.

(2) Applications for credits must be submitted to the Department with the trip reduction plan or notice of intent to reduce trips through participation in an equivalent commute trip reduction program.

(3) Credits will not be discounted and will be granted on a one-for-one basis.

(4) Trips documented for the purpose of receiving credits may not be bought or sold to other employers for the purpose of meeting the target trip reduction.

(5) Alternately, an employer may choose to provide documentation that its single occupant vehicle commute rate, at the time of registration, is equal to or less than two standard deviations below the mean rate for the Metro transportation zone which includes the employer's work site. Commute data for Metro's transportation zones is available from the Department.

NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.363

Hist.: DEQ 17-1996, f. & cert. ef. 8-14-96; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-030-1050; DEQ 3-2007, f. & cert. ef. 4-12-07

340-242-0270

Are Exemptions Allowed if an Employer is Unable to Reduce Trips or Take Advantage of Alternate Compliance Options?

(1) An employer is fully exempt from OAR 340-242-0010 through 340-242-0290 if the employer submits reasonable documentation for each of the following:

(a) Work site is located in an area for which:

(A) Public transit service during work shift changes is less frequent than thirty minute intervals; or

(B) The public transit service point is further than one-half mile from employee's usual parking area; or

(C) Work shift changes occur between 8:30 p.m. and 5:30 a.m..

(b) Upon completing the employee survey and providing reasonable promotion for a carpool matching program, employees indicating a willingness to car/vanpool cannot be matched within the work site or through Tri-Met's carpool matching database or employee turnover rate is greater than 50 percent per year;

(c) The nature of employees' work requires them to perform their work at the work site or during specific hours and days, eliminating the possibility of telecommuting or compressed work weeks/hours; and

(d) No options exist for the employer to achieve equivalent emission reductions at no net annualized cost to the employer (including both capital and operating costs).

(2) Partial exemptions.

(a) The Department will grant a partial exemption for that portion of an employer's work force for which sections (1)(a) through (c) of this rule apply;

(b) The Department will grant a partial exemption for section (1)(d) of this rule in direct proportion to the remaining work trips to be reduced after quantifying all available equivalent emission reductions.

(3) Employers must submit requests for partial or total exemptions to the Department, on application forms provided by the Department, by the deadline for plan or notice submittal. The Department will approve or deny the employer's request for exemption by letter to the employer. If the employer objects to any condition or limitation in that letter, the employer may request a contested case hearing as described in OAR 340-242-0170.

(4) Employers must renew requests for exemptions every three years.

NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.363

Hist.: DEQ 17-1996, f. & cert. ef. 8-14-96; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-030-1060; DEQ 3-2007, f. & cert. ef. 4-12-07

340-242-0280

Participation in the Industrial Emission Management Program

Employers that donate unused Plant Site Emission Limit (PSEL) to the Department's Industrial Emission Management program (see OAR 340-242-0400 through 340-242-0440) are exempt from the ECO rules.

NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.363

Hist.: DEQ 17-1996, f. & cert. ef. 8-14-96; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-030-1070; DEQ 3-2007, f. & cert. ef. 4-12-07

340-242-0290

What Kind of Records Must Be Kept and for How Long?

Employers must maintain records at the work site or other central location within the Air Quality Maintenance Area for at least three years, and must make those records available to the Department upon request. Records must include:

(1) The contents and results of employee surveys or other information gathering efforts;

(2) A full description of all measures and incentives offered to employees and the associated employee responses;

(3) Other information associated with the development, implementation, evaluation, or modification of the trip reduction program.

NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.363

Hist.: DEQ 17-1996, f. & cert. ef. 8-14-96; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-030-1080; DEQ 3-2007, f. & cert. ef. 4-12-07

ADMINISTRATIVE RULES

340-242-0400

Applicability

(1) OAR 340-242-0430 through 340-242-0440 apply to all sources of VOC or NOx that are required to provide a net air quality benefit under the provisions of OAR 340-225-0090 for the Portland Air Quality Maintenance Area (AQMA).

(2) OAR 340-242-0430 and 340-242-0440 apply to new major sources and major modifications that emit CO within the Portland Metro Area, including new major sources and major modifications outside the Portland Metro Area that have a significant air quality impact within this area.

NOTE: These rules are included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: DEQ 17-1996, f. & cert. ef. 8-14-96; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-030-0700; DEQ 3-2007, f. & cert. ef. 4-12-07

340-242-0410

Definition of Terms

The definitions in OAR 340-200-0020, 340-204-0010 and this rule apply in OAR 340-242-0400 through 340-242-0440. If the same term is defined in this rule and OAR 340-200-0020 or 340-204-0010, the definition in this rule applies in OAR 340-242-0400 through 340-242-0440.

(1) "PSEL" means the Plant Site Emission Limit of an individual air pollutant specified in an Air Contaminant Discharge Permit or Title V permit issued to a source by the Department, pursuant to OAR 340 division 216 or 218.

(2) "Unused PSEL" means the difference between a source's actual emissions and its permitted level or PSEL in 1990 or 1992, whichever is lower, as determined through the Department's emission inventory data.

(3) "Unused PSEL Donation Source" means any source that voluntarily returned to the Department unused PSEL, as part of the Unused PSEL Donation Program in OAR 340-242-0420.

NOTE: These rules are included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: DEQ 17-1996, f. & cert. ef. 8-14-96; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-030-0710; DEQ 3-2007, f. & cert. ef. 4-12-07

340-242-0420

Unused PSEL Donation Program

(1) This program encourages owners or operators of VOC and NOx sources identified in OAR 340-242-0400(1) to donate unused PSEL to the Department. Under this program, donations can be either permanent or temporary. For a source to participate in this program it must have entered into an agreement with the Department prior to January 1, 2006.

(2) VOC sources donating at least 35 percent of their unused PSEL and NOx sources donating at least 50 percent of their unused PSEL will receive the following incentives and considerations from the Department for participating in this program:

(a) Exemption from the Employee Commute Options (ECO) Program in OAR 340-242-0010 through 340-242-0290 for the duration of the Portland Ozone Maintenance plan;

(b) Priority permit processing for any required air quality permit;

(c) In accordance with OAR 340-242-0430 and 340-242-0440(1), priority use of up to 50 percent of any remaining growth allowance. This applies only to sources making permanent donations, pursuant to section (3) of this rule; and

(d) Other considerations may be added to the donation agreement on a case-by-case basis, consistent with the Department's rules and statutes.

(3) The Department will adjust the PSEL of sources providing permanent donations to reflect the emissions donated. Permanent donations will result in adjustment to the source's baseline emission rate and PSEL, consistent with the definition of "major modification" under OAR 340-200-0020 and changes to PSELs required by rule under OAR 340-222-0040.

(4) Sources participating in this program must enter into a donation agreement with the Department that identifies the commitments of both parties. Any such agreement is legally binding and enforceable.

NOTE: These rules are included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: DEQ 17-1996, f. & cert. ef. 8-14-96; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-030-0720; DEQ 3-2007, f. & cert. ef. 4-12-07

340-242-0430

Industrial Growth Allowances

(1) This rule establishes industrial growth allowances for sources identified in OAR 340-242-0400. The amount of each growth allowance is defined in the State Implementation Plan and is on file with the Department.

(2) The owner or operator of a proposed new major source or major modification emitting VOCs, NOx, or CO may obtain a portion of the respective growth allowance pursuant to OAR 340-242-0440.

(3) If no emissions remain in the respective growth allowance, the owner or operator of the proposed major source or major modification shall provide offsets for CO emissions at a 1 to 1 ratio, and for VOC and NOx emissions at a 1.1 to 1 ratio (i.e., demonstrate a 10% new reduction).

NOTE: These rules are included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

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

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: DEQ 17-1996, f. & cert. ef. 8-14-96; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-030-0730; DEQ 3-2007, f. & cert. ef. 4-12-07

340-242-0440

Industrial Growth Allowance Allocation

(1) The owner or operator of a proposed new major source or major modification emitting VOCs, NOx, or CO, as identified in OAR 340-242-0400, may obtain a portion of any remaining emissions in the respective growth allowance in accordance with procedures described in the State Implementation Plan that is on file with the Department, and based on the following conditions:

(a) Access is on a first-come-first-served basis, based on the submittal date of a complete permit application;

(b) Unused PSEL donation sources that meet the donation criteria specified in OAR 340-242-0420(2) have priority access to their respective growth allowance as a "tie-breaker" over non-donation sources;

(c) Except as provided below, no single source may receive an emissions allocation of more than 1,000 tons of either VOC or NOx or more than 50% of any remaining growth allowance; and

(d) A single source must apply to the Environmental Quality Commission to receive more than 1,000 tons of VOC or NOx, but in no case more than 50% of the remaining growth allowance. To apply, sources must submit air quality and other information as required by the Department justifying its request and must include information on significant economic, employment, or other benefits to the Portland area that will result from the proposed new major source or major modification, and the availability of emissions offsets. DEQ will evaluate ozone levels and expected trends to determine whether the proposed facility poses any risk to maintaining compliance with the ozone air quality standard prior to making a recommendation to the EQC regarding the source application.

(2) The amount of the CO growth allowance that can be allocated is identified in the Portland Area Carbon Monoxide Maintenance Plan, Section 4.58 of Volume 2 of the State Implementation Plan on file with the Department.

NOTE: These rules are included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

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

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: DEQ 17-1996, f. & cert. ef. 8-14-96; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-030-0740; DEQ 10-2004, f. & cert. ef. 12-15-04; DEQ 3-2007, f. & cert. ef. 4-12-07

Department of Fish and Wildlife Chapter 635

Rule Caption: Extend 2007 commercial spring Chinook gill net season in the Columbia River.

Adm. Order No.: DFW 17-2007(Temp)

Filed with Sec. of State: 3-20-2007

Certified to be Effective: 3-20-07 thru 9-15-07

Notice Publication Date:

Rules Amended: 635-042-0022

Subject: Amend rule to modify the commercial spring Chinook fishing season in the mainstem Columbia River below Bonneville Dam (Zones 1 thru 4). Modifications are consistent with the action taken March 19, 2007 by the Columbia River Compact.

Rules Coordinator: Casaria Tuttle—(503) 947-6033

ADMINISTRATIVE RULES

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. Use of monofilament nets is allowed. Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater. Nets authorized for this fishery, and nets with a mesh size of ≤ 2 inches or ≥ 9 inches are not required to be properly stored. Other permanent gear regulations remain in effect.

(b) Mesh size for the fishery is determined as described in OAR 635-042-0010(3).

(c) Retention of green sturgeon is prohibited. From the area as described in section (1) of this rule, adipose fin-clipped Chinook salmon, white sturgeon and shad may be taken for commercial purposes by gill net during the following open periods:

(A) 12:00 noon to 12:00 midnight, Tuesday March 6, 2007; and

(B) 8:00 p.m. Tuesday March 20 through 6:00 a.m. Wednesday March 21, 2007.

(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.

(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

ADMINISTRATIVE RULES

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. 3-22-04, 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. 3-2-05, 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. 3-6-06, 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; DFW 13-2007(Temp), f. & cert. ef. 3-6-07 thru 9-1-07; DFW 17-2007(Temp), f. & cert. ef. 3-20-07 thru 9-15-07

Rule Caption: Lower Deschutes River and Hood River sport spring Chinook fishery.

Adm. Order No.: DFW 18-2007(Temp)

Filed with Sec. of State: 3-22-2007

Certified to be Effective: 4-15-07 thru 7-31-07

Notice Publication Date:

Rules Amended: 635-018-0090

Subject: Amend rule to allow the sport harvest of spring Chinook in the Lower Deschutes and Hood rivers.

Rules Coordinator: Casaria Tuttle—(503) 947-6033

635-018-0090

Inclusions and Modifications

(1) The **2007 Oregon Sport Fishing Regulations** provide requirements for the Central Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2007 Oregon Sport Fishing Regulations**.

(2) The Deschutes River from the mouth at the I-84 Bridge upstream to Sherars Falls is open to angling for trout, steelhead and adipose fin clipped chinook salmon from April 15, 2007 to July 31, 2007.

(a) The catch limit is two adult adipose fin clipped salmon per day and five adipose fin clipped jack salmon per day.

(b) All non-adipose fin clipped Chinook salmon must be released unharmed.

(c) It is unlawful to continue to angle for steelhead or trout between Sherars Falls and the upper railroad trestle (three miles) after taking a daily bag limit of adult chinook salmon.

(3) The Hood River from the mouth to Powerdale Dam is open to angling for adipose fin clipped Chinook salmon from May 1, 2007 to June 30, 2007.

(a) The catch limit for Chinook salmon is two adipose fin clipped adults and five adipose fin clipped jacks per day. Catch limits and restrictions applying to trout, steelhead, and coho remain unchanged from those listed in the **2007 Oregon Sport Fishing Regulations for the Hood River**.

(b) All salmon that have not been adipose fin clipped must be released unharmed.

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

Stat. Auth.: ORS 496.138 & 496.146

Stats. Implemented: ORS 496.162

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 20-1994(Temp), f. & cert. ef. 4-11-94; FWC 24-1994(Temp), f. 4-29-94, cert. ef. 4-30-94; FWC 34-1994(Temp), f. 6-14-94, cert. ef. 6-16-94; FWC 54-1994, f. 8-25-94, cert. ef. 9-1-94; FWC 65-1994(Temp), f. 9-15-94, cert. ef. 9-17-94; FWC 67-1994(Temp), f. & cert. ef. 9-26-94; FWC 70-1994, f. 10-4-95, cert. ef. 11-1-94; FWC 18-1995, f. 3-2-95, cert. ef. 4-1-95; FWC 60-1995(Temp), f. 7-24-95, cert. ef. 8-1-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 11-1996(Temp), f. 3-8-96, cert. ef. 4-1-96; FWC 32-1996(Temp), f. 6-7-96, cert. ef. 6-16-96; FWC 38-1996(Temp), f. 6-14-96, cert. ef. 7-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 20-1997, f. & cert. ef. 3-24-97; FWC 21-1997, f. & cert. ef. 4-1-97; FWC 27-1997(Temp), f. 5-2-97, cert. ef. 5-9-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 25-1998(Temp), f. & cert. ef. 3-25-98 thru 8-31-98; DFW 56-1998(Temp), f. 12-24-98, cert. ef. 8-1-98 thru 10-31-98; DFW 70-1998, f. & cert. ef. 8-28-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 31-1999, f. & cert. ef. 5-3-99; DFW 78-1999, f. & cert. ef. 10-4-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 12-2000(Temp), f. 3-20-00, cert. ef. 4-15-00 thru 7-31-00; DFW 27-2000(Temp), f. 5-15-00, cert. ef. 8-1-00 thru 10-31-00; DFW 28-2000, f. 5-23-00, cert. ef. 5-24-00 thru 7-31-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 13-2001(Temp), f. 3-12-01, cert. ef. 4-7-01 thru 7-31-01; DFW 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; DFW 44-2001(Temp), f. 5-25-01, cert. ef. 6-1-01 thru 7-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 5-2002(Temp), f. 1-11-02 cert. ef. 1-12-02 thru 7-11-02; DFW 23-2002(Temp), f. 3-21-02, cert.

ef. 4-6-02 thru 7-31-02; DFW 25-2002(Temp), f. 3-22-02, cert. ef. 4-6-02 thru 7-31-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 62-2002, f. 6-14-02, cert. ef. 7-11-02; DFW 74-2002(Temp), f. 7-18-02, cert. ef. 8-1-02 thru 10-31-02; DFW 91-2002(Temp), f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 97-2002(Temp), f. & cert. ef. 8-29-02 thru 10-31-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 26-2003(Temp), f. 3-28-03, cert. ef. 4-15-03 thru 7-31-03; DFW 66-2003(Temp), f. 7-17-03, cert. ef. 8-1-03 thru 10-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 23-2004(Temp), f. 3-22-04, cert. ef. 4-1-04 thru 7-31-04; DFW 77-2004(Temp), f. 7-28-04, cert. ef. 8-1-04 thru 10-31-04, Administrative correction 11-22-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 19-2005(Temp), f. 3-16-05, cert. ef. 4-15-05 thru 7-31-05; DFW 41-2005(Temp), f. 5-13-05, cert. ef. 5-15-05 thru 7-31-05; DFW 83-2005(Temp), f. 7-29-05, cert. ef. 8-1-05 thru 10-31-05; DFW 84-2005(Temp), f. & cert. ef. 8-1-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 59-2006(Temp), f. 7-10-06, cert. ef. 8-1-06 thru 10-31-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 18-2007(Temp), f. 3-22-07, cert. ef. 4-15-07 thru 7-31-07

Rule Caption: Extend 2007 commercial spring Chinook gill net season in the Columbia River.

Adm. Order No.: DFW 19-2007(Temp)

Filed with Sec. of State: 3-22-2007

Certified to be Effective: 3-22-07 thru 9-17-07

Notice Publication Date:

Rules Amended: 635-042-0022

Subject: Amend rule to extend the commercial spring Chinook fishing season in the mainstem Columbia River below Bonneville Dam (Zones 1 thru 4). Modifications are consistent with the action taken March 21, 2007 by the Columbia River Compact.

Rules Coordinator: Casaria Tuttle—(503) 947-6033

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. Use of monofilament nets is allowed. Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater. Nets authorized for this fishery, and nets with a mesh size of ≤ 2 inches or ≥ 9 inches are not required to be properly stored. Other permanent gear regulations remain in effect.

(b) Mesh size for the fishery is determined as described in OAR 635-042-0010(3).

(c) Retention of green sturgeon is prohibited. From the area as described in section (1) of this rule, adipose fin-clipped Chinook salmon, white sturgeon and shad may be taken for commercial purposes by gill net during the following open periods:

(A) 12:00 noon to 12:00 midnight, Tuesday March 6, 2007;

(B) 8:00 p.m. Tuesday March 20 through 6:00 a.m. Wednesday March 21, 2007; and

(C) 10:00 p.m. Thursday March 22 through 6:00 a.m. Friday March 23, 2007.

(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.

ADMINISTRATIVE RULES

(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.

(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. 3-22-04, 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; DFW 13-2007(Temp), f. & cert. ef. 3-6-07 thru 9-1-07; DFW 17-2007(Temp), f. & cert. ef. 3-20-07 thru 9-15-07; DFW 19-2007(Temp), f. & cert. ef. 3-22-07 thru 9-17-07

Rule Caption: Sturgeon retention prohibition in the Columbia River between The Dalles and John Day dams.

Adm. Order No.: DFW 20-2007(Temp)

Filed with Sec. of State: 3-26-2007

Certified to be Effective: 3-28-07 thru 7-30-07

Notice Publication Date:

Rules Amended: 635-023-0095

Subject: Amend rule to prohibit retention of sturgeon in the Columbia River and tributaries between The Dalles Dam and John Day Dam. Revision is consistent with Joint State Action taken by the states of Oregon and Washington on March 26, 2007.

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

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(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) The Columbia River and tributaries between The Dalles Dam and John Day Dam are closed to the retention of sturgeon effective 12:00 Midnight, March 28, 2007.

(9) 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.

(10) 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; DFW 9-2007, f. & cert. ef. 2-14-07; DFW 20-2007(Temp), f. 3-26-07, cert. ef. 3-28-07 thru 7-30-07

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

Adm. Order No.: DFW 21-2007

Filed with Sec. of State: 3-30-2007

Certified to be Effective: 3-30-07

Notice Publication Date: 12-1-06

Rules Amended: 635-047-0025

Subject: This is a correction to the rule filed on January 18, 2007. A change made to the motion and adopted by the Fish and Wildlife Commission on January 12, 2007 was erroneously overlooked when filing the rule.

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 an anti pecking device. 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; DFW 21-2007, f. &

cert. ef. 3-30-07

Rule Caption: Implementation of the Oregon Coast Coho Conservation Plan for the State of Oregon.

Adm. Order No.: DFW 22-2007

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

Certified to be Effective: 4-5-07

Notice Publication Date: 2-1-07

Rules Adopted: 635-500-6500

Rules Amended: 635-500-0200, 635-500-0410, 635-500-0510, 635-500-0615, 635-500-4050, 635-500-4360, 635-500-4570, 635-500-4870, 635-500-5060, 635-500-5260

Subject: Adopted rule implements the Oregon Coast Coho Conservation Plan for the State of Oregon. Amended rules relating to Basin Fish Management Plans in order to provide consistency with the Coast Coho Conservation Plan and the Native Fish Conservation Policy (NFCP).

Rules Coordinator: Casaria Tuttle—(503) 947-6033

635-500-0200

Management Objectives for North Umpqua River Below Soda Springs Dam

The Department of Fish and Wildlife will emphasize summer and winter steelhead and spring chinook in the North Umpqua River below Soda Springs Dam. Coho shall be managed for the production of naturally produced coho with an option for a hatchery program consistent with provisions in OAR 635-500-6500 (Oregon Coast Coho Conservation Plan for the State of Oregon). Fall Chinook populations will be emphasized in other areas where better habitat exists. The Department shall proceed with programs and other efforts to achieve the following objectives, consistent with state law, agency policy and rule, and recognizing funding priorities for the agency. The North Umpqua Salmonid Management Plan will provide a basis for management activities in the subbasin. The following objectives will govern management of salmonid populations in the North Umpqua River basin below Soda Springs Dam.

(1) Summer Steelhead:

(a) Manage summer steelhead in the North Umpqua for wild and hatchery fish (Wild Fish Policy option 2 OAR 635-007-0525);

(b) Enhance wild summer steelhead runs to increase the current level of steelhead passing Winchester Dam (short-term goal);

(c) Based on the long-term objectives of the USFS and ODFW fish habitat improvement plans, enhance wild summer steelhead runs to increase the level of steelhead passing Winchester Dam to a range of 6,000 to 8,000 fish (long term +20 years);

(d) Increase numbers of hatchery summer steelhead adults to a range of 5,000-10,000 crossing Winchester Dam;

(e) Maintain the genetic integrity of North Umpqua summer steelhead consistent with the Wild Fish Policy, OAR 635-007-0525.

(2) Winter Steelhead:

(a) Manage North Umpqua winter steelhead for wild fish only (option #1 OAR 635-007-0525);

(b) Enhance wild winter steelhead runs to increase current levels passing Winchester Dam (short-term goal);

(c) Based on the long-term objectives of the USFS and ODFW habitat improvement plans, enhance wild winter steelhead runs to increase levels passing Winchester Dam to a range of 8,000-10,000 fish;

(d) Maintain genetic integrity of North Umpqua winter steelhead consistent with the Wild Fish Policy, OAR 635-007-0525.

(3) Spring Chinook:

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(a) Manage spring chinook in the North Umpqua River for wild and hatchery fish (option #2 OAR 635-007-0525);

(b) At least maintain wild spring chinook runs at current levels (average of 6,034);

(c) Increase numbers of hatchery spring chinook back up to a range of 4,000–7,000 fish crossing Winchester Dam;

(d) Maintain the genetic integrity of North Umpqua spring chinook as consistent with the Wild Fish Policy, OAR 635-007-0525.

(4) Fall Chinook:

(a) Manage fall chinook in the North Umpqua River for wild fish only (option #1 OAR 635-007-0525);

(b) Maintain wild fall chinook runs at least at current levels (+100 fish);

(5) Coho:

(a) Recover the naturally produced coho population in the North Umpqua River Basin consistent with the six measurable criteria for desired status contained in OAR 635-500-6500 (Oregon Coast Coho Conservation Plan for the State of Oregon);

(b) Recover Umpqua River Basin naturally produced coho salmon sufficiently to prevent restrictions on fisheries targeting other species or fin clipped hatchery coho, and sufficiently to provide for future harvest in the North Umpqua Basin consistent with OAR 635-500-6500 (Oregon Coast Coho Conservation Plan for the State of Oregon).

(6) Trout:

(a) Manage resident trout in the North Umpqua River for wild and hatchery fish (option #2 OAR 635-007-0525);

(b) Maintain a trout fishery at about the present level; 25,000 to 35,000 angler days per year with a catch rate of 0.6 to 0.7 trout per hour;

(c) Attempt to determine the cause for the current depressed state of the migratory wild cutthroat population. If possible, increase the run to more normal levels.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 506.109 & 506.129

Hist.: FWC 12-1986, f. & ef. 4-17-86, Renumbered from 635-500-0001; DFW 22-2007, f. & cert. ef. 4-5-07

635-500-0410

Coho Salmon

(1) The following operating principles apply to coho salmon in the Coos River basin:

(a) The Coos River Basin shall be managed for the production of naturally produced coho salmon with an option for a hatchery program consistent with provisions in OAR 635-500-6500 (Oregon Coast Coho Conservation Plan for the State of Oregon);

(b) The coho salmon stock approved for the Coos River system are Coos River stock only;

(c) Naturally produced stock shall be incorporated in hatchery broodstock and rearing programs every year.

(2) In accordance with these operating principles, it is the objective of the Department to:

(a) Recover the naturally produced coho population in the Coos River Basin consistent with the six measurable criteria for desired status contained in OAR 635-500-6500 (Oregon Coast Coho Conservation Plan for the State of Oregon);

(b) Recover the Coos River Basin naturally produced coho salmon sufficiently to allow an in-basin fishery on naturally produced coho salmon consistent with OAR 635-500-6500 (Oregon Coast Coho Conservation Plan for the State of Oregon).

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 506.109 & 506.129

Hist.: FWC 110-1990, f. & cert. ef. 10-1-90; DFW 22-2007, f. & cert. ef. 4-5-07

635-500-0510

Coho Salmon

(1) The following operating principles apply to coho salmon in the Tenmile Lakes basin:

(a) The Tenmile Lakes Basin shall be managed for the production of naturally produced coho salmon with an option for a hatchery program consistent with provisions in OAR 635-500-6500 (Oregon Coast Coho Conservation Plan for the State of Oregon);

(b) Coho salmon stock approved for Tenmile Lakes system are Tenmile stock only;

(c) Naturally produced stock shall be incorporated in all hatchery programs in every generation.

(2) In accordance with these operating principles, it is the objective of the Department to:

(a) Recover the naturally produced coho population in the Tenmile Lakes Basin consistent with the six measurable criteria for desired status contained in OAR 635-500-6500 (Oregon Coast Coho Conservation Plan for the State of Oregon);

(b) Recover the Tenmile Lakes Basin naturally produced coho salmon sufficiently to allow an in-basin fishery on naturally produced coho salmon consistent with OAR 635-500-6500 (Oregon Coast Coho Conservation Plan for the State of Oregon).

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 506.109 & 506.129

Hist.: FWC 14-1991, f. 2-28-91, cert. ef. 3-1-91; DFW 22-2007, f. & cert. ef. 4-5-07

635-500-0615

Coho Salmon

The following operating principles apply to coho salmon in the Yaquina River Basin:

(1) The Yaquina River Basin shall be managed for the production of naturally produced coho salmon with an option for a hatchery program consistent with provisions in OAR 635-500-6500 (Oregon Coast Coho Conservation Plan for the State of Oregon).

(2) In accordance with these operating principles, it is the objective of the Department to:

(a) Recover the naturally produced coho population in the Yaquina River Basin consistent with the six measurable criteria for desired status contained in OAR 635-500-6500 (Oregon Coast Coho Conservation Plan for the State of Oregon);

(b) Recover Yaquina River Basin naturally produced coho salmon sufficiently to prevent restrictions on fisheries targeting other species or fin clipped hatchery coho, and sufficiently to provide for future harvest in the Yaquina River Basin consistent with OAR 635-500-6500 (Oregon Coast Coho Conservation Plan for the State of Oregon).

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 506.109 & 506.129

Hist.: FWC 15-1991, f. 2-28-91, cert. ef. 3-1-91; DFW 22-2007, f. & cert. ef. 4-5-07

635-500-4050

Coho Salmon

Policy and objectives for coho salmon management in the mid-coast small ocean tributary streams.

(1) Policy: Mid-coast small ocean tributary streams shall be managed for production of naturally produced coho salmon.

(2) Objectives:

(a) Recover the naturally produced coho population in the Beaver Creek Basin (ocean tributary seven miles south of Newport) consistent with the six measurable criteria for desired status contained in OAR 635-500-6500 (Oregon Coast Coho Conservation Plan for the State of Oregon);

(b) Recover the Beaver Creek naturally produced coho salmon sufficiently to allow an in-river fishery on naturally produced coho salmon consistent with OAR 635-500-6500 (Oregon Coast Coho Conservation Plan for the State of Oregon); and

(c) Recover the aggregate of dependent populations covered in this plan consistent with the two measurable criteria for the dependent populations contained in OAR 635-500-6500 (Oregon Coast Coho Conservation Plan for the State of Oregon).

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 506.109 & 506.129

Hist.: DFW 5-1998, f. & cert. ef. 1-12-98; DFW 22-2007, f. & cert. ef. 4-5-07

635-500-4360

Coho Salmon

Policies and objectives for coho salmon management in the Salmon River Basin

(1) Policies and Objectives for coho salmon management in the Salmon River Basin. The Salmon River shall be managed for the production of naturally produced coho salmon with an option for a hatchery program consistent with provisions in OAR 635-500-6500 (Oregon Coast Coho Conservation Plan for the State of Oregon).

(2) Objectives: Recover the naturally produced coho population in the Salmon River Basin consistent with the six measurable criteria for desired status contained in OAR 635-500-6500 (Oregon Coast Coho Conservation Plan for the State of Oregon).

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 506.109 & 506.129

Hist.: DFW 5-1998, f. & cert. ef. 1-12-98; DFW 22-2007, f. & cert. ef. 4-5-07

635-500-4570

Coho Salmon

Policies and objectives for coho salmon management in the Siletz River Basin.

ADMINISTRATIVE RULES

(1) Policies: The Siletz River Basin shall be managed for production of naturally produced coho salmon with an option for a hatchery program consistent with provisions in OAR 635-500-6500 (Oregon Coast Coho Conservation Plan for the State of Oregon).

(2) Objectives:

(a) Recover the naturally produced coho population in the Siletz River Basin consistent with the six measurable criteria for desired status contained in OAR 635-500-6500 (Oregon Coast Coho Conservation Plan for the State of Oregon);

(b) Recover Siletz River Basin naturally produced coho salmon sufficiently to prevent restrictions on fisheries targeting other species or fin clipped hatchery coho, and sufficiently to provide for future harvest in the Siletz River Basin consistent with OAR 635-500-6500 (Oregon Coast Coho Conservation Plan for the State of Oregon);

(c) Cooperate with the Siletz Tribe in developing a mutually acceptable fishery based on provisions in the Agreement (US Public Law 96-340).

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 506.109 & 506.129

Hist.: DFW 5-1998, f. & cert. ef. 1-12-98; DFW 22-2007, f. & cert. ef. 4-5-07

635-500-4870

Coho Salmon

Policies and objectives for coho salmon management in the Alsea River Basin.

(1) Policies: The Alsea River Basin shall be managed for naturally produced coho production with an option for a hatchery program consistent with provisions in OAR 635-500-6500 (Oregon Coast Coho Conservation Plan for the State of Oregon).

(2) Objectives:

(a) Recover the naturally produced coho population in the Alsea River Basin consistent with the six measurable criteria for desired status contained in OAR 635-500-6500 (Oregon Coast Coho Conservation Plan for the State of Oregon);

(b) Recover Alsea River Basin naturally produced coho salmon sufficiently to prevent restriction on fisheries targeting other species or fin clipped hatchery coho, and sufficiently to provide for future harvest in the Alsea River Basin consistent with OAR 635-500-6500 (Oregon Coast Coho Conservation Plan for the State of Oregon).

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 506.109 & 506.129

Hist.: DFW 5-1998, f. & cert. ef. 1-12-98; DFW 22-2007, f. & cert. ef. 4-5-07

635-500-5060

Coho Salmon

Policy and objectives for coho salmon management in the Yachats River Basin.

(1) Policy: The Yachats River Basin shall be managed for production of naturally produced coho salmon.

(2) Objectives:

(a) Recover the Yachats River Basin naturally produced coho population consistent with the two measurable criteria for dependent populations contained in OAR 635-500-6500 (Oregon Coast Coho Conservation Plan for the State of Oregon).

(b) Recover Yachats River Basin naturally produced coho sufficiently to prevent restrictions on fisheries targeting other species or fin clipped hatchery coho, and sufficiently to provide for future harvest in the Yachats River Basin consistent with OAR 635-500-6500 (Oregon Coast Coho Conservation Plan for the State of Oregon).

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 506.109 & 506.129

Hist.: DFW 5-1998, f. & cert. ef. 1-12-98; DFW 22-2007, f. & cert. ef. 4-5-07

635-500-5260

Coho Salmon

Policies and objectives for coho salmon management in the Siuslaw River Basin.

(1) Policies:

(a) The Siuslaw Basin shall be managed for naturally produced coho production with an option for a hatchery program consistent with the provisions in OAR 635-500-6500 (Oregon Coast Coho Conservation Plan for the State of Oregon);

(b) The tidewater fishery for coho shall have priority over the freshwater coho fishery in the Siuslaw River Basin.

(2) Objectives:

(a) Recover the naturally produced coho population of the Siuslaw River Basin consistent with the six measurable criteria for desired status contained in OAR 635-500-6500 (Oregon Coast Coho Conservation Plan for the State of Oregon);

(b) Recover Siuslaw River Basin naturally produced coho salmon sufficiently to allow fisheries targeting fin clipped hatchery coho consistent with OAR 635-500-6500 (Oregon Coast Coho Conservation Plan for the State of Oregon).

(c) Recover Siuslaw River Basin naturally produced coho salmon sufficiently to allow an in-river fishery on naturally produced coho consistent with OAR 635-500-6500 (Oregon Coast Coho Conservation Plan for the State of Oregon).

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 506.109 & 506.129

Hist.: DFW 5-1998, f. & cert. ef. 1-12-98; DFW 22-2007, f. & cert. ef. 4-5-07

635-500-6500

Implementing the Oregon Coast Coho Conservation Plan for the State of Oregon

(1) Policy. The Oregon Coast Coho Conservation Plan for the State of Oregon (Coast Coho Plan) (State of Oregon 2007, available at Department offices) implements the State's strategy for protecting and enhancing Oregon coastal coho populations, in cooperation with other federal and local partners, including Oregon Plan natural resource agencies and NOAA Fisheries. This rule describes the Commission's contribution toward this collective effort and directs the Department's implementation of the Coast Coho Plan. The Coast Coho Plan is based on the following general premise: habitat management and improvement is the key to protecting and enhancing coastal coho; much of the most important coho habitat is on private land; habitat improvement on private land is most likely to occur through incentive-based cooperative partnerships with landowners; and fourth, and the Oregon Plan for Salmon and Watersheds provides the best vehicle for securing these partnerships and implementing habitat improvements. This rule describes the Department's role in implementing the Coast Coho Plan consistent with the Department's statutory authorities and the Native Fish Conservation Policy (OAR 635-007-0502 thru 635-007-0505). The rule is not intended to be a rigid recipe but rather to identify the range of opportunities the Department should pursue and how the effectiveness of those opportunities should be evaluated, following the template first established in the Native Fish Conservation Policy.

(2) Description of Species Management Unit and Populations. The Species Management Unit (SMU) for Oregon Coast coho is the Oregon Coast Coho Evolutionarily Significant Unit (ESU) that is comprised of component populations, variously defined as independent, potentially independent, and dependent, as described by the National Oceanic and Atmospheric Administration (NOAA) Oregon/Northern California Technical Recovery Team (TRT) reported in Lawson, et al. 2005. The Department adopts the definitions of coho populations proposed by the NOAA TRT. These include all historical coho streams flowing directly into the Pacific Ocean from, and inclusive of, the Necanicum River south to, and inclusive of, the Sixes River. To avoid confusion and because the SMU is the same as the federal ESU designation, the term ESU will be used to designate the SMU for Oregon Coast coho.

(3) Desired Status. The desired status goal is to improve coho habitat and coho populations across the Oregon Coast coho ESU so that:

(a) All independent populations perform at a level substantially above the level classified as sustainable, based on the Biological Recovery Criteria for the Oregon Coast Coho Salmon ESU, as described at the time of this rule's adoption by the NOAA Oregon/Northern California TRT; and

(b) All dependent populations have habitat that is capable of supporting coho salmon at productive levels, especially during periods of medium or high marine survival, as defined by the Pacific Fishery Management Council's (PFMC) Amendment 13 of the Salmon Fishery Management Plan;

(c) This desired status goal for the ESU shall be achieved when all independent and potentially independent coho populations pass all of the measurable criteria for independent and potentially independent populations and the aggregate of dependent populations within each bio-geographic stratum of the ESU pass both of the measurable criteria for dependent populations. In general, this means the average number of naturally produced coho spawners in the ESU is unlikely to drop below 100,000 fish even when marine survival is as poor as experienced during the early and mid 1990s when natural spawners averaged approximately 50,000 fish;

(d) The six measurable criteria for desired status of Oregon Coast coho independent or potentially independent populations are:

(A) Abundance;

(B) Persistence;

(C) Productivity;

(D) Distribution/connectivity;

(E) Diversity; and

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(F) Habitat.

(e) The two measurable criteria for dependent populations are:

(A) Spawner trend; and

(B) Habitat condition.

(f) The above measurable criteria are defined in the Metric and Evaluation Thresholds sections of each criterion in Appendix 2 of the Coast Coho Plan. While criterion for survival rate to each critical life history stage can not yet be developed with the available information and monitoring, staff shall establish a criterion for this biological attribute when adequate information and monitoring is available. Secondary criteria, such as age structure, are not incorporated into desired status criteria, but may be developed in the future to assess the effectiveness of specific management actions.

(4) Current Status. The current status of the Oregon Coast coho ESU at the time of the adoption of this rule is described in the State of Oregon's Oregon Coastal Coho Assessment (May 6, 2005). This assessment describes the biological attributes, criteria and metrics used to assess the status of the ESU. Those biological attributes, criteria, and metrics are adopted by reference into this rule. The Department shall update current status periodically consistent with timelines described in Chapter 9 of the Coast Coho Plan, Application of Adaptive Management, but these updates do not require rule modification of current status, but rather will serve as a measurement of progress toward desired status.

(5) Primary Limiting Factors.

(a) Numerous factors contribute to the gap between current and desired status of populations comprising the Oregon Coast coho ESU. Marine survival of coho associated with ocean conditions is the largest single factor regulating coho productivity and abundance. Marine survival is not considered a primary limiting factor for coho because the desired status criteria are scaled appropriately for variable marine survival and because management has little influence on marine survival;

(b) The factors generally causing the gap between current and desired status for the Oregon Coast coho ESU that can be managed are, in general order of importance for the ESU:

(A) Stream habitat complexity;

(B) Water quality;

(C) Exotic fish species;

(D) Hatchery impacts;

(E) Water quantity; and

(F) Spawning gravel.

(c) Primary and secondary limiting factors are identified for each population within the ESU in Table 4 of the Coast Coho Plan. Staff will continue to help identify management actions addressing these factors to aid reaching desired status. Staff may analyze the limiting factors at a finer, more localized scale when selecting or prioritizing management actions for specific areas. These analyses may find primary and secondary factors different than what was found at the ESU or population scale.

(6) Management Strategies. Staff shall consider and attempt to implement these management strategies designed for the SMU as a whole, and for constituent populations as applicable, as mechanisms to reach the desired status:

(a) *Short-term Strategies (1 to 5 years):*

(A) Provide technical support to local watershed groups to identify and address primary and secondary limiting factors at local scales within populations, with emphasis on independent and potentially independent populations;

(B) Modify hatchery coho programs in the Salmon River and the North Umpqua River thereby addressing the primary factor currently limiting viability of these populations.

(b) *Long-term Strategies (1 to 25 years):*

(A) Manage hatchery coho programs in a manner that will contribute to fisheries and attainment of the desired status goal;

(B) Manage harvest impacts to naturally produced coho consistent with the Pacific Fishery Management Council's (PFMC's) Amendment 13 of the Salmon Fishery Management Plan, including subsequent modifications to the plan;

(C) Provide monitoring data applicable to annual and periodic reviews of the efficacy of the PFMC's Amendment 13 to support the desired status goal for the Oregon Coast Coho ESU;

(D) Provide technical support to, and coordinate with, federal, state and local agencies and groups to protect existing high quality coho habitat;

(E) Provide technical support to, and coordinate with, federal, state and local agencies and groups to create additional high quality coho habitat;

(F) Provide technical and outreach support to willing landowners that will enhance the maintenance and/or creation of beaver dams in appropriate habitats.

(7) Adaptive Management. The Department shall employ adaptive management principles within its statutory authority in support of achieving the desired status goal for the ESU. The Department's contribution to adaptive management of the ESU by the state of Oregon will include five elements: research, monitoring, evaluation, a feedback loop, and reporting:

(a) *Research.* The Department shall identify and support research that addresses uncertainties related to management strategies and actions needed to achieve desired status. Research needs identified in the Coast Coho Plan at the time of adoption (but which are not intended to be the exclusive research projects to be pursued) are:

(A) The mechanisms that cause poor ocean survival of coho and methods to predict ocean survival conditions;

(B) The relative importance of limiting factors to coho throughout freshwater and estuarine residence;

(C) Validation and refinement of the Coho Winter High Intrinsic Potential model (as described in Burnett et al. 2003);

(D) The methods to maintain, enhance, or promote beaver dams in areas where they can create or maintain high quality coho rearing habitat;

(E) The impact of predation (from marine mammals, birds, and exotic fishes) on Oregon Coast coho;

(F) The re-establishment of a naturally producing coho population in Salmon River; and

(G) The development of standardized tools to evaluate limiting factors at stream-reach scales;

(H) Future research needs shall be identified during periodic assessments of the effectiveness of the Coast Coho Plan.

(b) *Monitoring.* The Department shall identify, implement, and support monitoring needed to assess the status of coho populations relative to desired status criteria, evaluate habitat status trends in the Oregon Coast coho ESU, and evaluate the effectiveness of management actions:

(A) The Department shall immediately implement annual juvenile coho, adult coho and habitat monitoring, as funding allows and as approved by the Oregon Plan Monitoring Team, at levels that provide estimates at the scale of independent population and dependent populations aggregated by strata:

(B) A monitoring need identified in the Coast Coho Plan at the time of plan adoption is the monitoring of habitat restoration projects;

(C) Future monitoring needs shall be identified during periodic assessments of the effectiveness of the Coast Coho Plan.

(c) *Evaluation.* The Department shall identify and support evaluation needed to determine the effectiveness of management strategies and actions in achieving their intended outcomes:

(A) An evaluation need identified in the Coast Coho Plan at the time of adoption is the evaluation of habitat protection, management and restoration programs in the Oregon Coast ESU;

(B) Future evaluation needs shall be identified during periodic assessments of the effectiveness of the Coast Coho Plan.

(d) *Feedback Loop.* The Department shall review the results of assessments identified in 635-500-6500(7)(e) and modify management strategies and actions as appropriate and within its statutory authority based on the review results. The Department shall recommend to the Oregon Plan Core Team and other agencies or entities, as necessary, appropriate modifications to management strategies and actions needed to support attainment of the desired status goal for the ESU. This feedback shall include refinement of research, monitoring and evaluation programs and desired status criteria based on the best available scientific information;

(e) *Reporting.* Monitoring data analyzed for the annual and periodic evaluation of ESU status shall be made available to the public. As part of the Oregon Plan Core Team, the Department shall help prepare a report available to the public summarizing the results of the 6-year (2013), 12-year (2019) and each subsequent 12-year assessment, or additional assessments called for by the Oregon Plan Core Team, of the effectiveness of the Coast Coho Plan;

(f) Modifications to the Coast Coho Plan are required if the fish become listed under the federal ESA or by the direction of the Oregon Plan Core Team in periodic Coast Coho Plan status reports. These reports by the Core Team will serve as an early warning system that will direct additional monitoring, evaluation, or management actions, if needed, based on annual review of monitoring data.

(8) Impact on Other Native Fish Species. Management strategies identified in the Coast Coho Plan are likely to be neutral or somewhat beneficial to other native fish species present in the ESU. New or modified

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actions shall consider impacts to other native species, as appropriate, to minimize harm and optimize benefits.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 506.109 & 506.129

Hist.: DFW 22-2007, f. & cert. ef. 4-5-07

Rule Caption: Suspension of waiting period requirement for commercial ocean Dungeness crab permit transfers.

Adm. Order No.: DFW 23-2007(Temp)

Filed with Sec. of State: 4-9-2007

Certified to be Effective: 4-17-07 thru 10-13-07

Notice Publication Date:

Rules Amended: 635-006-1095

Subject: Amend rule to suspend the 60-month waiting period requirement between transfers of commercial ocean Dungeness crab permits.

Rules Coordinator: Casaria Tuttle—(503) 947-6033

635-006-1095

Transferability of Permits

Any transfer of a permit away from a vessel without the written consent of each person holding a security interest in such vessel is void. The following rules apply to transfer of limited entry fishery permits:

(1) Gillnet salmon — see ORS 508.793.

(2) Troll salmon — see ORS 508.822.

(3) Shrimp — see ORS 508.907.

(4) Scallop — see ORS 508.864.

(5) Roe-herring:

(a) A permit is transferable to:

(A) A replacement vessel of the permit holder; or, upon request of a permit holder, the Department may authorize transfer of a permit to a replacement vessel owned by an individual other than the permit holder. However, any transfer of a permit away from a vessel without the written consent of each person holding a security interest in such vessel is void;

(B) The purchaser of the vessel when the vessel is sold.

(6) Sea Urchin:

(a) Medical Transfers: If the number of permits is at 31 or more, the Department may authorize a permit to be transferred to a specified individual for up to 90 days upon petition by a permittee on the form provided by the Department. The Department's decision to allow a transfer shall be based on a finding that the current permit holder is unable to participate in the fishery due to injury or illness which prevents diving, based on medical evidence submitted by the permit holder and such other evidence the Department considers reliable. At the end of the transfer period, the transfer may be renewed by the Department to the original transferee or to a new transferee, provided that the permittee again submits medical evidence documenting that the injury or illness continues to prevent the permittee's return to diving. There is a two-year limit on the eligibility of each individual permit for medical transfer status, beginning with the start date of the first medical transfer of that permit on or after January 1, 1996, and ending two years from that date. When the total number of permits reaches 30 or less the Department shall not allow any permit transfers for any medical reason;

(b) If the Department, or the Board, after review of a denial by the Department, allows a transfer, the original permit holder shall give written notice to the Department of the name, address and telephone number of the transferee. The original permit holder may, at any time during the transfer period specified in subsection (6)(a), request the Department to transfer the permit back to the original permit holder. Such transfer requires 30 days' written notice to the Department. In any event, upon expiration of the transfer period specified in (6)(a), or upon cancellation of a transfer due to lack of medical evidence of continuing inability to dive, the permit shall revert automatically to the original permit holder, unless the transfer is renewed, as provided in subsection (6)(a) of this rule;

(c) The total landings of sea urchins by all transferees of a permit shall not exceed the greater of either of the following amounts:

(A) Up to 5,000 pounds per 90-day period, not to exceed 5,000 pounds annually; or

(B) Twenty-five percent of the amount landed by the original permit holder in the previous season's catch, for each 90-day period.

(d) Combination Permit Transfers: If the number of permits is at 31 or more, the Department may transfer permits from one person to another as follows:

(A) The individual receiving the transferred permit (the purchaser) obtains no more than three total permits, each of which is valid for the current year in which the permit is purchased, from existing permit holders;

(B) The Department combines the three permits into a single new permit issued to the purchaser; and

(C) No transferred permit is valid for harvesting sea urchins until conditions (6)(d)(A) and (6)(d)(B) are met. Individual permits which are transferred may not be used individually and are not renewable. Once a permit has been transferred in accordance with (6)(d)(A) the individual to whom the permit has been transferred has up to 24 months from the date of transfer to combine it with two others to create a valid new permit.

(e) When the total number of permits reaches 30 or less, the Department shall approve the transfer of any permit to any purchaser of the permit, provided that not more than one sale or transfer of the permit occurs within that calendar year;

(f) Lottery-issued permit transfers: No permit issued to an individual through the lottery after 1998 may be transferred to another individual until a cumulative total of 20,000 pounds of sea urchins have been landed on commercial fish receiving tickets by the individual issued the permit through the lottery.

(7) Ocean Dungeness crab — see ORS 508.936; and

(a) The vessel permit is transferable provided the vessel holding the permit has landed at least 500 pounds of ocean Dungeness crab in each of two crab fishing seasons in the last five crab seasons which includes landings made during any season open at the time of application. Crab fishing season means ocean Dungeness crab season. However, the Board may waive the landing requirement for transfers, if the Board finds that strict adherence to this requirement would create undue hardship to the individual seeking to transfer a permit. The board also may delegate to the Department its authority to waive this requirement in such specific instances as the Board sets forth in a letter of delegation to the Department;

(b) The vessel permit is transferable:

(A) To another vessel; or

(B) To the purchaser of the vessel when the vessel is sold.

(c) The vessel to which a permit is transferred, with the exception of vessels covered by (7)(e):

(A) Shall not be more than 10 feet longer than the vessel which held the permit on January 1, 2006; and

(B) Shall not be more than 99 feet in length.

(d) For the purpose of (7)(c)(A), the Commercial Fishery Permit Review Board may waive the boat length restriction if it finds that strict adherence would create undue hardship. For this purpose, undue hardship means significant adverse consequences caused by death, permanent disability injury or serious illness requiring extended care by a physician.

(e) Permits obtained as a result of qualifying under section (1)(e) of ORS 508.931 may only be transferred to vessels of a length of 26 feet or less;

(f) In the event a vessel is destroyed due to fire, capsizing, sinking or other event, the vessel owner has up to two years to transfer the ocean Dungeness crab fishery permit to a replacement vessel.

(8) Black rockfish/blue rockfish/nearshore fishery — see ORS 508.957.

(9) Brine shrimp fishery: Permits are transferable.

(10) Bay clam dive fishery:

(a) The permittee may request the Department to transfer, to a replacement vessel that is owned by the same person that owns the vessel to which the permit was originally issued, a bay clam dive permit up to two times per calendar year.

(b) In the event of the death of a permit holder, the permit of the deceased may be issued to an immediate family member upon request, validated by the Department's receipt of a copy of the death certificate and the original permit.

(c) The Department may authorize a permit issued to an individual to be transferred to a specified individual for up to 90 days upon petition by the permittee on the form provided by the Department due to a medical condition.

(A) The Department's decision to allow a transfer shall be based on a finding that the current permit holder is unable to participate in the fishery due to injury or illness which prevents diving, based on medical evidence submitted by the permit holder, and such other evidence the Department considers reliable.

(B) At the end of the transfer period, the Department may reinstate the permit to the original permit holder or to a new transferee, provided that the original permit holder again submits medical evidence documenting that the injury or illness continues to prevent their return to diving.

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(C) There is a two-year limit on the eligibility of each individual permit for medical transfer status, beginning with the start date of the first medical transfer of that permit on or after January 1, 2006, and ending two years from that date.

(D) If the Department, after review of a denial by the Commission, allows a transfer, the original permit holder shall give written notice to the Department of the name, address and telephone number of the transferee. The original permit holder may, at any time during the transfer period specified in subsection (10)(c), request the Department reinstate the permit back to their possession. Such transfer requires 30 days' written notice to the Department. In any event, upon expiration of the transfer period specified in (10)(c), or upon cancellation of a transfer due to lack of medical evidence of continuing inability to dive, the permit shall revert automatically to the original permit holder, unless the transfer is renewed, as provided in subsection (10)(c) of this rule.

(11) Sardine Fishery:

(a) Permits are transferable up to two times in one calendar year

(b) Applications to transfer a sardine fishery permit shall only be accepted to vessels, which in the judgment of the Department, are capable of operating the gear necessary to legally participate in the fishery. Vessels of a size or design incapable of harvesting sardines are not eligible for transfer.

Stat. Auth.: ORS 506.109

Stats. Implemented: ORS 506.109, 506.129, 508.760, 508.762

Hist.: FWC 3-1996, f. 1-31-96, cert. ef. 2-1-96; FWC 64-1996, f. 11-13-96, cert. ef. 11-15-96; DFW 94-1998, f. & cert. ef. 11-25-98; DFW 112-2003, f. & cert. ef. 11-14-03; DFW 137-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 139-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 95-2006(Temp), f. & cert. ef. 9-8-06 thru 11-24-06; Administrative correction 12-16-06; DFW 23-2007(Temp), f. 4-9-07, cert. ef. 4-17-07 thru 10-13-07

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 3-2007

Filed with Sec. of State: 3-20-2007

Certified to be Effective: 3-20-07

Notice Publication Date: 10-1-06

Rules Adopted: 413-015-0409, 413-015-0415, 413-015-0420, 413-015-0425, 413-015-0430, 413-015-0435, 413-015-0440, 413-015-0445, 413-015-0450, 413-015-0460, 413-015-0465, 413-015-0470, 413-015-0475, 413-015-0480

Rules Amended: 413-015-0100, 413-015-0105, 413-015-0110, 413-015-0115, 413-015-0125, 413-015-0200, 413-015-0205, 413-015-0210, 413-015-0211, 413-015-0212, 413-015-0213, 413-015-0215, 413-015-0220, 413-015-0225, 413-015-0300, 413-015-0302, 413-015-0305, 413-015-0310, 413-015-0400, 413-015-0405, 413-015-1000, 413-015-1105, 413-015-1110, 413-015-1120, 413-015-1125

Rules Repealed: 413-015-0120, 413-015-0500, 413-015-0505, 413-015-0510, 413-015-0511, 413-015-0512, 413-015-0513, 413-015-0514, 413-015-0600, 413-015-0605, 413-015-0610, 413-015-0615, 413-015-0700, 413-015-0705, 413-015-0710, 413-015-0715, 413-015-0720, 413-015-0725, 413-015-0730, 413-015-0735, 413-015-0800, 413-015-0900, 413-015-0905

Rules Renumbered: 413-015-0740 to 413-015-0485

Rules Ren. & Amend: 413-015-0410 to 413-015-0455

Subject: The Department is adopting, amending, repealing, renumbering, and amending and renumbering rules on the subject of child protective services (CPS), including definitions, the initiation and termination of CPS services, screening activities, timelines, cross-reporting, assessment, protective custody, safety planning, protective actions, working with other entities, interviewing, visitation, notifications, assessment dispositions, confidentiality, and access to LEDS. These rule changes implement recommendations resulting from the Governor's request for a review of Oregon's child welfare system by the National Resource Center for Child Protective Services, assuring a focus on child safety throughout the child protective service process. These rule changes also refine parts of the existing process, provide clarity through language changes, reorganization of rule location, and detail actions that have not previously been described in the rules. The assessment rule is being amended to describe all

activities required of the CPS worker, other rules that currently set out those activities are being repealed.

Rules Coordinator: Annette Tesch—(503) 945-6067

413-015-0100

Child Protective Service Authority and Responsibility

Reports of alleged child abuse or neglect are received by Child Welfare and screened for Department response. The processes and time lines for completion are provided in division 015 of this chapter of rules. OAR 413-015-0100 to 413-015-0125 provide an overview of division 015, which implements ORS 409.185, 418.015 and 419B.005 to 419B.050.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 409.185, 418.015 & 419B.005 - 419B.050

Hist.: CWP 25-2003, f. & cert. ef. 7-1-03; CWP 3-2007, f. & cert. ef. 3-20-07

413-015-0105

Purpose of Child Protective Services

The purposes of Child Protective Services are to identify child safety threats and to assure protection of children after a report of alleged child abuse or neglect is received by a screener.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 409.185, 418.015 & 419B.005 - 419B.050

Hist.: CWP 25-2003, f. & cert. ef. 7-1-03; CWP 3-2007, f. & cert. ef. 3-20-07

413-015-0110

Introduction to Rules Governing Child Protective Services

The rules of this division are organized as follows:

(1) Introduction to Child Protective Services, OAR 413-015-0100 to 413-015-0125.

(2) Screening, OAR 413-015-0200 to 413-015-0225.

(3) Cross Reporting, OAR 413-015-0300 to 413-015-0310.

(4) Child Protective Services Assessment, OAR 413-015-0400 to 413-015-0485.

(5) Child Abuse Assessment Dispositions, OAR 413-015-1000.

(6) Access to LEDS in Local Child Welfare Offices, OAR 413-015-1100 to 413-015-1125.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 25-2003, f. & cert. ef. 7-1-03; CWP 17-2004, f. & cert. ef. 11-1-04; CWP 3-2007, f. & cert. ef. 3-20-07

413-015-0115

Definitions

Unless the context indicates otherwise, these terms are defined for use in OAR chapter 413, division 015:

(1) "Caregiver" means a guardian, legal custodian, or other person acting in loco parentis, who exercises significant authority over and responsibility for a child.

(2) "Child" means a person under 18 years of age.

(3) "Child abuse or neglect" means any form of abuse, including abuse through neglect and abuse or neglect by a third party, of a person under age 18.

(4) "Child protective services (CPS)" means a specialized social service program that the Department provides on behalf of children who may be unsafe after a report of child abuse or neglect is received.

(5) "Child protective services assessment" means activities and interventions that identify and analyze safety threats, determine if there is reasonable cause to believe child abuse or neglect occurred, and assure child safety through protective actions or ongoing safety planning.

(6) "Child protective services supervisor (CPS supervisor)" means an employee of Child Welfare trained in child protective services and designated as a supervisor.

(7) "Child protective services worker (CPS worker)" means an employee of Child Welfare who has completed the mandatory Department training for child protective service workers.

(8) "Child Safety Meeting" means a facilitated meeting held at the conclusion of a CPS assessment for the purpose of developing an ongoing safety plan.

(9) "Department" means the Department of Human Services, Child Welfare.

(10) "Department response" means how the Department intends to respond to information that a child is unsafe after a report of alleged abuse or neglect is received.

(11) "Face-to-face" means an in-person interaction between individuals.

(12) "FACIS" means the Family and Child Information System.

(13) "Former foster child" means a person under 21 years of age, who was in substitute care in Oregon, including substitute care provided by the

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Federally Recognized Tribes, after the age of 14 and remained in substitute care for an accumulative 180 days or longer.

(14) "Guided Assessment Process (GAP)" is a tool used to document the CPS assessment.

(15) "Harm" means any kind of impairment, damage, detriment, or injury to a child's physical, sexual, emotional, or mental development or functioning. Harm is the result of child abuse or neglect and may vary from mild to severe.

(16) "ICWA" means the Indian Child Welfare Act.

(17) "Initial contact" means the first face-to-face contact between a CPS worker and a family. The initial contact includes face-to-face contact with the alleged child victim, his or her siblings, parent or caregiver, and other children and adults living in the home; accessing the home environment; identifying safety threats; and determining if a protective action is needed.

(18) "Legal guardian" means a person or agency having the powers and responsibilities of a parent to make binding decisions for a child, including the authority to:

(a) Authorize surgery for the child;

(b) Authorize enlistment in the armed forces;

(c) Consent to the child's adoption when the child is in the permanent custody of the agency; and

(d) Make other decisions of substantial legal significance concerning the child (but a guardian is not a conservator of the child's property or estate).

(19) "Multi-disciplinary team (MDT)" means a county investigative team described in ORS 418.747 that includes law enforcement personnel, child protective service workers, district attorneys, school officials, health department staff, and juvenile department personnel.

(20) "Observable" means specific, definite, real, can be seen and described. Observable does not include suspicion and gut feeling.

(21) "Ongoing safety plan" means a documented set of actions or interventions that manage a child's safety after the Department has identified one or more safety threats to which the child is vulnerable and determined the parent or caregiver is unable or unwilling to protect the child. An ongoing safety plan can be in-home or out-of-home and is adjusted when necessary to provide the least intrusive interventions.

(22) "Out of control" means family behaviors, conditions, or circumstances that can affect a child are unrestrained, unmanaged, without limits or monitoring, not subject to influence or manipulation within the control of the family, resulting in an unpredictable and chaotic family environment.

(23) "Personal representative" means a person who is at least 18 years of age and is selected to be present and supportive during the CPS assessment by a child who is the victim of a person crime as defined in ORS 147.425 and is at least 15 years of age at the time of the crime. The personal representative may not be a person who is a suspect in, party or witness to, the crime.

(24) "Protective action" means an immediate, same day, short-term plan sufficient to protect a child from a safety threat in order to allow completion of the CPS assessment.

(25) "Protective capacity" means behavioral, cognitive, and emotional characteristics that can specifically and directly be associated with a person's ability and willingness to care for and keep a child safe.

(26) "Protective custody" means custody authorized by ORS 419B.150.

(27) "Referral" means a report that has been assigned for the purpose of CPS assessment.

(28) "Report" means an allegation of child abuse or neglect provided to Child Welfare that the screener evaluates to determine if it constitutes a report of child abuse or neglect as defined in ORS 419B.005.

(29) "Reporter" means an individual who makes a report.

(30) "Safe" means there is an absence of safety threats, the child is not vulnerable to identified safety threats, or there is sufficient parent or caregiver protective capacity to protect the vulnerable child from the identified safety threats.

(31) "Safety service provider" means a participant in a protective action or ongoing safety plan whose actions, assistance, or supervision help a family in managing a child's safety or increasing the protective capacities of the child's parent or caregiver.

(32) "Safety services" mean the actions, assistance, and supervision provided by safety service providers to manage the identified safety threats to a child.

(33) "Safety threat" means family behavior, conditions, or circumstances that could result in harm to a child.

(34) "Screener" means a Child Welfare employee with training required to provide screening services.

(35) "Screening" means the process used by a screener to determine the Department response when information alleging abuse or neglect is received.

(36) "Severe harm" means 'substantial', as used in ORS 419B.005; immobilizing impairment; life-threatening damage; or significant or acute injury to a child's physical, sexual, psychological, or mental development or functioning.

(37) "Substance" means any controlled substance as defined by ORS 475.005, prescription medications, over the counter medications, or alcoholic beverages.

(38) "Third-party abuse" means abuse by a person who is not the child's parent, not the child's caregiver or other member of the child's household, and not a person responsible for the child's care, custody, and control. Examples of persons who could be considered as a third-party under this definition include school personnel, day-care providers, coaches, and church personnel.

(39) "Unsafe" means there is a safety threat to which the child is vulnerable and there is insufficient parent or caregiver protective capacity to protect a vulnerable child from the identified safety threats.

(40) "Vulnerable child" means a child who is unable to protect him or herself. This includes a child who is dependent on others for sustenance and protection. A vulnerable child is defenseless, exposed to behavior, conditions, or circumstances that he or she is powerless to manage, and is susceptible and accessible to a threatening parent or caregiver. Vulnerability is judged according to physical and emotional development, ability to communicate needs, mobility, size, and dependence.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 147.425, 409.185, 418.005, 418.015, 419B.005-419B.050

Hist.: CWP 25-2003, f. & cert. ef. 7-1-03; CWP 14-2004, f. 7-30-04, cert. ef. 8-1-04; CWP 17-2004, f. & cert. ef. 11-1-04; CWP 4-2005, f. & cert. ef. 2-1-05; CWP 19-2005(Temp), f. 12-30-05, cert. ef. 1-1-06 thru 6-30-06; CWP 14-2006, f. 6-30-06, cert. ef. 7-1-06; CWP 3-2007, f. & cert. ef. 3-20-07

413-015-0125

Department Responsibility Ends

The Department is not responsible for providing child protective services when:

(1) A screener determines that information received during screening does not meet the statutory definition of child abuse or neglect (see OAR 413-015-0210(2)(a) and (b));

(2) The CPS assessment has determined that there is an absence of safety threats, the child is not vulnerable to identified safety threats, or the parent or caregiver can and will protect the vulnerable child from the identified safety threats; or

(3) The CPS assessment does not identify information sufficient to request juvenile court intervention or the juvenile court declines to intervene, and the parents or caregivers do not request or agree to receive voluntary services.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 409.185, 418.015 & 419B.005 - 419B.050

Hist.: CWP 25-2003, f. & cert. ef. 7-1-03; CWP 3-2007, f. & cert. ef. 3-20-07

413-015-0200

Screening Rules, Purpose

OAR 413-015-0200 to 413-015-0225 describe how the Department handles and documents information received, and outlines the criteria used to determine a Department response to the information, including the Department response time lines. This process is known as screening and is conducted by a screener.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 25-2003, f. & cert. ef. 7-1-03; CWP 14-2004, f. 7-30-04, cert. ef. 8-1-04; CWP 16-2005, f. & cert. ef. 12-1-05; CWP 3-2007, f. & cert. ef. 3-20-07

413-015-0205

Screening Activities

The screener must complete the following activities:

(1) Gather information. When gathering information, the screener must do both of the following:

(a) Accept reports of child abuse and neglect regardless of where the child resides or where the alleged child abuse or neglect may have occurred. If the report is about a child that does not reside in the county where the report is received, the screener must forward the report to the local child welfare office in the county or state where the child resides. The screener must forward the report on the same day the report is received and confirm that the report has been successfully forwarded.

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(b) Accept and handle anonymous reports of child abuse and neglect in the same manner as other reports, gather the same information from the anonymous reporter as the screener would from any other reporter, and encourage the reporter to provide identifying information.

(2) If appropriate, refer the person to community services and resources.

(3) Determine the type of information received, Child Protective Services, Family Support Services, or Interstate Compact on the Placement of Children, and where and when to document the information received.

(a) Child Protective Services. This type of information is related to reports of child abuse or neglect.

(A) Child Protective Services information is documented in FACIS using the Guided Assessment Process (GAP).

(B) The time line for screeners to complete and document their actions, and document information gathered, unless a CPS supervisor grants the screener an extension as provided in OAR 413-015-0220, is:

(i) Immediately when a within 24 hours response time line is assigned;

(ii) Within the same day when a within five days response time line is assigned; or

(iii) No later than the next working day after the screening determination is made when the report is closed at screening.

(b) Family Support Services. This type of information is not a report of alleged child abuse or neglect, and it does not include information that indicates a child is unsafe.

(A) This information is documented in FACIS using a screening form.

(B) The time line for screeners to complete and document their actions, and document information gathered is within two days of receiving the request for services.

(C) Family Support Services information falls within one of the categories described below:

(i) Request for Placement — Information falls within this category when:

(I) A parent or legal guardian requests out-of-home placement of their child due solely to obtain services for the emotional, behavioral, or mental disorder or developmental or physical disability of the child;

(II) The parent or legal guardian requests the Department take legal custody of their child; or

(III) The court has ordered a pre-adjudicated delinquent into the care of the Department.

(ii) Request for Independent Living Program Services — Information falls within this category when a former foster child qualifies for Independent Living Program (ILP) services, is not a member on an open case, and requests to enroll in the Department's ILP.

(iii) Request for Post Legal Adoption and Post Guardianship Services — Information falls within this category when a family requests post legal adoption or post guardianship services, if the adoption or guardianship occurred through the Department.

(iv) Request for Voluntary Services — Information falls within this category when it does not meet the criteria in subparagraphs (i), (ii), or (iii) of this paragraph, a parent or caregiver requests assistance with a child in the home, and all of the following apply:

(I) Other community resources have been utilized and determined to be ineffective.

(II) Members of the extended family and other responsible adults who are well known to the child have been explored or utilized and determined to be unsafe, unavailable, unwilling, or ineffective as support for the family.

(III) The parent or caregiver is temporarily or will be temporarily unable to fulfill parental responsibilities due to a diagnosed medical condition or a mental health diagnosis.

(IV) The parent's or caregiver's inability to fulfill parental responsibilities is temporary and immediate, and will be alleviated with short term services or short term services will transition the family to community services.

(V) A Child Welfare program manager approves the request for voluntary services.

(c) Request for Interstate Compact on the Placement of Children (ICPC) supervision and services. This type of information is not a report of child abuse or neglect. Information falls within the ICPC category when a screener receives a request from central office to provide ICPC supervision and services. This information is documented in FACIS using a screening form.

(4) When the screener receives Child Protective Services information, the screener must complete the screening activities described below.

(a) The screener must use the GAP screening template to collect the following information, which is critical to effectively identify if there is a report of child abuse or neglect as defined in ORS 419B.005 and if the information indicates a child is unsafe:

(A) The type of alleged child abuse or neglect and the circumstances surrounding the report;

(B) How the alleged child abuse or neglect or the surrounding circumstances are reported to affect the safety of the child;

(C) Information that identifies how the child is vulnerable; and

(D) Reported parent or caregiver functioning and behavior.

(b) Gather information from individuals who can provide firsthand information necessary to determine the appropriate Department response. This may include individuals who have regular contact with the child, doctors or others who have evaluated or maintain records on the child, people who are in an established personal or professional relationship with the parent or caregiver and who can judge the quality and nature of the parent or caregiver behavior, and those who have records or reason to know things about the parent or caregiver as a result of their involvement with or exposure to the parent or caregiver.

(c) Research Department history of every identified child, parent, caregiver, and household member for information about current or previous Department involvement relevant to the current child abuse or neglect report.

(d) Inquire regarding possible Indian or Alaskan Native heritage (for further direction see OAR 413-015-0215(5)).

(e) Request relevant information when available and appropriate from law enforcement agencies (LEA), including domestic disturbance calls, arrests, warrants, convictions, restraining orders, probation status, and parole status.

(f) Determine the location and corresponding law enforcement jurisdiction of the family's residence and the site where the alleged child abuse or neglect may have occurred.

(g) Immediately refer to Child Welfare Policy I-B.2.2.3 when information is related to a Department approved and certified home that is a foster home, relative caregiver home, or adoptive home.

(h) Immediately refer to Child Welfare Policy II-E.1, "Child-Caring Agencies", OAR 413-210-0000 to 413-210-0250 when information is related to a licensed child caring agency.

(i) Immediately refer to the Child Welfare "Fatality Protocol" when information is related to the death of a child.

(5) Explain to reporters:

(a) That the Department will not disclose the identity of the reporter unless disclosure is to an LEA for purposes of investigating the report, disclosure is required because the reporter may need to testify as a witness in court, or the court orders the Department to disclose the identity of the reporter;

(b) That anyone making a report of child abuse or neglect in good faith, who has reasonable grounds to make the report, is immune from liability in respect to making the report and the contents of the report;

(c) The Department's decision about whether the report will be assigned for a CPS assessment. If this decision has not been made when the report is completed, the screener must notify the reporter that, if contact information is provided, diligent efforts will be made to contact him or her at a later date and inform him or her of the decision;

(d) If applicable, that the information reported does not meet the screening criteria to be documented and retained in the child abuse information system; and

(e) That mandatory reporters should consider maintaining a record of their report to document compliance with ORS 419B.010 and 419B.015.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 25-2003, f. & cert. ef. 7-1-03; CWP 14-2004, f. 7-30-04, cert. ef. 8-1-04; CWP 4-2005, f. & cert. ef. 2-1-05; CWP 16-2005, f. & cert. ef. 12-1-05; CWP 3-2007, f. & cert. ef. 3-20-07

413-015-0210

Determining Department's Response and Required Time Lines for CPS Information

(1) After the screener completes screening activities required by OAR 413-015-0205, the screener must determine the Department response, either CPS assessment required or close at screening. If a CPS assessment is required, the screener must then determine the time line for the Department response, either within 24 hours or within five calendar days.

(2) CPS assessment required. A CPS assessment is required if:

(a) The screener determines that information received constitutes a report of child abuse or neglect, as defined in ORS 419B.005, in which a child is alleged to be unsafe; or

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(b) A Tribe or LEA requests assistance from Child Welfare with an investigation of child abuse or neglect, and a CPS supervisor agrees that assistance from Child Welfare is appropriate.

(3) If the screener determines that a CPS assessment is required, the screener must:

(a) Determine the CPS assessment response time line. The time line for the Department response refers to the amount of time between when the report is received at screening and when the CPS worker is required to make an initial contact.

(A) Within 24 hours: This response time line is required when the information received constitutes a report of child abuse or neglect as defined in ORS 419B.005 in which a child is alleged to be unsafe, unless paragraph (B) of this subsection applies.

(B) Within five calendar days: This response time line must only be used when the screener can clearly document how the information indicates the child's safety will not be compromised by not responding within 24 hours. The screener's judgment must take into account the location of the child, how long the child will be in that location, access that others have to the child's location, and whether an intentional delay to allow for a planned response is less likely to compromise the safety of the child.

(b) Complete a GAP screening form immediately when a within 24 hour response time line is assigned or the same day when a within five calendar days response time is assigned, unless a CPS supervisor grants an extension as provided in OAR 413-015-0220.

(c) Refer the CPS assessment to the appropriate county as described in OAR 413-015-0213.

(4) Close at Screening: A report will be closed at screening if either subsections (a) or (b) of this section apply:

(a) The screener determines that information received does not constitute a report of child abuse or neglect, as defined in ORS 419B.005, in which a child is alleged to be unsafe, and the screener determines that the information received meets any of the following criteria:

(A) It is a report of one or more factors that may negatively impact parenting behavior.

(B) It is a report of third party child abuse or neglect that does not require a CPS assessment because the information indicates the child is safe, the alleged perpetrator does not have access to the child, the parent or caregiver has the information necessary to protect the child, and a parent or caregiver will continue to assure child safety.

(C) It is a report that an expectant mother's newborn child will be at risk when born because the expectant mother or a household member has a history of prior termination of parental rights, substance abuse, or prior aggravated circumstances, and the expectant mother has no children in her care.

(b) The screener, after extensive efforts, is unable to obtain sufficient information to locate the child. Name and exact address are not necessary if a location is obtained.

(5) If a report is closed at screening, the screener must:

(a) Document the current information that supports the decision to close the report at screening.

(b) Decide whether other services are appropriate and make service or resource referrals, as necessary. Document what service or resource referrals are made, if any.

(c) If contact information was provided, make diligent efforts to contact the reporter and inform him or her of the decision to close the report at screening when the reporter was not informed of the decision prior to completing the report.

(d) Complete a GAP screening form no later than the next working day after the screening determination is made, unless a CPS supervisor grants an extension, as provided in OAR 413-015-0220.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 25-2003, f. & cert. ef. 7-1-03; CWP 14-2004, f. 7-30-04, cert. ef. 8-1-04; CWP 4-2005, f. & cert. ef. 2-1-05; CWP 16-2005, f. & cert. ef. 12-1-05; CWP 3-2007, f. & cert. ef. 3-20-07

413-015-0211

Additional Screening Activities

In the specific circumstances described below, the screener must complete additional activities to complete the screening process.

(1) The screener receives information on an open CPS assessment.

(a) When a screener receives duplicate information (same alleged victim, same alleged perpetrator, same allegation of child abuse or neglect, and same incident dates) on an open CPS assessment, the screener must:

(A) Inform the reporter that a new report will not be assigned because the information has already been received;

(B) Provide the reporter with the assigned caseworker's name and phone number; and

(C) Provide contact information about the reporter and any information the screener received to the assigned caseworker.

(b) When a screener receives information that constitutes a new report of child abuse or neglect as defined in ORS 419B.005 on an open CPS assessment:

(A) The screener must document the information in a new GAP screening form unless paragraph (B) of this subsection applies.

(B) If a CPS worker assigned to an open CPS assessment reports child abuse or neglect in the household that is the subject of the open CPS assessment, the screener must direct the CPS worker to incorporate the new information into the existing, open CPS assessment.

(2) The screener receives new information on an open Child Welfare case.

(a) When a screener receives new information on an open Child Welfare case, the screener must:

(A) Consult with a CPS supervisor;

(B) Notify each assigned case worker and their respective supervisors of all new information received on the same day the information is received, and document this notification in FACIS case notes; and

(C) Complete notification on the same day the information is received.

(b) When a screener receives a new report of child abuse or neglect, as defined in ORS 419B.005, but there is no open CPS assessment, the screener must document the information in a new GAP screening form.

(3) The information received by a screener on an open Child Welfare case that will not be documented in the GAP but must be documented in FACIS case notes includes:

(a) Additional information on an open case that does not meet the criteria for a new CPS assessment or closed at screening;

(b) When an in-home ongoing safety plan is violated, but the violation is not a new incident of child abuse or neglect;

(c) Reports of an ongoing concern in an open case, which Child Welfare is currently addressing;

(d) Reports of child runaways; and

(e) Any requests for case information received by the screener.

(4) When a screener receives information related to the home of a Department certified foster parent or relative caregiver, the screener must notify and document that the screener has notified each assigned case worker, assigned certifier, and their respective supervisors of all information received (see Child Welfare Policy I-B.2.2.3).

(5) When a screener receives the report of a child fatality alleged to be the result of abuse or neglect or involving a child known to the Department, the screener must:

(a) Consult with a CPS supervisor;

(b) Refer to the Child Welfare "Fatality Protocol";

(c) Complete a GAP screening form documenting the "allegation" as a "fatality" in addition to other allegations that apply;

(d) Notify the CPS consultant; and

(e) Complete subsections (a) through (d) of this section even when there are no siblings to the deceased child and no other children in the home where the fatality occurred.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 16-2005, f. & cert. ef. 12-1-05; CWP 3-2007, f. & cert. ef. 3-20-07

413-015-0212

Screener Consultation with a CPS Supervisor

Screeners may consult with a CPS supervisor about any screening determination. Screeners must consult with a CPS supervisor in each of the following situations:

(1) The screener receives a report of child abuse or neglect involving a child, parent, caregiver, or perpetrator who was a child, parent, caregiver, or perpetrator in a CPS assessment that resulted in a founded disposition in the preceding six months.

(2) The screener reviews Department records on a family that is the subject of a child abuse or neglect report and finds multiple consecutive reports were closed at screening, and the information received in the current report, in combination with the prior reports regarding the same family, may meet the criteria to refer the report for a CPS assessment.

(3) The screener receives a new report involving a family that has an open Child Welfare case.

(4) The screener receives a report involving the home of a Department certified foster parent or relative caregiver. The screener must immediately refer to and follow Child Welfare Policy I-B.2.2.3.

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(5) The screener receives a report involving a licensed child-caring agency. The screener must immediately refer to and follow Child Welfare Policy II-E.1, "Child-Caring Agencies".

(6) The screener receives a report of a child fatality.

(7) The screener decides not to refer for assessment a report of a baby who is born with substances in his or her system.

(8) The screener receives a report of child abuse or neglect in which a community partner or an employee of any program, office, or division of the Department or the Oregon Youth Authority is the alleged perpetrator.

(9) The screener receives a report of child abuse or neglect that is expected to receive media attention or that already is being reported by the media.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 16-2005, f. & cert. ef. 12-1-05; CWP 3-2007, f. & cert. ef. 3-20-07

413-015-0213

Determining the County to which the CPS Assessment will be Referred

(1) Except as described in section (2) of this rule, the screener must refer the CPS assessment to the local Child Welfare office in the county where the child resides, and that county is responsible for completing the CPS assessment.

(2) When the alleged child abuse or neglect occurred in a foster home or a residential care facility, the screener must refer the CPS assessment to the local Child Welfare office in the county where the alleged child abuse or neglect occurred, and that county is responsible for completing the CPS assessment.

(3) The District Managers in the affected counties must jointly approve any exception to sections (1) or (2) of this rule. When a joint decision cannot be made, the CPS Program Manager or designee must approve the exception.

(4) As a courtesy, and to assist with the CPS assessment process, when the child resides in a different county than the county where the alleged child abuse or neglect occurred, CPS workers may be assigned in the county of the child's residence and the county where the alleged child abuse or neglect occurred. The county who is responsible for completing the CPS assessment is described in sections (1) and (2) of this rule.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 16-2005, f. & cert. ef. 12-1-05; CWP 3-2007, f. & cert. ef. 3-20-07

413-015-0215

Notifications to Specific Agencies or Entities

The screener must notify specific agencies or entities of reports that the screener determines will be referred for a CPS assessment or will be closed at screening.

(1) LEA. The screener must cross report to LEA as required by OAR 413-015-0305(1).

(2) Child Care Division. The screener must notify the Child Care Division when a report involves a registered day-care home or a licensed day-care center, as required by ORS 418.747(2)(e) and 419B.020(1).

(3) Child Caring Agency Licensing Program. The screener must notify the Department's Child Caring Agency Licensing Program when a report involves a licensed child caring facility (see OAR 413-200-0000).

(4) Senior and People with Disabilities Division (SPD). The screener must notify the Office of Investigations and Training with the Public Health Division of the Department when a report involves a child with developmental disabilities in an SPD licensed group home.

(5) ICWA. If the screener knows or has reason to know that the child is an Indian child, the screener must give notice within 24 hours to the Indian child's tribe that a CPS assessment is being conducted.

Stat. Auth.: ORS 418.005, 419B.017

Stats. Implemented: ORS 418.005, 419B.015, 419B.017

Hist.: CWP 25-2003, f. & cert. ef. 7-1-03; CWP 4-2005, f. & cert. ef. 2-1-05; CWP 16-2005, f. & cert. ef. 12-1-05; CWP 3-2007, f. & cert. ef. 3-20-07

413-015-0220

Screening Extensions

(1) Except as provided in section (2) of this rule, the CPS supervisor may grant an extension to the deadline in OAR 413-015-0205 if the screener is unable to complete all required screening activities the same day that the report alleging child abuse or neglect is received because critical information (such as information that the child is unsafe and the child's location) is still needed to determine the Department response. The screener must document in GAP the reason for the extension, including the critical information that remains to be collected, and the CPS supervisor's approval.

(a) The CPS supervisor may grant a one-business day extension up to two times; and

(b) Screening activities may not exceed two business days beyond the day the report alleging child abuse or neglect is received by Child Welfare.

(2) If the screener has the critical information needed to determine the Department response or has information that indicates the child is unsafe, no extension to the deadline in OAR 413-015-0205 may be allowed.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 25-2003, f. & cert. ef. 7-1-03; CWP 14-2004, f. 7-30-04, cert. ef. 8-1-04; CWP 16-2005, f. & cert. ef. 12-1-05; CWP 3-2007, f. & cert. ef. 3-20-07

413-015-0225

Supervisory Review

The CPS supervisor must review all closed-at-screening reports within five days of the completion of screening activities and electronic submission of the reports for review.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 25-2003, f. & cert. ef. 7-1-03; CWP 3-2007, f. & cert. ef. 3-20-07

413-015-0300

Cross Reporting Defined

The Department and law enforcement agencies are required by ORS 419B.015 to notify each other when a report of child abuse or neglect, as defined in ORS 419B.005, is received. This process is known as cross reporting, and the notification is called a cross report. OAR 413-015-0300 to 413-015-0310 explain when and how a report of child abuse or neglect received by Child Welfare or a law enforcement agency is cross reported. Information is not cross reported until it is received.

Stat. Auth.: ORS 418.005 & 419B.015

Stats. Implemented: ORS 418.005, 419B.015, 419B.017

Hist.: CWP 25-2003, f. & cert. ef. 7-1-03; CWP 18-2005(Temp), f. 12-30-05 cert. ef. 1-1-06 thru 6-30-06; CWP 13-2006, f. 6-30-06, cert. ef. 7-1-06; CWP 3-2007, f. & cert. ef. 3-20-07

413-015-0302

Purpose of Cross Reporting

The purpose of the cross report is to share reports of alleged child abuse or neglect between Child Welfare and law enforcement agencies.

Stat. Auth.: ORS 418.005, 419B.017

Stats. Implemented: ORS 418.005, 419B.015, 419B.017

Hist.: CWP 18-2005(Temp), f. 12-30-05 cert. ef. 1-1-06 thru 6-30-06; CWP 13-2006, f. 6-30-06, cert. ef. 7-1-06; CWP 3-2007, f. & cert. ef. 3-20-07

413-015-0305

Cross Reporting Requirements

(1) Who is Required to Cross Report and to Whom.

(a) When a report of child abuse or neglect is received by a Child Welfare screener, the screener or designee must cross report to a law enforcement agency in the county where the report was made. If the abuse or neglect is alleged to have occurred in a different county, the screener must cross report a second time to the law enforcement agency in the county where the alleged abuse or neglect occurred.

(b) When a report of child abuse or neglect is received by a law enforcement agency, the law enforcement agency must cross report to the local office of Child Welfare in the county where the report was made.

(2) What to include in a Cross Report. A cross report from either Child Welfare or law enforcement agencies must include:

(a) The information provided by the person making the report of child abuse or neglect. This may include, the name of and contact information for the confidential reporter, the names and addresses of the child, the names and addresses of the child's parent or caregiver, the child's age, the nature and extent of the abuse or neglect, any evidence of previous abuse or neglect, the explanation given for the abuse or neglect, where the abuse or neglect occurred, identity and whereabouts of the alleged perpetrator, and any other information provided by the person making the report that would be helpful in establishing the cause of the abuse or neglect and the identity and whereabouts of the alleged abuser; and

(b) The name and contact information for the assigned CPS worker and officer, if known.

(3) When and How to Cross Report.

(a) The Department. When and how the Department must cross report to a law enforcement agency is described below.

(A) The same day.

(i) Child Welfare must cross report to a law enforcement agency on the same day the screener determines that a report of alleged child abuse or neglect requires a within 24 hours response by the Department or immediate notification to law enforcement. This requirement includes, but is not limited to any reports of:

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- (I) Moderate to severe physical abuse;
- (II) Visible injuries to a child;
- (III) Sexual abuse; or
- (IV) Suspicious or unexpected death of a child.

(ii) The reports of child abuse or neglect that the Department cross reports on the same day must be cross reported in one of the following ways:

(I) Verbal Cross Report. When a cross report is verbal and Child Welfare and law enforcement do not respond to the report of child abuse or neglect together, a completed screening report must be sent to the law enforcement agency.

- (II) Electronic Transmission.
- (III) Hand Delivery.

(B) No later than ten days.

(i) All other reports of child abuse or neglect, including reports assigned for CPS assessment and closed at screening, must be cross reported within a time frame that ensures the receipt of the cross report by law enforcement no later than ten days after receiving the report.

(ii) The reports of child abuse or neglect that the Department cross reports within a time frame that ensures the receipt of the cross report no later than ten days must be cross reported in one of the following ways:

- (I) Electronic transmission.
- (II) Hand delivery.
- (III) Mail.

(C) Department cover sheet. In order for law enforcement agencies to quickly and easily prioritize reports and respond accordingly, all written cross reports from the Department must have a cover sheet. The following information must be included on the cover sheet:

- (i) Date and time of the cross report;
- (ii) How the cross report is made;
- (iii) If additional cross reports occurred, and if so, to what agencies;
- (iv) Name and number of the screener or designee making the cross report;

(v) If the report was assigned or not assigned;

(vi) Name and number of the assigned caseworker;

(vii) Cross reporting time frame;

(viii) If the report is an original or follow-up cross report; and

(ix) Date of the original cross report, if it is a follow-up cross report.

(D) Supplemental cross reporting by the Department. Child Welfare may receive information not previously cross reported but apparently related to a report of child abuse or neglect involving the same victim and the same alleged perpetrator that has been previously cross reported. If the information relates to the same incident of abuse or neglect, the screener must make a supplemental cross report of the additional information to each law enforcement agency that received the prior cross report. Supplemental information that is determined to be critical, given the information in the original report, must be cross reported immediately. All other supplemental information must be cross reported within a time frame that ensures the receipt of the information no later than ten days after the information was received.

(b) Law Enforcement. When and how law enforcement agencies must cross report to Child Welfare is described below.

(A) Immediate.

(i) Law enforcement agencies must cross report to Child Welfare immediately when a law enforcement agency determines that a report of alleged child abuse or neglect requires a joint immediate response.

(ii) The reports of child abuse or neglect that law enforcement agencies cross report immediately must be cross reported by verbal cross report to the local office of Child Welfare without delay.

(B) Next Business Day.

(i) Law enforcement agencies must cross report to Child Welfare all other reports of child abuse or neglect no later than the end of the next business day after receiving the report.

(ii) The reports of child abuse or neglect that law enforcement agencies cross report no later than the end of the next business day must be cross reported in one of the following ways:

- (I) Verbal report.
- (II) Electronic transmission.
- (III) Hand delivery.

Stat. Auth.: ORS 418.005, 419B.017

Stats. Implemented: ORS 418.005, 419B.015, 419B.017

Hist.: CWP 25-2003, f. & cert. ef. 7-1-03; CWP 14-2004, f. 7-30-04, cert. ef. 8-1-04; CWP 4-2005, f. & cert. ef. 2-1-05; CWP 18-2005(Temp), f. 12-30-05 cert. ef. 1-1-06 thru 6-30-06; CWP 13-2006, f. 6-30-06, cert. ef. 7-1-06; CWP 3-2007, f. & cert. ef. 3-20-07

413-015-0310

Department Documentation and Verification Requirements

Documentation and Verification:

(1) If the Department cross reports a report of child abuse or neglect on the same day the report is received, the Department screener or designee must document in FACIS:

(a) The date the cross report is made from Child Welfare to law enforcement;

(b) To which law enforcement agency the cross report is made; and

(c) How the cross report is made.

(2) Copies of the cover sheet for a cross report must be maintained in the case record.

(3) If the cross report is faxed, the screener or designee must attach the fax transmittal confirmation sheet to each cover sheet.

Stat. Auth.: ORS 418.005, 419B.017

Stats. Implemented: ORS 418.005, 419B.015, 419B.017

Hist.: CWP 25-2003, f. & cert. ef. 7-1-03; CWP 18-2005(Temp), f. 12-30-05 cert. ef. 1-1-06 thru 6-30-06; CWP 13-2006, f. 6-30-06, cert. ef. 7-1-06; CWP 3-2007, f. & cert. ef. 3-20-07

413-015-0400

Purpose and Overview of the CPS Assessment Rules

(1) These rules, OAR 413-015-0400 to 413-015-0485 describe the activities required to sufficiently complete a CPS assessment.

(2) Completing a CPS assessment involves the following:

(a) Making initial contact within the assigned response time lines, which includes:

(A) Face-to-face contact with the alleged victim, his or her siblings, his or her parent or caregiver and other children and adults living in the home;

(B) Access to the home environment;

(C) Determining if there is a safety threat;

(D) Determining if the child is unsafe; and

(E) Establishing a protective action when the child is unsafe.

(b) Gathering safety-related information through interviews and observation;

(c) Determining child vulnerability and explaining the basis for that determination;

(d) Determining if the parent or caregiver can or cannot and will or will not protect and explain the basis for that determination;

(e) Determining if there is reasonable cause to believe that child abuse or neglect occurred and explaining the basis for that determination;

(f) Completing a safety analysis; and

(g) Developing an ongoing safety plan when a child is unsafe.

(3) A CPS assessment must only be completed by a Department employee whose current position is a CPS worker, a CPS supervisor, or an employee who meets the definition of CPS worker and has recent experience completing CPS assessments.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 409.185, 418.005, 418.015, 419B.005 - 419B.050

Hist.: CWP 25-2003, f. & cert. ef. 7-1-03; CWP 14-2004, f. 7-30-04, cert. ef. 8-1-04; CWP 17-2004, f. & cert. ef. 11-1-04; CWP 3-2007, f. & cert. ef. 3-20-07

413-015-0405

CPS Assessment Response Time Lines

(1) The time line for the Department response refers to the amount of time from the receipt of a report at screening to the time when the CPS worker is required to make an initial contact.

(2) Except as provided in sections (3) and (4) of this rule, every CPS assessment must be assigned one of the following response time lines and the CPS worker must make an initial contact within the assigned response time line:

(a) Within 24 hours: This response time line is required when the information received constitutes a report of child abuse or neglect as defined in ORS 419B.005 in which a child is alleged to be unsafe, unless subsection (b) of this section applies.

(b) Within five calendar days: This response time line must only be used when the screener has clearly documented how the information indicates the child's safety will not be compromised by not responding within 24 hours. The screener's judgment must have taken into account the location of the child, how long the child will be in that location, access that others have to the child's location, and whether an intentional delay to allow for a planned response is less likely to compromise the safety of the child.

(3) A supervisor may change the initial contact time lines established in section (2) of this rule as follows:

(a) The supervisor may change the response time line from within five calendar days to within 24 hours.

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(b) The supervisor may change the response timeline from within 24 hours to within five calendar days, but the supervisor must explain in writing why the time line was changed and how the child's safety needs were considered when the change was approved.

(4) If a screener was granted an extension to complete the screening process, the CPS supervisor may adjust the initial contact time lines as follows:

(a) Within 24 hours: The CPS worker must make an initial contact within 24 hours of the end date of either the last screening extension or the date the CPS assessment was assigned, whichever is earlier.

(b) Within five calendar days: The CPS worker must make an initial contact within five calendar days of the end date of either the last screening extension or the date the CPS assessment was assigned, whichever is earlier.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 409.185, 418.005, 418.015, 419B.005 - 419B.050

Hist.: CWP 25-2003, f. & cert. ef. 7-1-03; CWP 14-2004, f. 7-30-04, cert. ef. 8-1-04; CWP 17-2004, f. & cert. ef. 11-1-04; CWP 15-2005(Temp), f. & cert. ef. 10-20-05 thru 3-31-06; CWP 17-2005(Temp) f. 12-30-05 cert. ef. 1-1-06 thru 6-30-06; CWP 1-2006, f. & cert. ef. 2-1-06; CWP 3-2006(Temp), f. & cert. ef. 2-1-06 thru 6-30-06; CWP 12-2006, f. 6-30-06, cert. ef. 7-1-06; CWP 3-2007, f. & cert. ef. 3-20-07

413-015-0409

Exception to Completing CPS Assessment Activities

(1) The only exception to completing the CPS assessment activities required by these rules on an assigned referral is when a CPS worker, in consultation with a CPS supervisor or designee, determines within the response time line that the referral does not require a CPS assessment because:

(a) The referral was opened in error;

(b) The CPS worker has, through reliable collateral contacts, received information that indicates there is and was no safety threat; or

(c) The referral content will be addressed in an open CPS assessment.

(2) The CPS worker must document the determination and explain the basis for the determination that a CPS assessment is not necessary.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 409.185, 418.005, 418.015, 419B.005 - 419B.050

Hist.: CWP 3-2007, f. & cert. ef. 3-20-07

413-015-0415

CPS Assessment Activities

The required CPS assessment activities are outlined below. The activities are described in a logical order in these rules, but the order in which they occur is controlled by the specific circumstances in a given case.

(1) Review Records.

(a) The assigned CPS worker must:

(A) Thoroughly review the documentation in the referral;

(B) Thoroughly review the paper and electronic records maintained by Child Welfare for historical information on the family and the child that may be useful in completing the CPS assessment; and

(C) Thoroughly review available Self Sufficiency records.

(D) Make diligent efforts to contact another state's child welfare agency to obtain records, if any, when the CPS worker has information that the family has lived in another state.

(b) The CPS worker must review the documents to identify information related to:

(A) Safety threats;

(B) History or a pattern of abuse or neglect;

(C) Child and family support systems and protective capacity; and

(D) Worker safety.

(2) Contact Collateral Sources.

(a) The CPS worker must contact collateral sources who can clarify or supplement the information in the referral and in records already reviewed.

(A) The CPS worker must contact the assigned self sufficiency worker, if any.

(B) The CPS worker may contact other collateral sources including, but not limited to:

(i) Individuals who have regular contact with the child;

(ii) Doctors or others who have evaluated or maintain records on the child;

(iii) People who are in an established personal or professional relationship with the parent or caregiver and who can judge the quality and nature of the parent or caregiver behavior; and

(iv) People who have records or information about the parent or caregiver as a result of their involvement with, or exposure to, the parent or caregiver.

(b) The CPS worker must gather information from collateral sources throughout the CPS assessment.

(c) The CPS worker must:

(A) Protect the identity of collateral sources to the extent possible.

(B) Consult with the district attorney or the assistant attorney general to obtain a court order for records from a collateral source, if the source is unable or unwilling to share information with Child Welfare.

(3) Consult with CPS Supervisor.

(A) The CPS worker must consult with a CPS supervisor or designee:

(A) When the CPS worker has reasonable cause to believe the alleged perpetrator is an employee of any program, office, or division of the Department or Oregon Youth Authority (OYA);

(B) When a referral involves the home of a Department certified foster parent or relative caregiver;

(C) When a referral involves allegations that child abuse or neglect occurred in a licensed child caring agency;

(D) Prior to a decision to place a child in protective custody, or after placement if consultation before placement will delay the safety intervention;

(E) Prior to initiating court action, or after initiating court action if consultation before will delay the safety intervention;

(F) When the referral involves a child fatality;

(G) When making dispositions in complicated or sensitive situations or cases; or

(H) Prior to a decision to close a case during or at the end of the CPS assessment.

(b) Subject to the discretion of the CPS supervisor, the CPS worker will consult with a CPS supervisor or designee at additional key points during the assessment, such as:

(A) Before making initial contact with the family; or

(B) When a referral indicates potential danger to the worker.

(4) Contact and Work with Other Entities. The CPS worker may need to work with representatives of other entities to develop a sufficient protective action or ongoing safety plan, to analyze safety threats, and to complete the CPS assessment.

(a) The CPS worker may, as appropriate, notify or consult with other Department programs or other agencies, including but not limited to the Office of Vocational Rehabilitation Services and Animal Control.

(b) The CPS worker must contact and work with other entities as follows:

(A) Child Care Division. The CPS worker must notify and coordinate with the Child Care Division when a report involves a registered day-care home or a licensed day-care center, as required by ORS 418.747(2)(e) and 419B.020(1).

(B) Oregon Youth Authority (OYA). The CPS worker must notify OYA when the allegation involves an OYA certified foster home.

(C) Seniors and People with Disabilities Division (SPD).

(i) The CPS worker must notify the Office of Investigations and Training with the Department when the allegation involves a child with developmental disabilities in an SPD licensed group home.

(ii) The CPS worker must make a report to the Office of Investigations and Training with the Department when the CPS worker has reasonable cause to believe:

(I) That any person 18 years of age or older with a mental illness or a developmental disability whom the CPS worker comes into contact with, while acting in an official capacity, has suffered abuse.

(II) That any person with whom the CPS worker comes into contact, while acting in an official capacity, has abused a person 18 years of age or older with a mental illness or developmental disability.

(iii) The CPS worker must make a report to SPD when the CPS worker has reasonable cause to believe:

(I) That any person 65 years of age or older with whom the CPS worker comes into contact, while acting in an official capacity, has suffered abuse.

(II) That any person with whom the CPS worker comes into contact, while acting in an official capacity, has abused a person 65 years of age or older.

(D) Child Caring Agency Licensing Program. The CPS worker must notify the Department's Child Caring Agency Licensing Program when the allegation involves a licensed child caring facility.

(E) Indian Tribes. If the CPS worker knows or has reason to know that the child is an Indian child, the CPS worker must give notice within 24 hours to the Indian child's tribe that a CPS assessment is being conducted unless the screener documented completion of this notification in the referral.

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(F) Probation and Parole. The CPS worker must contact probation and parole when the allegation involves a parent or caregiver, or alleged perpetrator who is supervised by probation or parole.

(G) Law Enforcement. If the screener did not cross report, the CPS worker must contact one or more law enforcement agencies in accordance with the protocols of the local MDT agreement and in accordance with cross reporting rules, OAR 413-015-0300 to 413-015-0310. When there is a joint response involving a CPS worker and LEA staff, the CPS worker is still responsible for all of the activities necessary to complete a CPS assessment which are summarized in OAR 413-015-0400. Whenever possible, the CPS worker must coordinate assessment activities with LEA in the following situations:

(i) Presence of danger. When the CPS worker has information that indicates that the child is unsafe right now.

(ii) Family cooperation. When the CPS worker has information that the family may not allow the CPS worker to observe the alleged victim or other children in the home.

(iii) Protective custody. When the CPS worker has information that a child may need to be placed in protective custody.

(iv) Child interview. When the CPS worker and the LEA officer must each interview a child, it is preferable to coordinate the interviews to reduce the number of interactions with the child.

(v) Worker safety. When the CPS worker has information that indicates the family behavior, circumstances, or situation could pose a danger to the CPS worker.

(vi) Crime committed. When the CPS worker suspects or receives a report that a crime may have been committed.

(H) Public or Private Schools. The CPS worker may interview a child at school when the worker believes it will be the best environment in which to assure a child's safety when making contact with the child. ORS 419B.045 provides requirements for CPS investigations that are conducted on school premises. The CPS worker must do following:

(i) Notify the school administrator that a CPS assessment must be conducted. If the school administrator is a subject of the CPS assessment, then notification is not required.

(ii) Report to the school office, provide identification, inform school personnel of the CPS assessment, and provide the name of the child to be interviewed.

(iii) Request information from school personnel regarding the disabilities of the child, if any, prior to an interview with the affected child.

(iv) Interview the child out of the presence of other persons, unless the CPS worker believes the presence of a school employee or other person would facilitate the interview. If the CPS worker believes that a school employee does not need to be present, but the school employee insists on being present during the interview, the worker should confer with the CPS supervisor for assistance in handling the situation.

(v) Discuss further actions with the child at the conclusion of the interview.

(vi) Inform school personnel when the interview has been completed.

(vii) Inform school personnel if the child is taken into protective custody.

(viii) Inform school personnel that the CPS worker will notify parents of the interview.

(ix) Contact the CPS supervisor if school officials refuse to allow the assessment to take place on school property.

(I) Multi-Disciplinary Teams (MDTs). Department district managers must develop interagency agreements regarding assessment of child abuse and neglect, as necessary, with local MDTs. Requirements for MDT protocols are set out in ORS 418.747.

(5) Obtain Interpreters and Translation. The CPS worker must obtain the services of a competent interpreter and competent written translation service for families, including hearing-impaired family members, who have limited or no means of communicating in or reading English.

(6) Determine ICWA Status and Comply with ICWA, if Applicable. The CPS worker must initiate the process to determine the child's ICWA status and notify the Indian child's tribe if ICWA applies. To initiate this process, the CPS worker must:

(a) Complete a form CF 1270, "Verification of ICWA Eligibility," to assist in determining ICWA eligibility.

(b) Contact the child's tribe when an Indian child is the subject of a CPS assessment. Federally recognized tribes must be notified within 24 hours after information alleging abuse or neglect is received by Child Welfare.

(c) If the Indian child is enrolled or eligible for enrollment in a federally recognized tribe, notify the child's tribe if the child may be placed in protective custody.

(d) Consult with the local Department ICWA liaison, a supervisor, or the ICWA manager if the worker has questions regarding the involvement of a tribe or the ICWA status of a child.

(e) Make a diligent attempt to address the following when determining the placement resource:

(A) Contact the Tribe's social services department;

(B) Search for relative resources;

(C) Search for available Indian homes; and

(D) Contact other Indian tribes and other Indian organizations with available placement resources; and

(f) Unless the Indian child's tribe has established a different order of preference, comply with the ICWA placement preference, which is:

(A) Placement with a member of Indian child's extended family.

(B) Placement with a foster family that is licensed, approved or specified by the Indian child's tribe.

(C) Placement with an Indian foster home licensed or approved by an authorized non-Indian licensing authority.

(D) Placement with an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.

(7) Determine Refugee Status and Comply with the Refugee Children Act, if applicable. During a CPS assessment, the CPS worker must consider whether the child is a refugee child. Under ORS 418.925, a "refugee child" is a "person under 18 years of age who has entered the United States and is unwilling or unable to return to the person's country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular group or political opinion, or whose parents entered the United States within the preceding 10 years and are or were unwilling or unable to return to their country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular group or political opinion."

(a) If it appears that a child is a refugee child:

(A) The CPS worker must ask about the child or parents' country of origin, length of time the child or parents have been in the United States, and the reasons why the child or parents came to the United States. The CPS worker does not have to make a legal determination that the child and parent are refugees, but if the child or the parents indicate they are refugees, then the CPS worker must proceed as if they are, until or unless it is known that they are not refugees.

(B) The CPS worker is not required to determine whether the child is a refugee child, but if the child appears to be a refugee child the CPS worker must proceed as if they are, until or unless it is known that the child is not a refugee child.

(b) The CPS worker may not take a refugee child into protective custody unless, in addition to the other requirements for taking a child into custody, the CPS worker determines that:

(A) Removal is necessary to prevent imminent serious emotional or physical harm to the child; and

(B) Reasonable efforts to alleviate the harm through remedial or preventive services do not alleviate the harm, have failed, or are not practical in an emergency situation.

(c) No refugee child may remain in placement more than five days unless there has been a judicial determination, supported by clear and convincing evidence that:

(A) Preventative or remedial services provided by the Department have failed to alleviate the need for removal; and

(B) Return to the home will likely result in psychological or physical damage to the child.

(d) When a refugee child is placed in care, the juvenile court petition must include, in addition to the information required by ORS 419B.809, the following information:

(A) A specific and detailed account of the circumstances that led the Department to conclude that the child was in imminent danger of serious emotional or physical harm;

(B) Specific actions the Department has taken or is taking to alleviate the need for removal;

(C) Assurance that the Department has complied with placement preferences listed in ORS 418.937 and listed in subsection (e) of this section; and

(D) Assurance that the Department is making or has made diligent efforts to locate and give notice to all affected refugee family members and

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to the Refugee Child Welfare Advisory Committee that the petition has been filed.

(e) The CPS worker must consider the refugee child's culture and tradition when making any placement decision for a refugee child and, unless shown to be inappropriate and inconsistent with the best interests of the child, place the child with the following in order of preference:

- (A) Natural parents.
- (B) Extended family member.
- (C) Members from the same cultural heritage.
- (D) Persons with knowledge and appreciation of the child's cultural heritage.

(f) The CPS worker may determine that placement under subsection (e) of this section is inappropriate and inconsistent with the best interests of the child if:

- (A) The preferred placement presents safety threats to the child;
- (B) The extreme medical, physical, or psychological needs of the child cannot be met in the placement; or

(C) There is an informed request from either of the child's biological parents not to use a placement, if the request is consistent with stability, security, and the individual needs of the child.

(g) The CPS worker must staff the case with the Refugee Child Welfare Advisory Committee (RCWAC). The CPS worker must contact the Cultural Competency Coordinator for Child Welfare to arrange a time for the staffing. In preparation for the staffing, the CPS worker must:

- (A) Invite the CPS supervisor to the staffing; and
- (B) Be prepared to discuss the reasons for the CPS referral, the information indicating that family members are refugees, and their country of origin.

(8) Take Photographs. The CPS worker must take photographs and document, as necessary, child abuse, neglect, and observable safety threats during the CPS assessment.

(a) As provided in ORS 419B.028, a law enforcement officer or the CPS worker may take photographs for the purpose of documenting the child's condition at the time of the CPS assessment. Copies of the photographs must be labeled with the case name, child's name, and date taken and filed in the Child Welfare record.

(b) The CPS worker must document injuries, hazardous environments, and any observable safety threats in the assessment narrative by use of photographs, written description, or illustrations.

(c) The CPS worker may observe or photograph injuries to female or male genitalia if the child is not school aged and if the observation or photograph can be facilitated without the CPS worker touching the child's genitalia. The CPS worker must facilitate an examination by a medical professional if the alleged abuse or neglect involves injury to the genitalia of any age child or reported or disclosed injury to the genitalia of a school aged child.

(9) Obtain Medical Examinations. The CPS worker must facilitate a medical examination of the child and obtain the child's medical history when necessary to assure child safety, determine treatment needs, reassure the child and family, or assist in analyzing safety threats during the CPS assessment.

(a) When the CPS worker determines that the child is in need of a medical examination as part of a CPS assessment, the CPS worker must consult with a CPS supervisor as soon as possible, but not at the expense of delaying medical treatment.

(b) When there are indications of severe physical trauma to the child, the CPS worker must make arrangements to immediately transport the child to a medical facility, which may include calling 911. The CPS worker must also make arrangements for medical examination of a child for mild or moderate physical trauma.

(c) To make arrangements for the medical examination of a child, the CPS worker must do the following, unless completing the action would delay medical treatment for the child:

(A) Discuss with the parent or caregiver the need for medical examination or treatment.

(B) Ask the parent or caregiver to take the child to a medical facility for a medical examination or treatment.

(C) Request that the parent sign a form DHS 2099, "Authorization for Use and Disclosure of Information."

(D) Contact an LEA immediately and seek a juvenile court order to obtain protective custody of the child for the purpose of obtaining a medical examination or treatment when:

(i) The parent or caregiver refuses to obtain needed medical examination or treatment;

(ii) The parent or caregiver may flee with the child;

(iii) Delaying medical examination or treatment could harm the child; or

(iv) The CPS worker has reason to believe medical examination will reveal evidence of child abuse or neglect.

(E) Immediately seek medical care and consultation when the child may have a life-threatening condition, or a deteriorating condition that may become life-threatening.

(F) As soon as possible and not later than 24 hours after learning of the exposure, make arrangements to have the child tested for chemical exposure to harmful substances when there is reason to believe a child has been exposed to dangerous chemicals such as those found in a chemical drug lab.

(d) When a report of suspected medical neglect of an infant with a disability and with life-threatening conditions is referred for CPS assessment, the assigned CPS worker must comply with Child Welfare Policy I-B.2.2.2, "Investigation of Suspected Medical Neglect-Infants", OAR 413-030-0600 to 413-030-0650.

(e) When it is medically indicated to subject a child in the custody of the Department to HIV testing, the CPS worker must comply with Child Welfare Policy I-B.5.1, "HIV Testing of Children in Custody and HIV Confidentiality", OAR 413-040-0400 to 413-040-0450.

(f) As provided in ORS 147.425, a child who is the victim of a person crime and is at least 15 years of age at the time of the abuse may have a personal representative present during a medical examination. If a CPS worker believes that a personal representative would compromise the CPS assessment, a CPS worker may prohibit a personal representative from being present during the medical examination.

(g) When the CPS worker is assessing a CPS allegation of medical neglect, the CPS worker must consult with a health care professional as part of the assessment.

(10) Obtain Psychological and Psychiatric Evaluations.

(a) The CPS worker must make a referral for a psychological or psychiatric evaluation of the parent, caregiver, or child by a mental health professional to assure child safety, determine treatment needs, or assist in analyzing safety threats when during the CPS assessment the CPS worker identifies a specific condition or behavior that requires additional professional evaluation. This includes but is not limited to:

(A) Unusual or bizarre forms of punishment;

(B) Mental illness;

(C) Suicidal ideation;

(D) Homicidal ideation; or

(E) Unusual or bizarre child or parental behavior that is indicative of emotional problems.

(b) The CPS worker must obtain consent of the parent or caregiver prior to making a referral for a psychological or psychiatric evaluation of the parent, caregiver, or child, unless the evaluation is court ordered.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 409.185, 418.005, 418.015, 419B.005 - 419B.050

Hist.: CWP 3-2007, f. & cert. ef. 3-20-07

413-015-0420

Make Initial Contact

The CPS worker must make an initial contact within the assigned response time line.

(1) To make an initial contact, the CPS worker must:

(a) Have face-to-face contact with and interview the alleged victim, his or her siblings, and other children living in the home. The purpose of the face-to-face contact and interview with the alleged victim, his or her siblings, and other children living in the home is to gather information regarding possible child abuse and neglect, assess if the children are vulnerable to identified safety threats, and assess the children's immediate safety. If it is not possible during the initial contact for the CPS worker to make a face-to-face contact with and interview the siblings or other children living in the home, the CPS worker must document why contact was not made and must complete the face-to-face contact and interview as soon as possible.

(b) Interview and observe children as follows:

(A) The CPS worker must notify parents of the intent to interview a child, unless notification could compromise the child's safety or a criminal investigation.

(B) The CPS worker must make diligent efforts to contact the child at home, school, day care, or any other place where the worker believes the child may be found. If the CPS worker is unsuccessful, the CPS worker must document in the assessment activities section of the GAP all attempts made to contact the child and the dates of those attempted contacts.

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(C) When the CPS worker contacts the child at home and the parent or caregiver is not present:

(i) The CPS worker must consult with a CPS supervisor and seek assistance from LEA if the referral indicates that: there may be severe harm or threat of severe harm to the child; there is reasonable cause to believe the child's health or safety is endangered by the conditions of the dwelling; or the child is inadequately supervised and there is an immediate need to evaluate the child's health and safety.

(ii) The CPS worker must wait until the parent is present in the home to complete a child interview in the home if the referral does not indicate severe harm or threat of severe harm to the child or if there is not reasonable cause to believe the child's health or safety is endangered by the conditions of the dwelling or that the child is inadequately supervised.

(D) When the CPS worker is denied access to the child or to the child's residence, the CPS worker must:

(i) If the referral indicates that the child may be unsafe, request assistance from LEA in assessing the situation and in taking the child into protective custody if needed.

(ii) If the referral indicates that the child is presently safe, the CPS worker must do the following:

(I) Attempt to contact other persons who may have relevant information regarding the referral;

(II) Persist in attempts to gain cooperation from the family or caregivers, depending on the known child safety information; and

(III) Seek LEA assistance.

(iii) Consult with the CPS supervisor, the district attorney, assistant attorney general, or the county juvenile department to discuss possible juvenile court action; or

(iv) Seek a protective custody order from the juvenile court.

(E) The CPS worker must notify the parents or caregivers the same day a child is interviewed. If the same day notification could make a child or adult unsafe, a CPS supervisor may authorize an extension for one day to allow a planned notification that is less likely to compromise safety. The CPS worker must document the supervisory approval and an explanation describing the basis for the approval.

(F) The CPS worker must conduct interviews in a manner that assures privacy for the child.

(G) If the parent or caregiver is the alleged perpetrator or if the presence of the parent or caregiver might impede the interview, the CPS worker must attempt to interview children outside the presence of their parents or caregivers.

(H) A CPS worker must allow a child who is the victim of a person crime as defined in ORS 147.425 and is at least 15 years of age at the time of the abuse to have a personal representative be present during an interview. If a CPS worker believes that the personal representative would compromise the CPS assessment, the CPS worker may prohibit a personal representative from being present during the interview.

(I) The CPS worker must observe the child's injuries or signs of neglect. The CPS worker may need to remove a child's clothing to make adequate observations. In that event, the CPS worker must:

(i) Use discretion and make the child as comfortable as possible.

(ii) Seek parental consent and assistance, when possible and appropriate.

(iii) Consider requesting a worker or other support person, who is the same gender as the child, be present to serve as a witness and provide comfort for the child.

(J) The CPS worker may observe injuries to female or male genitalia if the child is not school aged and if the observation can be facilitated without the CPS worker touching the child's genitalia. The CPS worker must facilitate examination by a medical professional if the alleged abuse or neglect involves injury to the genitalia of any aged child or reported or disclosed injury to the genitalia of a school aged child.

(c) Have face-to-face contact with and interview the non-offending parent or caregiver and all adults living in the home. The purpose of this face-to-face contact and interview is to find out what the non-offending parent or caregiver and other adults living in the home know about the alleged child abuse or neglect, gather information related to the safety of the child, and gather information to determine if the parent or caregiver can or cannot and will or will not protect the child. If it is not possible during the initial contact for the CPS worker to make face-to-face contact with and interview the non-offending parent or caregiver and other adults living in the home, the CPS worker must document why the contact was not made and must complete the face-to-face contact and interview as soon as possible.

(A) Whenever practicable, the CPS worker must interview both parents and caregivers in person, as follows:

(i) Interview each person individually;

(ii) Ask questions about domestic violence in separate interviews only; and

(iii) Provide all adults living in the home with a written notice that a criminal records check may be conducted on them.

(B) The CPS worker must provide the parent or caregiver with a "What you need to know about a Child Protective Services assessment" pamphlet, which includes written information regarding the CPS assessment process, including the court process and the rights of the parent and caregiver.

(C) The CPS worker must interview the non-custodial legal parent during the CPS assessment. This is not required during the initial contact, but must be completed as part of the assessment process because the non-custodial parent may have essential information or be a placement resource. If the interview of the non-custodial legal parent may make a child or adult unsafe, a CPS supervisor may authorize an exception to this requirement based on written documentation that supports the conclusion that an interview with a non-custodial legal parent should not be conducted.

(d) Have face-to-face contact with and interview the alleged perpetrator. Except as provided in this subsection, the CPS worker must make face-to-face contact with and interview the alleged perpetrator during the initial contact when he or she is the child's custodial parent, caregiver, any person living in the home, or is present in the home when the CPS worker makes contact. The purpose of this interview is to evaluate the alleged perpetrator's reaction to allegations of abuse or neglect as well as to the child and his or her condition, and to gather further information about the alleged perpetrator and the family in relation to the safety of the child.

(A) The CPS worker is not required to make face-to-face contact with or interview the alleged perpetrator during the initial contact if:

(i) The alleged perpetrator is not a custodial parent, caregiver, anyone living in the home, or is not present in the home when the CPS worker makes contact. The CPS worker still must interview the alleged perpetrator, but may complete the interview during the course of the CPS assessment; or

(ii) There is a criminal investigation and the interview cannot be coordinated with an LEA within the time lines for initial contact.

(B) The decision not to interview an alleged perpetrator as provided in subparagraphs (A)(i) or (ii) of this subsection must be approved by a CPS supervisor, and the CPS worker must document both the approval and the reason for not completing the interview.

(C) When interviewing the alleged perpetrator, the CPS worker must:

(i) Coordinate the interviews of the alleged perpetrator with LEA when law enforcement is conducting an investigation;

(ii) Consult with a CPS supervisor if an interview with the alleged perpetrator could make a child or adult unsafe;

(iii) Provide the alleged perpetrator with a written notice that a criminal records check may be conducted on them; and

(iv) Make inquiries about the employment status of the alleged perpetrator. If the CPS worker has reasonable cause to believe the alleged perpetrator is an employee of any program, office, or division of the Department or OYA, the CPS worker must notify a CPS supervisor. The CPS supervisor must confirm the person's employee status by contacting a Central Office Field Services representative. If the CPS supervisor determines the alleged perpetrator is an employee of the Department or OYA, the CPS supervisor must notify the Department Office of Human Resources at the time of the assessment and at the time the assessment is reviewed as required in OAR 413-015-0475. The CPS supervisor must document the notifications in FACIS.

(D) When interviewing an alleged perpetrator who is the parent or caregiver, the CPS worker must provide the parent or caregiver with a "What you need to know about a Child Protective Services assessment" pamphlet, which includes written information regarding the CPS assessment process, including the court process and the rights of the parent and caregiver.

(e) Gather safety-related information through interviews and observation.

(A) The CPS worker must gather relevant information and facts necessary to complete all parts of the CPS assessment. The CPS worker must gather information through interview and observation about the following:

(i) The extent of the child abuse or neglect;

(ii) The circumstances surrounding the child abuse or neglect;

(iii) Child functioning;

(iv) Adult functioning;

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- (v) Parenting practices and skills; and
- (vi) Disciplinary practices.

(B) Interview. If possible, family members should be interviewed separately in the following order, using information gathered from one interview to assist in the next interview:

- (i) Alleged victim.
- (ii) Siblings and other children in the home.
- (iii) Non-offending parents and caregivers, including all of the non-offending adults in the home.
- (iv) Non-custodial legal parent.
- (v) Alleged perpetrator.

(C) The CPS worker must, to the extent possible, do the following during interviews with family members:

(i) Present identification to the family at the beginning of the interview and provide a business card or other document to the parents and caregivers containing the CPS worker's name and phone number.

(ii) Clearly state the reason for the interview, provide statutory authority to assess reports of child abuse and neglect, and give an explanation of the alleged child abuse or neglect.

- (iii) Allow the parent or caregiver to respond to each allegation.
- (iv) Assure the privacy of the persons being interviewed.
- (v) Focus the interview on the safety of the children.

(vi) Assess whether the parents or caregivers are involved in domestic violence.

(vii) Summarize and discuss the initial impressions and intentions resulting from the interview with appropriate family members or caregivers.

(viii) Obtain from the parents or caregivers the names of persons who can provide additional information in determining child safety and completing the CPS assessment.

(ix) Ask the parents and caregivers to sign an authorization to release information to enable Child Welfare to obtain confidential information from physicians, mental health providers, school employees, or other service or treatment providers.

(x) Inform the parents and caregivers about the Child Welfare grievance procedure.

(D) Observation. The CPS worker must observe the identified child, parent or caregiver, and the home environment. Specific areas for observation are:

(i) Physical condition of the child, including any observable effects of child abuse or neglect;

(ii) Emotional status of the child, including mannerisms, signs of fear, and developmental status;

(iii) Reactions of the parents or caregivers to the Department concerns;

(iv) Emotional and behavioral status of the parents or caregivers during the interviewing process;

(v) Interactions between family members, including verbal and body language;

(vi) Condition of the child's living space, including where the child sleeps; and

(vii) Physical condition of the home.

(f) Determine if there is a safety threat. During the initial contact, the CPS worker must determine, based on the information obtained at that time, if there is a safety threat to the child.

(A) To determine that there is a safety threat, the CPS worker must analyze the information gathered and conclude that:

(i) A specific, observable, describable family behavior, condition, or circumstance is present; and

(ii) The specific, observable, describable family behavior, condition, or circumstance reasonably could result in harm to a child.

(B) If the CPS worker determines during the initial contact that there is no safety threat and the child is safe, then the CPS worker must continue the activities required to sufficiently complete the CPS assessment.

(C) If the CPS worker determines there is a safety threat to the child, the CPS worker must determine if, because of the safety threat, the child is unsafe and a protective action is required. The CPS worker must then continue the activities required to sufficiently complete the CPS assessment.

(g) Determine if the child is unsafe. If the CPS worker determines, based on the available information, that there is a safety threat to the child, the CPS worker must determine if the safety threat makes the child unsafe.

(A) To assess the child's safety, the CPS worker must analyze the information gathered; and

(i) Determine if the child is vulnerable to harm resulting from the identified family behavior, condition, or circumstance, as described in OAR 413-015-0425.

(ii) Determine if the child's parent or caregiver can or cannot and will or will not protect the child from harm resulting from the identified family behavior, condition, or circumstance, as described in OAR 413-015-0430.

(B) If the CPS worker determines that the child is not vulnerable to harm resulting from the identified safety threat, then the child is safe and the CPS worker must continue the activities required to sufficiently complete the CPS assessment.

(C) If the CPS worker determines that the child's parent or caregiver can and will protect the child from harm resulting from the identified safety threat, then the child is safe. The CPS worker must continue the activities required to sufficiently complete the CPS assessment.

(D) If the CPS worker determines that the child is vulnerable to the identified safety threat and the child's parent or caregiver cannot or will not protect the child from harm resulting from the identified safety threat, the child is unsafe and the CPS worker must initiate a protective action as described in OAR 413-015-0435. The CPS worker must then continue the activities required to sufficiently complete the CPS assessment.

(2) Documentation of the Initial Contact. The CPS worker must document the dates of the initial contact using the GAP. The CPS worker must document attempted and successful contacts.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 409.185, 418.005, 418.015, 419B.005 - 419B.050

Hist.: CWP 3-2007, f. & cert. ef. 3-20-07

413-015-0425

Determine Child Vulnerability

(1) Requirements to Determine Child Vulnerability. The CPS worker must determine whether and how the child is or is not vulnerable to identified safety threats. The child's vulnerability to identified safety threats is determined by considering the child's physical and emotional development, ability to communicate needs, mobility, size and dependence, and an analysis of the identified safety threats in relation to the child's personal characteristics.

(a) If the CPS worker determines that the child is not vulnerable, then the child is safe, and the CPS worker must continue the activities required to sufficiently complete the CPS assessment.

(b) If the CPS worker determines that the child is vulnerable, the CPS worker must determine if the parent or caregiver can or cannot and will or will not protect the child, as described in OAR 413-015-0430.

(2) Documentation of Child Vulnerability. The CPS worker must document the determination and explain the basis for the determination that the child is or is not vulnerable to the identified safety threats prior to completing the CPS assessment.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 409.185, 418.005, 418.015, 419B.005 to 419B.050

Hist.: CWP 3-2007, f. & cert. ef. 3-20-07

413-015-0430

Determine Whether the Parent or Caregiver Can or Cannot and Will or Will Not Protect the Child

(1) Requirements to Determine Whether the Parent or Caregiver Can or Cannot and Will or Will Not Protect the Child. The CPS worker must determine whether a parent or caregiver can or cannot and will or will not protect the child against identified safety threats.

(a) If the CPS worker determines that the parent or caregiver can and will protect the child, then the child is safe, and the CPS worker must continue the activities required to sufficiently complete the CPS assessment.

(b) If the CPS worker determines that the parent or caregiver cannot or will not protect the child, the CPS worker must initiate a protective action.

(2) Documentation of Whether the Parent or Caregiver Can or Cannot and Will or Will Not Protect the Child. The CPS worker must document the determination and explain the basis for the determination that a parent or caregiver can or cannot and will or will not protect the child against identified safety threats prior to completing the CPS assessment.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 409.185, 418.005, 418.015, 419B.005 - 419B.050

Hist.: CWP 3-2007, f. & cert. ef. 3-20-07

413-015-0435

Establish a Protective Action

(1) If the CPS worker determines the child is unsafe, the CPS worker must immediately initiate a protective action. This usually occurs during the initial contact, but must occur at any time during the CPS assessment if it is determined that the child is unsafe. The purpose of the protective action

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is to assure that children are safe while CPS intervention continues and a fuller understanding of the family is obtained. A protective action may or may not involve taking the child into protective custody. A protective action occurs the same day that it is determined the child is unsafe and provides a child with responsible adult supervision and care. Typically a protective action will include a straightforward immediately achievable arrangement such as: arranging and confirming that the parent or caregiver who is the alleged perpetrator will leave and remain away from the home; arranging for a parent or caregiver who is not the alleged perpetrator to leave home with the child; using people and resources available to the family to immediately protect the child; or placing the child in a relative placement, foster care, or appropriate temporary shelter facility.

(2) Requirements for a Protective Action. The CPS worker must assure that the protective action:

- (a) Is in place before the CPS worker leaves the home;
- (b) Is focused on the particular family behaviors, conditions, or circumstances that present the safety threat;
- (c) Controls the identified safety threats until sufficient information can be gathered and analyzed to determine whether there is a need for an ongoing safety plan;
- (d) Does not use a parent or caregiver who is the alleged perpetrator of physical abuse, sexual abuse, or domestic violence to provide protection;
- (e) Includes safety service providers who can provide protection for the child and have been confirmed to be suitable to do so;
- (f) Does not continue or remain in place after the CPS assessment is complete; and
- (g) Has been approved by a CPS supervisor.

(3) Additional Protective Action Requirements When Assessing Allegations of Sexual Abuse. When assessing an allegation of sexual abuse, if a CPS worker develops a protective action that includes a parent or caregiver, who is the alleged perpetrator, consenting to leave the family home, the CPS worker must notify the local district attorney responsible for the MDT in the county where the child resides that a protective action of this type has been developed. The notice to the District Attorney must:

- (a) Be in writing; and
- (b) Be provided within three business days of the date the parent or caregiver leaves the family home.

(4) Modifying the Protective Action. The CPS worker must modify the protective action, as necessary, to continue to control the identified safety threats until sufficient information can be gathered and analyzed to determine whether there is a need for an ongoing safety plan.

(5) Documentation of the Protective Action. The CPS worker must provide a detailed description of the protective action taken to manage the safety threat. Documentation must be completed within five business days following the identification of the safety threat and must include:

- (a) A detailed description of the safety threat;
- (b) The location of the child;
- (c) The names of all safety service providers, their contact information, their relationship to the family, and how they were determined to be suitable to provide safety for the child;
- (d) The specific details of the protective action;
- (e) A summary of the parents' and caregivers' agreement to and acceptance of the protective action;
- (f) An explanation of why the protective action is the most suitable, least intrusive action that will protect the child; and
- (g) The plan to oversee the protective action.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 409.185, 418.005, 418.015, 419B.005 - 419B.050

Hist.: CWP 3-2007, f. & cert. ef. 3-20-07

413-015-0440

Determine Disposition of the CPS Assessment

(1) After gathering all the information necessary to complete the CPS assessment, the CPS worker must determine the disposition.

(2) Requirement to Determine Disposition of the CPS Assessment. The CPS worker must determine if there is reasonable cause to believe that child abuse or neglect occurred and explain the basis for that determination. The requirements for determining dispositions are described in OAR 413-015-1000, "The CPS Assessment Dispositions".

(3) When a disposition is founded for child abuse or neglect, the CPS worker must refer all victims three years old and under to Early Intervention. In completing the referral, the CPS worker must use the "CPS to Early Intervention Referral Form" (DHS 323) when a release of information is not signed.

(4) Documentation. The CPS worker must document that determination and explain the basis for the determination in the disposition narrative section of the GAP prior to completing the CPS assessment.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 409.185, 418.005, 418.015, 419B.005 - 419B.050

Hist.: CWP 3-2007, f. & cert. ef. 3-20-07

413-015-0445

Safety Analysis

(1) After all the necessary information is gathered for the CPS assessment and the disposition has been determined, the CPS worker must analyze the safety-related information. The purpose of completing the safety analysis when all the information is gathered is to fully and accurately understand and explain how safety threats are occurring in the family and to determine the necessary level of ongoing safety intervention required to assure child safety.

(2) Requirements of the Safety Analysis.

(a) The CPS worker must again determine if the child is safe or unsafe by analyzing the information gathered and identified safety threats, which requires the worker to consider the following factors:

(A) The length of time the family behaviors, conditions, or circumstances have posed a threat to child safety;

(B) The frequency with which the family behaviors, conditions, or circumstances pose a threat to child safety;

(C) The predictability of the family behaviors, conditions, or circumstances that pose a threat to child safety;

(D) Specific times (during the day or week), if any, that require special attention due to the way the family behaviors, conditions, or circumstances are occurring;

(E) Identified individual or family behaviors, conditions, or circumstances that prevent a parent or caregiver from adequately functioning in their primary parenting role; and

(F) Anything else that is associated with, occurs at the same time as, or influences the family behaviors, conditions, or circumstances that pose a threat to child safety.

(b) After considering all of the factors described in subsection (a) of this section, the CPS worker must conclude that the child is safe when:

(A) The CPS worker determines there is no safety threat;

(B) The CPS worker determines the safety threat identified previously has been eliminated;

(C) The CPS worker determines the child is not vulnerable to the identified safety threat; or

(D) The CPS worker determines that the parent or caregiver can and will protect the child from the identified safety threat.

(c) If the CPS worker determines that the child is safe, the CPS worker must:

(A) Dismiss the protective action if one is in place; and

(B) Complete and close the CPS assessment.

(d) After considering the factors listed in subsection (a) of this section, the CPS worker must conclude that the child is unsafe when:

(A) The CPS worker determines that there is a safety threat, or the CPS worker determines that a previously identified safety threat has not been eliminated;

(B) The CPS worker determines the child is vulnerable to the identified safety threat; and

(C) The CPS worker determines that the parent or caregiver cannot or will not protect the child from the identified safety threat.

(e) If the CPS worker determines that the child is unsafe, the CPS worker must:

(A) Review the protective action and make modifications if necessary to assure child safety until an ongoing safety plan is developed;

(B) Use the safety analysis to support the development of an ongoing safety plan;

(C) Complete the CPS assessment; and

(D) Open a case.

(3) Documentation of the Safety Analysis. The CPS worker must document the conclusions from the safety analysis prior to completing the CPS assessment.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 409.185, 418.005, 418.015, 419B.005 - 419B.050

Hist.: CWP 3-2007, f. & cert. ef. 3-20-07

413-015-0450

Develop an Ongoing Safety Plan

(1) At the completion of the CPS assessment when the CPS worker determines, through an analysis of the safety-related information, that a child is unsafe, the CPS worker must develop and document an ongoing

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safety plan. The purpose of the ongoing safety plan is to control safety threats as they are uniquely occurring within a particular family.

(2) Requirements to Develop an Ongoing Safety Plan.

(a) When developing an ongoing safety plan, the CPS worker must:

(A) Use a Child Safety Meeting;

(B) Re-evaluate the protective action, if one is in place, to determine if it is appropriate and sufficient as an ongoing safety plan;

(C) Explain how the ongoing safety plan is the least intrusive means that can effectively manage identified safety threats occurring within the family;

(D) Re-confirm all commitments with all safety service providers identified in the protective action if the protective action is to become an ongoing safety plan;

(E) Involve the child's parent or caregiver when developing the ongoing safety plan; and

(F) Use the Indian child's tribe as a resource, unless the tribe declines, when the CPS worker knows or has reason to know the child is an Indian child.

(b) The CPS worker must assure child safety by developing either an in-home or out of home ongoing safety plan.

(A) An in-home ongoing safety plan is required when safety services can assure a child can be protected in the child's own home. All of the following criteria must be in place for an in-home ongoing safety plan to manage safety:

(i) The home environment is stable enough for safety services and safety service providers to be in the home and be safe.

(ii) The parent or caregiver is:

(I) Willing to accept an in-home ongoing safety plan;

(II) Willing to allow the safety services to be provided in the home according to the in-home ongoing safety plan;

(III) Willing to cooperate with the safety service providers carrying out the in-home ongoing safety plan;

(IV) Agreeable to the designated actions and time requirements in the in-home ongoing safety plan; and

(V) Agreeable to the expectations detailed in the in-home ongoing safety plan.

(iii) The CPS worker has determined that he or she can rely upon the willingness of the parent or caregiver to comply with the in-home ongoing safety plan.

(B) An out-of-home ongoing safety plan is required when separation of the child from the identified safety threats, including separation of the child from the child's home or the child's parents or caregivers, is necessary to assure the child's safety. Separation of the child from the child's parent or caregiver may occur only when the parent or caregiver cannot or will not protect the child. One of the following criteria must be present before an out-of-home ongoing safety plan is required:

(i) Safety threats as analyzed are occurring within the family in such a way as to prevent in-home safety management;

(ii) The nature of the home environment is so out of control as to prevent in-home safety management;

(iii) The parent or caregiver is unwilling to accept an in-home ongoing safety plan;

(iv) The parent or caregiver is unwilling to accept people, resources, or safety services that are necessary to implement an in-home ongoing safety plan; or

(v) The willingness of a parent or caregiver to accept an in-home ongoing safety plan cannot be confirmed or relied upon.

(c) An ongoing safety plan may be a combination of an in-home and an out-of-home ongoing safety plan in order to assure the least intrusive intervention.

(d) The ongoing safety plan, whether in-home or out-of-home, must:

(A) Be a written document between the parent or caregiver and the Department;

(B) Specify the safety threat;

(C) Describe how identified safety threats will be managed, including what safety services are necessary to implement the ongoing safety plan;

(D) Identify the safety service providers and the safety services necessary to implement the ongoing safety plan;

(E) Establish the time commitments and availability of those involved;

(F) Identify safety services that will have immediate impact with respect to controlling identified safety threats;

(G) Not use a parent or caregiver who is the alleged perpetrator of physical abuse, sexual abuse, or domestic violence to provide protection;

(H) Include safety service providers that have been confirmed to be suitable to provide safety for the child; and

(I) Be approved by a CPS supervisor.

(3) Documentation of the Ongoing Safety Plan. The CPS worker must document the ongoing safety plan. This documentation must include an explanation of how the ongoing safety plan is the most suitable, least intrusive action available.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 409.185, 418.005, 418.015, 419B.005 - 419B.050

Hist.: CWP 3-2007, f. & cert. ef. 3-20-07

413-015-0455

Protective Custody and Juvenile Court Action

(1) Protective Custody

(a) The CPS worker may take a child into emergency protective custody when there is severe harm or threat of severe harm to a child in the present and law enforcement assistance is not available. If there is any resistance or threatened resistance to taking the child into protective custody, which creates a substantial risk of physical injury to any person, the CPS worker may not take the child into custody, but must wait for law enforcement assistance or obtain an order of protective custody from the juvenile court.

(b) As provided in ORS 419B.171, when a child is taken into protective custody without a court order, the person taking the child into custody must promptly file a brief written report with the court. A written report is required even if the child is released to a parent or other responsible person prior to a shelter care hearing. The written report must be completed and sent to the court the day the child is taken into custody, or no later than the morning of the next working day.

(c) If the child is not released to a parent or other responsible person, but is retained in protective custody, a shelter hearing must be scheduled as required by ORS 419B.183.

(d) If a child is placed in protective custody, the CPS worker must notify the child's parents, including a non-custodial parent; the child's caregivers; and the child's tribe, if applicable, in writing.

(e) The CPS worker or designee must immediately make diligent efforts to identify the child's legal parents and any putative fathers after a child is taken into protective custody. Information about putative fathers must be recorded on form CF 418, "Father(s) Questionnaire" and filed in the case record.

(2) Juvenile Court Petition. When a child is taken into protective custody or juvenile court intervention is necessary to assure the child and family receive appropriate services, the CPS worker must make arrangements for a juvenile court petition to be filed, as provided in ORS 419B.809.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 409.185, 418.005, 418.015, 419B.005 - 419B.050, 419B.171, 419B.183, 419B.809

Hist.: CWP 25-2003, f. & cert. ef. 7-1-03; Renumbered from 413-015-0410, CWP 3-2007, f. & cert. ef. 3-20-07

413-015-0460

Visitation

(1) If an out-of-home ongoing safety plan is developed, the CPS worker must arrange for visitation between the child and the child's family.

(2) The CPS worker must refer to Child Welfare Policy I-E.3.5, "Visits and Other Types of Child and Family Contact", OAR 413-070-0800 to 413-070-0880.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 409.185, 418.005, 418.015, 419B.005 - 419B.050

Hist.: CWP 3-2007, f. & cert. ef. 3-20-07

413-015-0465

Medical Assessment, Dental Assessment, and Mental Health Assessment for All Children in Substitute Care

(1) The child's caseworker must refer a child placed in substitute care for:

(a) A medical assessment within 30 days of entering care;

(b) A dental assessment within 30 days of entering care; and

(c) A mental health assessment within 60 days of entering care.

(2) The assigned caseworker must assure that the child receives all required, covered medical treatment recommended in the assessments described in section (1) of this rule. (See Child Welfare Policy I-C.4.1, "Medical Services Provided through the Oregon Health Plan".)

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 409.185, 418.005, 418.015, 419B.005 - 419B.050

Hist.: CWP 3-2007, f. & cert. ef. 3-20-07

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413-015-0470

Notifications

(1) Requirements for Providing Notifications. The CPS worker must:

(a) Unless the Department determines that disclosure is not permitted under ORS 419B.035, notify the reporter, if the reporter provided the Department with contact information, whether contact was made, whether the Department determined that child abuse or neglect occurred, and whether services will be provided.

(b) Notify the child's parents, including a non-custodial legal parent, and caregivers of all CPS assessment dispositions (unfounded, unable to determine, or founded).

(c) Provide perpetrators written notification of founded dispositions. This written notification must include information about the founded disposition review process as outlined in Child Welfare Policy I-A.6.1, "Notice and Review of CPS Founded Dispositions", OAR 413-010-0700 to 413-010-0750. If the notification could make a child or adult unsafe, a CPS supervisor may authorize an exception to the requirement to provide notification based on documentation that supports this conclusion.

(2) Documentation of Notifications. The CPS worker must document that the notifications described in this rule have been made or attempted prior to completing the CPS assessment.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 409.185, 418.005, 418.015, 419B.005 - 419B.050

Hist.: CWP 3-2007, f. & cert. ef. 3-20-07

413-015-0475

CPS Assessment Documentation and Supervisory Review Requirements

(1) The CPS worker must record assessment activities and information gathered during the assessment process.

(2) The CPS worker must complete the CPS assessment, including FACIS input, and electronically submit the CPS assessment for review by a CPS supervisor, within 30 days of the day that the information alleging child abuse or neglect is received by the screener, except as provided in OAR 413-015-0480, "CPS Assessment Extensions".

(3) A CPS supervisor or designee must review and approve a completed CPS assessment within five working days of the electronic submission of the assessment by the CPS worker. After the assessment is reviewed by a CPS supervisor, if the alleged perpetrator is an employee of any program, office or division of the Department or OYA, the CPS Supervisor must inform the Department's Office of Human Resources of the disposition. If the disposition is founded, the CPS supervisor must also inform the Department's Office of Human Resources of the type of abuse. The CPS supervisor must document the notification in FACIS.

(4) Each local Child Welfare office may designate an individual to electronically enter into FACIS the verification of the completed review and approval of a CPS assessment by a CPS supervisor or designee.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 409.185, 418.005, 418.015, 419B.005 - 419B.050

Hist.: CWP 3-2007, f. & cert. ef. 3-20-07

413-015-0480

CPS Assessment Extensions

The CPS supervisor may approve a one-time extension of an additional 30 days for completion of the CPS assessment if critical information (information necessary to determine child safety or a child abuse or neglect disposition) is outstanding. Additional extension of time may be approved by the Child Welfare program manager if the ability to obtain critical information is beyond the reasonable control of the CPS worker.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 409.185, 418.005, 418.015, 419B.005 - 419B.050

Hist.: CWP 3-2007, f. & cert. ef. 3-20-07

413-015-0485

Confidentiality

Information gathered and records and reports compiled during a CPS assessment are confidential and may be disclosed only as provided in ORS 419B.035. The identity of the person reporting child abuse or neglect may not be disclosed.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 409.185, 418.005, 418.015, 419B.005 - 419B.050

Hist.: CWP 25-2003, f. & cert. ef. 7-1-03; Renumbered from 413-015-0740, CWP 3-2007, f. & cert. ef. 3-20-07

413-015-1000

The CPS Assessment Dispositions

(1) This rule describes child abuse and neglect for the purpose of making CPS assessment dispositions.

(2) As part of completing the CPS assessment, the CPS worker must determine whether there is reasonable cause to believe child abuse or neglect occurred. The possible determinations are:

(a) "Founded," which means there is reasonable cause to believe that child abuse or neglect occurred.

(b) "Unfounded," which means no evidence of child abuse or neglect was identified or disclosed.

(c) "Unable to determine," which means there are some indications of child abuse or neglect, but there is insufficient data to conclude that there is reasonable cause to believe that child abuse or neglect occurred.

(3) When determining whether there is reasonable cause to believe child abuse or neglect occurred, the CPS worker shall consider, among others, the following parent or caregiver behavior, conditions, and circumstances:

(a) Abandonment, including parental behavior showing an intent to permanently give up all rights and claims to the child.

(b) Child selling, including the selling of a child that consists of buying, selling, bartering, trading, or offering to buy or sell the legal or physical custody of a child.

(c) Mental injury (psychological maltreatment), including cruel or unconscionable acts or statements made, threatened to be made, or permitted to be made by the parent or caregiver that has a direct effect on the child. The parent or caregiver's behavior, intentional or unintentional, must be related to the observable and substantial impairment of the child's psychological, cognitive, emotional, or social well-being and functioning.

(d) Neglect, including failure, through action or omission, to provide and maintain adequate food, clothing, shelter, medical care, supervision, protection, or nurturing. Chronic neglect is a persistent pattern of family functioning in which the parent or caregiver does not sustain or meet the basic needs of a child resulting in an accumulation of harm that can have long term effect on the child's overall physical, mental, or emotional development. Neglect includes each of the following:

(A) Physical neglect, which includes each of the following:

(i) Failing to provide for the child's basic physical needs including adequate shelter, food, and clothing.

(ii) Permitting a child to enter or remain in or upon premises where methamphetamines are being manufactured.

(iii) Unlawful exposure of a child to a substance that subjects a child to severe harm to the child's health or safety. When the CPS worker is making a determination of physical neglect based on severe harm to the child's health due to unlawful exposure to a substance, this determination must be consistent with medical findings.

(B) Medical neglect is a refusal or failure to seek, obtain, or maintain necessary medical, dental, or mental health care. Medical neglect includes withholding medically indicated treatment from infants who have disabilities and life-threatening conditions. However, failure to provide the child with immunizations or routine well-child care alone does not constitute medical neglect. When the CPS worker is making a determination of medical neglect, the CPS worker must consult with a health care professional.

(C) Lack of supervision and protection, including failure to provide supervision and protection appropriate to the child's age, mental ability, and physical condition.

(D) Desertion, which includes the parent or caregiver leaving the child with another person and failing to reclaim the child, or parent or caregiver failure to provide information about their whereabouts, providing false information about their whereabouts, or failing to establish a legal guardian or custodian for the child.

(E) Psychological neglect, which includes serious inattention to the child's need for affection, support, nurturing, or emotional development. The parent or caregiver behavior must be related to the observable and severe harm of the child's psychological, cognitive, emotional, or social well-being and functioning.

(e) Physical abuse, including an injury to a child that is inflicted or allowed to be inflicted by non-accidental means that results in harm. Physical abuse may include injury that could not reasonably be the result of the explanation given. Physical abuse may also include injury that is a result of discipline or punishment. Examples of injuries that may result from physical abuse include:

(A) Head injuries;

(B) Bruises, cuts, lacerations;

(C) Internal injuries;

(D) Burns or scalds;

(E) Injuries to bone, muscle, cartilage, and ligaments;

(F) Poisoning;

(G) Electrical shock;

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(H) Death.

(f) Sexual abuse, which includes a person's use or attempted use of a child for the person's own sexual gratification, the sexual gratification of another person, or the sexual gratification of the child. Sexual abuse includes incest, rape, sodomy, sexual penetration, fondling, and voyeurism.

(g) Sexual exploitation, including the use of a child in a sexually explicit way for personal gain, for example, to make money, in exchange for food stamps or drugs, or to gain status. Sexual exploitation also includes using children in prostitution or using children to create pornography.

(h) Threat of harm, including all activities, conditions, and circumstances that place the child at threat of severe harm of physical abuse, sexual abuse, neglect, mental injury, or other child abuse or neglect.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 409.185, 418.015 & 419B.005 - 419B.050

Hist.: CWP 25-2003, f. & cert. ef. 7-1-03; CWP 6-2005, f. & cert. ef. 4-1-05; CWP 19-2005(Temp), f. 12-30-05, cert. ef. 1-1-06 thru 6-30-06; CWP 14-2006, f. 6-30-06, cert. ef. 7-1-06; CWP 3-2007, f. & cert. ef. 3-20-07

413-015-1105

Purpose

(1) The primary purposes of LEDS access in local Child Welfare offices are to assist staff in making decisions about child safety, specifically related to child protective services and emergency certification as outlined in these rules (OAR 413-015-1100 to 413-015-1125). Criminal history information obtained from LEDS will be considered, along with other safety-related information, to:

(a) Identify safety threats; or

(b) Determine if behavior that is revealed by criminal history is inconsistent with providing care to children or having access to children.

(2) These rules do not address criminal records checks for non-emergency certification or adoption approval. Criminal records checks for non-emergency certification or adoption approval are governed by OAR 413-120-0400 to 413-120-0470.

Stat. Auth.: ORS 181.537, 409.010, 418.005 & 419B.020

Stats. Implemented: ORS 181.537, 409.010, 418.005 & 419B.020

Hist.: CWP 1-2005(Temp), f. & cert. ef. 1-28-05 thru 7-27-05; CWP 8-2005, f. & cert. ef. 7-28-05; CWP 3-2007, f. & cert. ef. 3-20-07

413-015-1110

Definitions

The following definitions apply to OAR 413-015-1100 to 413-015-1125:

(1) "LEDS" means Law Enforcement Data System, the computerized criminal history information system maintained by the Oregon State Police.

(2) "LEDS representative" means the staff person in the local Department office who has been designated under OAR 257-015-0050(5) by the Assistant Director of the Department's Children, Adults and Families Division and who has completed the training required by Oregon State Police in order to train other employees to be LEDS users.

(3) "LEDS user" means a staff person in the local Department office who has been trained by a LEDS representative and has been certified by the Oregon State Police to access LEDS information.

(4) "Notice" means a subject individual has been informed in writing that the Department may conduct criminal records checks and that the subject individual has a right to obtain a copy of his or her LEDS record and has a right to challenge information in the record by contacting Oregon State Police. Notice does not imply consent or permission.

Stat. Auth.: ORS 181.537, 409.010, 418.005 & 419B.020

Stats. Implemented: ORS 181.537, 409.010, 418.005 & 419B.020

Hist.: CWP 1-2005(Temp), f. & cert. ef. 1-28-05 thru 7-27-05; CWP 8-2005, f. & cert. ef. 7-28-05; CWP 3-2007, f. & cert. ef. 3-20-07

413-015-1120

LEDS Use for Child Protective Service Purposes

(1) The local Child Welfare office may conduct criminal records checks on subject individuals using the LEDS system available in the local office and use LEDS information pertaining to subject individuals for the purpose of making decisions about child safety, specifically related to Child Protective Services when:

(a) Notice as defined at OAR 413-015-1110(4) has been provided to a subject individual before the Department performs criminal records checks on the subject individual; and

(b) A child abuse allegation is being assessed or there is an open Child Welfare case.

(2) When conducting criminal records checks for a Child Protective Services purpose under this rule, a subject individual is defined as:

(a) A person who is alleged to be the perpetrator of child abuse or neglect when the allegation is being assessed by Child Protective Services;

(b) A person who resides in or frequents a household where the alleged victim of child abuse resides on a full- or part-time basis; or

(c) A person in the household to which a child is being returned.

Stat. Auth.: ORS 181.537, 409.010, 418.005 & 419B.020

Stats. Implemented: ORS 181.537, 409.010, 418.005 & 419B.020

Hist.: CWP 1-2005(Temp), f. & cert. ef. 1-28-05 thru 7-27-05; CWP 8-2005, f. & cert. ef. 7-28-05; CWP 3-2007, f. & cert. ef. 3-20-07

413-015-1125

LEDS Use for Certification Purposes in Emergency Situations

(1) The local Child Welfare office may perform criminal records checks using the LEDS system available in the local office and use LEDS information pertaining to a subject individual for the purpose of making decisions about child safety, specifically related to emergency certification when:

(a) The subject individual has consented to the Department conducting a criminal records check by signing form DHS 1011F, "Consent For Criminal Records & Fingerprint Check";

(b) There is an emergent need to place a child or maintain a placement of a child, and the Criminal Records Unit is unable to complete the check in time;

(c) Staff refer to and comply with OAR 413-120-0400 to 413-120-0470; and

(d) A child abuse allegation is being assessed or there is an open child welfare case.

(2) When conducting criminal records checks for emergency certification purposes under this rule, a subject individual is defined as:

(a) An adult who resides in or plans to reside in a household that is being certified for placement of a child;

(b) An adult who resides in or plans to reside in a household that is being re-certified to place or maintain a child in the household;

(c) A person assisting in the household to enrich the care provided to children placed in the household by tutoring or providing recreation, relief care, or other services such as household chores, whether paid or unpaid; or

(d) A member of the household under 18 years of age if there is reason to believe that member may pose a risk to children placed in the household.

(3) Staff in local Child Welfare offices who access LEDS information for emergency certification purposes as outlined in these rules must:

(a) Refer to and comply with OAR 413-120-0400 to 413-120-0470; and

(b) Forward fingerprints and consent forms to the Department's Criminal Records Unit for processing if:

(A) LEDS information reveals an arrest or conviction of any kind;

(B) The subject individual discloses an arrest or conviction of any kind; or

(C) It is known that the subject individual has lived outside of Oregon within the last five years.

Stat. Auth.: ORS 181.537, 409.010, 418.005 & 419B.020

Stats. Implemented: ORS 181.537, 409.010, 418.005 & 419B.020

Hist.: CWP 1-2005(Temp), f. & cert. ef. 1-28-05 thru 7-27-05; CWP 8-2005, f. & cert. ef. 7-28-05; CWP 3-2007, f. & cert. ef. 3-20-07

Rule Caption: Changing OARs affecting Child Welfare programs.

Adm. Order No.: CWP 4-2007

Filed with Sec. of State: 3-20-2007

Certified to be Effective: 3-20-07

Notice Publication Date: 10-1-06

Rules Adopted: 413-020-0025, 413-020-0045, 413-020-0060, 413-020-0065, 413-020-0070, 413-020-0075, 413-020-0080, 413-020-0085, 413-020-0090, 413-030-0003, 413-030-0009, 413-030-0013, 413-030-0016, 413-030-0019, 413-030-0023, 413-030-0026, 413-040-0006, 413-040-0009, 413-040-0011, 413-040-0013, 413-040-0024, 413-040-0032, 413-070-0625, 413-070-0645, 413-080-0052, 413-080-0059, 413-080-0063, 413-200-0274, 413-200-0276, 413-200-0278, 413-200-0281, 413-200-0283, 413-200-0285, 413-200-0287, 413-200-0289, 413-200-0292, 413-200-0294, 413-200-0296, 413-200-0354, 413-200-0383, 413-200-0386, 413-200-0388

Rules Amended: 413-020-0000, 413-020-0005, 413-020-0010, 413-020-0020, 413-020-0040, 413-020-0050, 413-030-0000, 413-030-0030, 413-040-0000, 413-040-0005, 413-040-0010, 413-040-0017, 413-070-0600, 413-070-0620, 413-070-0630, 413-070-0640, 413-070-0800, 413-070-0810, 413-070-0830, 413-070-0840, 413-070-0855, 413-070-0860, 413-070-0870, 413-070-0880, 413-080-0040, 413-080-0050, 413-080-0055, 413-200-0270, 413-200-0301, 413-

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200-0305, 413-200-0306, 413-200-0308, 413-200-0335, 413-200-0348, 413-200-0371, 413-200-0377, 413-200-0390, 413-200-0393, 413-200-0394, 413-200-0395, 413-200-0396

Rules Repealed: 413-030-0010, 413-040-0021, 413-040-0027, 413-040-0037, 413-040-0042, 413-040-0047, 413-040-0052, 413-040-0057, 413-040-0061, 413-040-0071, 413-070-0610, 413-070-0650, 413-070-0820, 413-070-0850, 413-080-0045, 413-200-0290, 413-200-0307, 413-200-0309, 413-200-0311, 413-200-0338, 413-200-0341, 413-200-0345, 413-200-0376, 413-200-0391, 413-200-0392, 413-200-0401

Rules Ren. & Amend: 413-030-0020 to 413-030-0006, 413-040-0031 to 413-040-0008, 413-040-0063 to 413-040-0016, 413-080-0060 to 413-080-0067, 413-200-0280 to 413-200-0272, 413-200-0346 to 413-200-0362, 413-200-0347 to 413-200-0358, 413-200-0349 to 413-200-0379, 413-200-0375 to 413-200-0352, 413-200-0381 to 413-200-0314

Subject: The Department is adopting, amending, repealing, and renumbering and amending rules (413-080-0040 through 413-080-0063) that cover monitoring the safety and well-being of children and young adults by Child Welfare caseworkers, including mandatory reporting of a new safety threat on an open case, monitoring safety with an in-home ongoing safety plan, monitoring safety in substitute care (including relative caregivers, foster parents, and providers), additional documentation when a child or young adult is placed in Oregon through the Interstate Compact for the Placement of Children, and the requirements and exceptions for face-to-face contact. These rule changes apply a safety intervention model and implement recommendations resulting from the Governor's request for a review of Oregon's child welfare system by the National Resource Center for Child Protective Services. The revised rules provide for children in the care or custody of Oregon's child welfare system a greater amount of supervision and a consistent process of evaluating a child's safety through a continuum starting with first contact through return home or adoption, specifying caseworker action and responsibility in monitoring child safety when a child and family are clients of DHS child welfare, wherever the child is located in the system.

The Department is adopting, amending, and repealing rules (413-020-0000 through 413-020-0090 and 413-070-0600 through 413-070-0650) about voluntary custody agreements, voluntary placement agreements, and placement matching in the child welfare system, including definitions of terms. The changes to the rules about voluntary custody agreements (OAR 413-020-0000 to 413-020-0050) change the eligibility requirements under which the Department will place and retain a child in substitute care and provide services, including the continuation of services after the age of 18. Language about voluntary placement agreements is being removed from the rules about voluntary custody agreements, and separate rules (OAR 413-020-0060 to 413-020-0090) for voluntary placement agreements are being adopted, which change the eligibility requirements under which the Department will support the placement and services to a child. Two separate rules (OAR 413-020-0025 and 413-020-0080) are being adopted to describe the development of a family support services case plan when a parent or legal guardian enters into a Voluntary Custody Agreement or Voluntary Placement Agreement with the Department. The changes to the rules about Placement Matching (OAR 413-070-0600 to 413-070-0650) adjust the requirements for assessing a child's needs when the Department initially places a child in substitute care, identifying the most appropriate, available substitute care provider who can meet the needs of a child or young adult, and assessing how a substitute care placement is meeting a child or young adult's need for safety, permanency, and well-being. OAR 413-070-0645 is being adopted to describe caseworker requirements for involving the substitute caregiver in the concurrent permanency plan is being adopted, and OAR 413-070-0650 about emergency placements is being repealed.

The Department is adopting, amending, repealing, and renumbering and amending rules (413-030-0000 through 413-030-0030) on the subject of family support services, formerly known as pre-

ventive/restorative services, that change the eligibility requirements for these voluntary services and the responsibilities of the Department for determination of service needs, development of the family support services case plan, development of service agreements with the client, caseworker contact and monitoring requirements, timelines for reviewing progress, and when these plans are closed. These rule changes provide greater clarity in the eligibility requirements and implement recommendations resulting from the Governor's request for a review of Oregon's child welfare system by the National Resource Center for Child Protective Services, assuring a focus on child safety throughout the continuum of services.

The Department is adopting, amending, repealing, and renumbering and amending rules (413-040-0000 through 413-040-0071) that cover the development and management of the case plan (formerly known as the service plan) by Child Welfare caseworkers. The Department is changing the requirements for completing a protective capacity assessment, using the family decision-making meeting, developing a case plan, developing an action agreement, reviewing and revising the case plan, determining when conditions for return have been met, closing the ongoing safety plan, and closing the case. These rule changes apply a safety intervention model and implement recommendations resulting from the Governor's request for a review of Oregon's child welfare system by the National Resource Center for Child Protective Services. The revised rules provide for children in the care or custody of Oregon's child welfare system a greater amount of supervision and a consistent process of evaluating a child's safety through a continuum starting with first contact through return home or adoption, specifying caseworker action and responsibility in monitoring child safety when a child and family are clients of DHS child welfare, wherever the child is located in the system.

The Department is amending and repealing rules (413-070-0800 through 413-070-0880) about visits and other types of child and family contact for children and young adults in substitute care, including the right to visit, orientation activities, determining priority in contact plans, types of child-family visits and contact plans, supervision of visits, and documentation of contact. These rule changes apply a safety intervention model and implement recommendations resulting from the Governor's request for a review of Oregon's child welfare system by the National Resource Center for Child Protective Services. The revised rules specify caseworker responsibilities for visits and other contact for children in the care or custody of Oregon's child welfare system and a consistent process of evaluating a child's safety when arranging visitation and other contact.

The Department is adopting, amending, renumbering and amending, and repealing rules 413-200-0270 through 413-200-0401 regarding certification standards and Department responsibilities for certification of relative caregivers, foster parents and pre-adoptive parents. The policies changing in these rules cover personal qualifications, the application and recertification process, denial, inactive status, termination, revocation, contested case hearings, limits on the number of children and young adults placed in each home, requirements for the home environment, care, education, discipline, medication, notification of the Department, selection of alternate caregivers, confidentiality, training and education. These rule changes apply a safety intervention model and implement recommendations resulting from the Governor's request for a review of Oregon's child welfare system by the National Resource Center for Child Protective Services. The revised rules provide clarity on assessment of placement resources for children in the care or custody of Oregon's child welfare system and a consistent process of evaluating a child's safety while in substitute care, specifying child welfare staff actions and responsibilities in certifying and monitoring the home responsible for the child's safety.

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

Rules Coordinator: Annette Tesch—(503) 945-6067

ADMINISTRATIVE RULES

413-020-0000

Purpose

These rules, OAR 413-020-0000 to 413-020-0050, describe:

(1) The circumstances in which parents or legal guardians and the Department may enter into a Voluntary Custody Agreement concerning a child who is in a parent's or legal guardian's legal custody; and

(2) The responsibilities of the parents or legal guardians and the Department in connection with these agreements.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 109.056, 418.015, 418.270, 418.275, 418.280, 418.285

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 3-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 2-2003, f. & cert. ef. 1-7-03; CWP 4-2007, f. & cert. ef. 3-20-07

413-020-0005

Definitions

The following definitions apply to OAR 413-020-0000 to 413-020-0050:

(1) "Child" means a person under 18 years of age.

(2) "Department" means the Department of Human Services, Child Welfare.

(3) "Legal custodian" means a person, agency, or institution with legal custody of a child and the following duties and authority:

(a) To have physical custody and control of a child;

(b) To supply the child with food, clothing, shelter, and incidental necessities;

(c) To provide the child with care, education, and discipline;

(d) To authorize ordinary medical, dental, psychiatric, psychological, and other remedial care or treatment for the child, and in an emergency where the child's safety appears urgently to require it, to authorize surgery or other extraordinary care;

(e) To make such reports and to supply such information as the court may require; and

(f) To apply for any benefits to which the child is entitled and to use them to pay for the child's care.

(4) "Legal custody" means a legal relationship between a person, agency, or institution and a child that imposes on the person, agency, or institution the duties and authority of the child's legal custodian.

(5) "Legal guardian" means a person or agency that has the duties and authority of a parent with legal custody to make decisions concerning a child, including but not limited to the following:

(a) Authorize surgery and other extraordinary treatment for the child;

(b) Authorize the child to enlist in the armed forces of the United States;

(c) Consent to child's adoption; and

(d) Make other decisions of substantial legal significance concerning the child, (but a guardian is not a conservator of the child's property or estate).

(6) "Substitute care" means the out-of-home placement of a child or young adult who is in the legal or physical custody and care of the Department.

(7) "Voluntary Custody Agreement" means a written agreement between the Department and the parent or legal guardian of a child, which transfers legal custody of the child to the Department; the Department assumes all parental authority and responsibilities that the agreement does not specifically reserve to the parents or legal guardians, as permitted by state law; and the Department provides the child substitute care or treatment, or both, if the family falls within a circumstance described in OAR 413-020-0010(2)(a)–(c).

(8) "Young adult" means a person aged 18 through 20 years who remains in the care and custody of the Department, and lives in substitute care or lives independently through the Department's Independent Living Subsidy Program.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 109.056, 418.015, 418.270, 418.275, 418.280, 418.285

Hist.: SOSCF 3-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 2-2003, f. & cert. ef. 1-7-03; CWP 4-2007, f. & cert. ef. 3-20-07

413-020-0010

Voluntary Custody Agreement

(1) Under a "Voluntary Custody Agreement", the parent or legal guardian gives the Department the legal custody of the child. The Department assumes all parental and legal responsibilities that the agreement does not specifically reserve to the parents or legal guardians as permitted under ORS 418.015 and becomes the child's legal custodian.

(2) It is appropriate for the Department to place a child in substitute care and provide services if all of the following subsections apply:

(a) The parent or legal guardian requests the Department take custody of the child.

(b) The parent or legal guardian is immediately and temporarily unable to fulfill his or her parental responsibilities.

(c) This inability will be alleviated with short-term placement when one of the following conditions exists:

(A) The child cannot remain at home due to a temporary crisis in the family, and cannot safely stay with a member of the extended family or another responsible adult who is well known to the child.

(B) The parent or legal guardian is temporarily or will be temporarily unable to fulfill parental responsibilities due to a diagnosed medical or mental health condition.

(C) The child needs to be placed outside the home due to problems in the family that could compromise the safety of a family member, and a placement of limited duration in conjunction with intensive services is likely to reunite the family and reduce safety concerns.

(3) A Voluntary Custody Agreement is not appropriate when the Department's Child Protective Services has determined, within the past 12 months, that the parent or legal guardian was the perpetrator of a founded disposition of child abuse or neglect or when the parent or legal guardian is unwilling to be a permanent resource for the child.

(4) A Child Welfare Program Manager must approve entering into a Voluntary Custody Agreement.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 109.056, 418.015, 418.270, 418.275, 418.280, 418.285

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 3-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 2-2003, f. & cert. ef. 1-7-03; CWP 4-2007, f. & cert. ef. 3-20-07

413-020-0020

Legal Consent

(1) Only a parent or legal guardian who has legal custody of the child may enter into a Voluntary Custody Agreement (CF 1005).

(2) All persons who have legal custody of the child must sign the agreement unless one person with legal custody of the child is missing.

(3) If one person with legal custody of the child is missing, all other persons with legal custody of the child must sign the agreement and must provide the Department the persons and places likely to have knowledge of the missing person's whereabouts. The Department must immediately begin a reasonably diligent search to find the other person with legal custody of the child to provide him or her notice of the agreement.

(4) The parent or legal guardian must provide information to the Department about insurance and other financial resources to meet the medical, dental, and mental health needs of the child by completing a Medical Resource Report Form (DHS 415H).

(5) If the child is an Indian child, who is an enrolled member of or may be eligible for membership in an Indian tribe, each parent or Indian custodian who has legal custody must sign the Voluntary Custody Agreement in a hearing before a judge of a court with appropriate jurisdiction. The child must be more than 10 days old. Refer to Child Welfare Policy I-E.2.1, "Placement of Indian Children", OAR 413-070-0240 for detailed requirements.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.015

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 3-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 2-2003, f. & cert. ef. 1-7-03; CWP 4-2007, f. & cert. ef. 3-20-07

413-020-0025

Developing the Family Support Services Case Plan when a Parent or Legal Guardian Enters into a Voluntary Custody Agreement with Child Welfare

(1) The caseworker must develop a family support services case plan as described in OAR 413-030-0016 with the parent or legal guardian who signs a Voluntary Custody Agreement.

(2) The caseworker must develop a visit and contact plan as described in OAR 413-070-0800 to 413-070-0880.

(3) The parent or legal guardian must agree to:

(a) Full and ongoing cooperation in developing the family support services case plan as described in OAR 413-030-0006(2)(a)–(c) and making decisions for the child based on the child's identified needs;

(b) Visit and financially support the child to the fullest extent possible; and

(c) Work cooperatively with the Department.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 4-2007, f. & cert. ef. 3-20-07

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413-020-0040

Required Reviews

Federal and state law, including the Adoptions and Safe Families Act (Pub. L. 105-89), require review of the cases of all children placed in substitute care. The child placed by the Department with a Voluntary Custody Agreement will be scheduled for Citizen Review Board and court reviews pursuant to OAR 413-040-0100 to 413-040-0170.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.015
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 3-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 2-2003, f. & cert. ef. 1-7-03; CWP 4-2007, f. & cert. ef. 3-20-07

413-020-0045

Criteria for Continuing a Voluntary Custody Agreement After a Child Reaches 18 Years of Age

(1) The Department determines that the child will need placement services after reaching 18 years of age and continues a Voluntary Custody Agreement after the child reaches 18 years per ORS 418.027(5) if:

(a) One of the conditions in OAR 413-020-0010(2)(a)-(c), which led the Department to assume voluntary custody of the child, continues at the time of the child's 18th birthday;

(b) The young adult agrees to the Department's continued assumption of all parental and legal responsibilities that the Voluntary Custody Agreement does not specifically reserve to the parents or legal guardians; and

(c) The District Manager approves the continuation of the Voluntary Custody Agreement.

(2) The court must determine continued custody is in the best interests of the young adult and approve the continuation of the Voluntary Custody Agreement every 180 days.

Stat. Auth.: ORS 418.005, 418.027
Stats. Implemented: ORS 418.015, 418.027
Hist.: CWP 4-2007, f. & cert. ef. 3-20-07

413-020-0050

Termination of Voluntary Agreement

(1) Either the Department or a parent or legal guardian who signed the agreement may terminate the agreement by providing 48 hours written notice. If an agreement continues after the child reaches 18 years of age, a young adult may terminate the agreement by providing 48 hours written notice.

(2) If a parent or legal guardian requests the termination of the voluntary agreement and there is reason to believe the child will be unsafe if returned to the home of the parent or legal guardian, the caseworker must report the information to a CPS screener.

(3) OAR 413-070-0240(5) governs the withdrawal by a parent or Indian custodian of consent concerning an Indian child, within the meaning of the Indian Child Welfare Act, who is in substitute care and the subject of a "Voluntary Custody Agreement" with the Department. OAR 413-070-0240(5) prescribes:

(a) That the parent or Indian custodian may withdraw consent orally or in writing at any time;

(b) That an Indian child shall immediately be released to the parent or Indian custodian upon withdrawal of a voluntary consent; and

(c) Notification to the court, and other actions are required when return of an Indian child to the parent or Indian custodian would place the child in imminent danger or harm.

Stat. Auth.: ORS 418.005, 418.027
Stats. Implemented: ORS 418.015, 418.027
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 3-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 2-2003, f. & cert. ef. 1-7-03; CWP 4-2007, f. & cert. ef. 3-20-07

413-020-0060

Purpose

These rules, OAR 413-020-0060 to 413-020-0090, describe:

(1) The circumstances in which parents or legal guardians and the Department may enter into a Voluntary Placement Agreement to place a child, who is in the legal custody of the parents or legal guardians, for care or services from the Department; and

(2) The responsibilities of the parents or legal guardians and the Department in connection with these agreements.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.015, 418.312
Hist.: CWP 4-2007, f. & cert. ef. 3-20-07

413-020-0065

Definitions

The following definitions apply to OAR 413-020-0060 to 413-020-0090:

(1) "Child" means a person under 18 years of age.
(2) "Department" means the Department of Human Services, Child Welfare.

(3) "Legal custodian" means a person, agency, or institution with legal custody of a child and the following duties and authority:

(a) To have physical custody and control of a child;
(b) To supply the child with food, clothing, shelter, and incidental necessities;

(c) To provide the child with care, education, and discipline;
(d) To authorize ordinary medical, dental, psychiatric, psychological, and other remedial care or treatment for the child, and in an emergency where the child's safety appears urgently to require it, to authorize surgery or other extraordinary care;

(e) To make such reports and to supply such information as the court may require; and

(f) To apply for any benefits to which the child is entitled and to use them to pay for the child's care.

(4) "Legal custody" means a legal relationship between a person, agency, or institution and a child that imposes on the person, agency, or institution the duties and authority of the child's legal custodian.

(5) "Legal guardian" means a person or agency that has the duties and authority of a parent with legal custody of a child to make decisions concerning a child, including but not limited to the following:

(a) Authorize surgery and other extraordinary treatment for the child;
(b) Authorize the child to enlist in the armed forces of the United States;

(c) Consent to child's adoption; and

(d) Make other decisions of substantial legal significance concerning the child (but a guardian is not a conservator of the child's property or estate).

(6) "Substitute care" means the out-of-home placement of a child or young adult who is in the legal or physical custody and care of the Department.

(7) "Voluntary Placement Agreement" means a binding, written agreement between the Department and the parent or legal guardian of a child that does not transfer legal custody to the Department but that specifies, at a minimum, the legal status of the child and the rights and obligations of the parent or legal guardian, the child, and the Department while the child is in placement.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.015, 418.312
Hist.: CWP 4-2007, f. & cert. ef. 3-20-07

413-020-0070

Voluntary Placement Agreement Limitations

(1) Under a Voluntary Placement Agreement, the parent or legal guardian retains legal authority over the child and is obligated to continue to exercise and perform all parental authority and legal responsibilities, except those that the parent or legal guardian specifically delegates to the Department by a binding agreement. The agreement specifies, while the child is in placement, the legal status of the child and the rights and obligations of the parent or legal guardian, the child, and the Department.

(2) The Department must use a Voluntary Placement Agreement (CF 499) under ORS 418.312 in all cases in which the sole reason for placing the child in a foster home, group home, or institutional child care setting is the need to obtain services for the child's emotional, behavioral, or mental disorder or developmental or physical disability.

(3) Under a Voluntary Placement Agreement, the Department has responsibility for the child's placement and care.

(4) The parent or legal guardian who requests substitute care for the child through a Voluntary Placement Agreement may enter into a child support agreement with the Division of Child Support (DCS) or receive a child support order.

(a) The caseworker must inform the parent or legal guardian that he or she may enter into a non-adversarial support agreement with DCS to discharge support obligations. Other, existing child obligations of the parent or legal guardian are not superseded by support agreements with DCS.

(b) The caseworker must provide the parent or legal guardian who signs the Voluntary Placement Agreement with the "DCS Referral for Non-Adversarial Support Agreement" (CF 496). The parent or legal guardian completes the form and returns it to the caseworker. If the form is not returned to the caseworker within 30 days, a support order may be entered.

(c) The caseworker must forward the completed form (CF 496) and a signed copy of the Voluntary Placement Agreement to the Children's Benefits Unit of the Department.

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(5) The parent or legal guardian must provide information to the Department about insurance and other financial resources to meet the medical, dental, and mental health needs of the child by completing a Medical Resource Report Form (DHS 415H).

(6) A Child Welfare Program Manager must approve entering into a Voluntary Placement Agreement.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.015, 418.312
Hist.: CWP 4-2007, f. & cert. ef. 3-20-07

413-020-0075

Legal Consent

(1) Only a parent or legal guardian who has legal custody of the child may enter into a "Voluntary Placement Agreement".

(2) All persons who have legal custody of the child must sign the agreement unless one person with legal custody of the child is missing.

(3) If one person with legal custody of the child is missing, all other persons with legal custody of the child must sign the agreement and must provide the Department the persons and places likely to have knowledge of the missing person's whereabouts. The Department must immediately begin a reasonably diligent search to find the other person with legal custody of the child to provide him or her notice of the agreement.

(4) If the child is an Indian child who is an enrolled member of or may be eligible for membership in an Indian tribe, each parent or Indian custodian who has legal custody of the child must sign the "Voluntary Placement Agreement" in a hearing before a judge of a court with appropriate jurisdiction. The child must be more than 10 days old. Refer to Child Welfare Policy I-E.2.1, "Placement of Indian Children", OAR 413-070-0240 for detailed requirements.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.015, 418.312
Hist.: CWP 4-2007, f. & cert. ef. 3-20-07

413-020-0080

Developing the Family Support Services Case Plan and a Voluntary Placement Agreement with the Department

(1) The caseworker must prepare the Voluntary Placement Agreement (CF 499), which must specify the legal status of the child and the rights and obligations of the parent or legal guardian, the child, and the Department.

(2) The caseworker must develop a family support services case plan (see OAR 413-030-0016) with the parent or legal guardian who signs a Voluntary Placement Agreement.

(3) The caseworker must develop a visit and contact plan as described in OAR 413-070-0800 to 413-070-0880.

(4) The parent or legal guardian must agree to:

(a) Full and ongoing cooperation in the family support services case plan described in OAR 413-030-0006(2)(a)-(c) and in making decisions for the child based on the child's identified needs;

(b) Visit and financially support the child to the fullest extent possible; and

(c) Work cooperatively with the Department.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.015, 418.312
Hist.: CWP 4-2007, f. & cert. ef. 3-20-07

413-020-0085

Required Reviews

Federal and state law, including the Adoptions and Safe Families Act (Pub. L. 105-89), require review of the cases of all children in substitute care. The child placed by the Department with a Voluntary Placement Agreement will be scheduled for Citizen Review Board and court reviews pursuant to OAR 413-040-0100 to 413-040-0170. Under state law:

(1) When the child remains in voluntary placement for more than 180 days, the juvenile court must make a determination within the first 180 days of the placement that the placement is in the best interests of the child.

(2) The juvenile court must hold a permanency hearing as provided in ORS 419B.476 to determine the future status of the child no later than 14 months after the child's original voluntary placement and not less frequently than once every 12 months thereafter during the continuation of the child's original voluntary placement.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.015, 418.312
Hist.: CWP 4-2007, f. & cert. ef. 3-20-07

413-020-0090

Termination of Voluntary Agreement

(1) Either the Department or a parent or legal guardian who signed the Voluntary Placement Agreement may terminate the agreement by providing 48 hours written notice. The child support agreement may be terminated at

the same time by sending a copy of the written termination notice to the Children's Benefits Unit of the Department.

(2) If the parent or legal guardian requests the termination of the Voluntary Placement Agreement and there is reason to believe the child is unsafe, the caseworker must report the information to a CPS screener.

(3) OAR 413-070-0240(5) governs the withdrawal by a parent or Indian custodian of consent concerning an Indian child who is in substitute care and the subject of a Voluntary Placement Agreement with the Department. OAR 413-070-0240(5) prescribes:

(a) That the parent or Indian custodian may withdraw consent orally or in writing at any time;

(b) That an Indian child shall immediately be released to the parent or Indian custodian upon withdrawal of a voluntary consent; and

(c) Notification to the court and other actions required when return of an Indian child to the parent or Indian custodian would place the child in imminent danger or harm.

(4) A Voluntary Placement Agreement ends when the child reaches 18 years of age.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.015, 418.312, 419C.080
Hist.: CWP 4-2007, f. & cert. ef. 3-20-07

413-030-0000

Purpose

The purpose of these rules (OAR 413-030-0000 to 413-030-0030) is to describe the responsibilities of the Department in providing family support services, including:

- (1) Eligibility criteria;
- (2) Determination of service needs;
- (3) Development of the family support services case plan;
- (4) Development of Service Agreements;
- (5) Caseworker contact and monitoring requirements; and
- (6) Timelines for reviewing progress.

Stat. Auth.: ORS 409.050, 418.005
Stats. Implemented: ORS 418.005
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 4-2007, f. & cert. ef. 3-20-07

413-030-0003

Definitions

The following definitions apply to OAR 413-030-0000 to 413-030-0030:

(1) "Caregiver" means a guardian, legal custodian, or other person acting in loco parentis, who exercises significant authority over and responsibility for a child.

(2) "Child" means a person under 18 years of age.

(3) "Department" means the Department of Human Services, Child Welfare.

(4) "Expert evaluation" means a written assessment prepared by a professional with specialized knowledge of a particular subject matter such as physical health, psychological health, mental health, sexual deviancy, substance abuse, and domestic violence. The assessment provides information regarding an individual's functioning in the area of the professional's specialized knowledge and when the expert is evaluating a parent or legal guardian, whether the individual's functioning impacts his or her protective capacity.

(5) "FACIS" means the Family and Child Information System.

(6) "Family support services case plan" means a goal-oriented, time-limited, individualized plan for a child and the child's family or a former foster child. The Department and the family or former foster child jointly develop a family support services case plan that addresses the service goals and the identified needs of the child and the child's family or the former foster child.

(7) "Former foster child" means a person under 21 years of age, who was in substitute care in Oregon, including substitute care provided by the Federally Recognized Tribes, after the age of 14 and remained in substitute care for an accumulative 180 days or longer.

(8) "ILP" means the Independent Living Program services provided by the Department to an eligible foster child or former foster child.

(9) "Parent" means the biological or adoptive mother or the legal father of the child. A legal father is a man who has adopted the child or whose paternity has been established or declared under ORS 109.070, 416.400 to 416.465, or by a juvenile court. In cases involving an Indian child under the Indian Child Welfare Act (ICWA), a legal father includes a man who is a father under applicable tribal law. "Parent" also includes a putative father who has demonstrated a direct and significant commitment to the child by assuming or attempting to assume responsibilities normally

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associated with parenthood unless a court finds that the putative father is not the legal father.

(10) "Service Agreement" means a written document between the Department and a parent, legal guardian, or former foster child that identifies one or more of the service goals in a family support services case plan, and the services and activities that are necessary for the parent, legal guardian, or former foster child to achieve the goal.

(11) "Service goal" means the observable, sustained change in behavior, condition, or circumstance that, when accomplished, achieves the desired effect.

(12) "Short term services" mean actions or activities that are limited in duration to a maximum of 180 days.

(13) "Substitute care" means the out-of-home placement of a child or young adult who is in the legal or physical custody and care of the Department.

(14) "Young adult" means a person aged 18 through 20 years who remains in the care and custody of the Department, and lives in substitute care or lives independently through the Department's Independent Living Subsidy Program.

Stat. Auth.: ORS 409.050, 418.005
Stats. Implemented: ORS 418.005
Hist.: CWP 4-2007, f. & cert. ef. 3-20-07

413-030-0006

Eligibility For Family Support Services

(1) A parent, legal guardian, caregiver, or former foster child is eligible for family support services if the requirements of one of the following subsections are met:

(a) A parent or legal guardian requests out-of-home placement of a child due solely to the emotional, behavioral, or mental disorder or developmental or physical disability of the child, as described in Child Welfare Policy I-B.1.3.1, "Voluntary Placement Agreement", OAR 413-020-0060 to 413-020-0090.

(b) A parent or legal guardian requests that the Department take temporary custody of a child due to conditions described in Child Welfare Policy I-B.1.3, "Voluntary Custody Agreement", OAR 413-020-0000 to 413-020-0050.

(c) A former foster child eligible to receive Independent Living Program (ILP) services requests those services.

(d) A parent or legal guardian requests post adoption or post legal guardianship services in connection with an adoption or legal guardianship that occurred through the Department.

(e) A parent, legal guardian, or caregiver requests assistance with a child in the home, and all of the following paragraphs apply:

(A) Other community resources have been utilized and determined to be ineffective.

(B) Members of the extended family and other responsible adults who are well known to the child have been explored or utilized and determined to be unsafe, unavailable, unwilling, or ineffective as support for the family.

(C) The parent, legal guardian, or caregiver is temporarily or will be temporarily unable to fulfill parental responsibilities due to a diagnosed medical or mental health condition.

(D) The inability of the parent, legal guardian, or caregiver to fulfill parental responsibilities is temporary and immediate; and will be alleviated with short term services or short term services will transition the family to community services.

(E) A Child Welfare program manager approves the request for voluntary services.

(2) Service eligibility requires the full and ongoing cooperation of the parent, legal guardian, caregiver, or former foster child in:

(a) The determination of need;

(b) The preparation of the family support services case plan; and

(c) The monitoring of the family support services case plan.

(3) If the Department determines that funds for family support services are unavailable, the Department will not provide services for those who are eligible for services under subsection (1)(e) of this rule.

(4) The Department must provide family support services when a court has ordered the Department to provide services to a pre-adjudicated delinquent.

Stat. Auth.: ORS 409.050, 418.005
Stats. Implemented: ORS 418.005
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; Renumbered from 413-030-0020, CWP 4-2007, f. & cert. ef. 3-20-07

413-030-0009

Determination of the Service Needs

(1) Within 30 days of receiving the family support services screening information, the caseworker must determine the service needs by completing the following actions:

(a) Provide the parent, legal guardian, caregiver, or former foster child with a Service Application.

(b) Initiate the process to determine the child's ICWA status and notify the Indian child's tribe if ICWA applies. To initiate this process, the caseworker must:

(A) Complete a form CF 1270, Verification of ICWA Eligibility, to assist in determining ICWA eligibility.

(B) Contact the child's tribe when an Indian child's family is requesting placement of the child per the requirements of OAR 413-070-0160(1), "Placement of Indian Children."

(C) Consult with the local Child Welfare ICWA liaison or a supervisor if the caseworker has questions regarding the involvement of a tribe or the ICWA status of the child.

(c) Within five working days of receipt of the case, confirm there is no current reported safety threat to the child by reviewing the screening information and the child welfare case records for all family members living in the household.

(d) Within ten working days of receipt of the case, make initial face-to-face contact with the parent, legal guardian, caregiver, or former foster child to assess current behaviors, conditions, and circumstances in the family and gather specific information on the needs of the parent, legal guardian, caregiver, child, or former foster child.

(e) Within ten working days of receipt of the case, when the child is in the home of the parent, legal guardian, or caregiver, make initial face-to-face contact with the child to assess the identified needs of the child. When the child is in substitute care, the initial face-to-face contact must be made within 30 days of receipt of the case.

(f) To determine service needs, the caseworker must, at a minimum, observe:

(A) The parent, legal guardian, caregiver, or former foster child in the home environment;

(B) The child or former foster child in his or her home or substitute care placement; and

(C) The interactions between family members.

(g) Obtain from the parent, legal guardian, caregiver, or former foster child the names of persons who can provide additional information on the needs of the child, former foster child, or the family, when appropriate.

(h) Ask the parent, legal guardian, caregiver, or former foster child to sign an authorization to release information to enable the Department to obtain additional information from physicians, mental health providers, school employees, or other service and treatment providers, when appropriate.

(i) After obtaining the authorization to release information, contact service and treatment providers, when appropriate, to understand the past and current services and treatment of the family and the child or former foster child.

(j) Obtain expert evaluations when appropriate to determine specific service or treatment needs when a condition or behavior requires additional professional information regarding a person's functioning.

(k) Analyze the behaviors, conditions, and circumstances of the family to determine service or treatment needs based upon information gathered from the activities in subsections (a) to (j) of this section.

(1) Document in FACIS the findings of the activities in subsections (a) to (j) of this section.

(2) The caseworker must use the information and determination of service and treatment needs to develop an individualized family support services case plan that addresses the specific identified needs:

(a) When a family is eligible for post-legal adoption services, the caseworker must also refer to Child Welfare Policies I-G.3.2, "Post Legal Adoption Services", OAR 413-130-0150 to 413-130-0180 and I-E.2.1, "Placement of Indian Children", 413-070-0100 to 413-070-0260 if the child is an Indian child.

(b) When a family is eligible for out-of-home placement due to the child's special needs or placement is ordered through the court, the caseworker must also refer to Child Welfare Policies I-E.3.1, "Placement Matching", OAR 413-070-0600 to 413-070-0650; I-B.1.3.1, "Voluntary Placement Agreement", 413-020-0060 to 413-020-0090; I-E.2.1, "Placement of Indian Children", 413-070-0100 to 413-070-0260 if the child is an Indian child, and I-B.1, "Monitoring Child Safety", 413-080-0040 to 413-080-0067.

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(c) When a former foster child requests ILP services, the caseworker must also refer to Child Welfare Policies I-B.2.3.5, "Independent Living Programs", OAR 413-030-0300 to 413-030-0320 and I-E.2.1, "Placement of Indian Children", 413-070-0100 to 413-070-0260 if the child is an Indian child.

(d) When a family requests that the Department take voluntary custody of the child, the caseworker must also refer to Child Welfare Policies I-E.3.1, "Placement Matching", OAR 413-070-0600 to 413-070-0650; I-B.1.3, "Voluntary Custody Agreement", 413-020-0000 to 413-020-0050; I-E.2.1, "Placement of Indian Children", 413-070-0100 to 413-070-0260 if the child is an Indian child; and I-B.1, "Monitoring Child Safety", 413-080-0040 to 413-080-0067.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 409.050, 418.005
Stats. Implemented: ORS 418.005
Hist.: CWP 4-2007, f. & cert. ef. 3-20-07

413-030-0013

Requirements when Obtaining Medical, Psychological, or Psychiatric Evaluations

(1) The caseworker must secure an expert evaluation of the parent, legal guardian, caregiver, or child, when appropriate, to determine treatment or service needs or to assist in assessing child safety when there is a specific condition or behavior that requires additional professional information regarding a person's functioning. Examples include, but are not limited to:

(a) The parent, legal guardian, caregiver, or child is displaying unusual or bizarre behaviors that are indicative of emotional or behavioral problems;

(b) Physical illness, physical disability, or mental illness;

(c) Suicidal ideation; or

(d) Homicidal ideation.

(2) The caseworker must obtain the consent of the parent, legal guardian, or caregiver prior to arranging an expert evaluation of the parent, legal guardian, or caregiver.

Stat. Auth.: ORS 409.050, 418.005
Stats. Implemented: ORS 418.005
Hist.: CWP 4-2007, f. & cert. ef. 3-20-07

413-030-0016

Requirements for the Family Support Services Case Plan

(1) The caseworker must analyze the information gathered during the determination of service needs to develop a family support services case plan. The family support services case plan must include all of the following information:

(a) Family composition, which includes identifying information for:

(A) Each parent, legal guardian, caregiver, and the children of the parent or legal guardian; or

(B) The former foster child who is 18 years or older and his or her child, if the former foster child is parenting a child.

(b) Conditions identified in the screening or intake referral information.

(c) Determination of service need.

(d) Service goals and activities.

(e) Services, related to a child in substitute care, which include:

(A) Placement information;

(B) Routine and specialized medical and mental health services;

(C) Education services, including the child's school and any special educational needs; and

(D) A plan for visitation and contact with the parents or legal guardians.

(f) Services the Department will provide, including:

(A) Case oversight and routine contact with the parent, legal guardian, or caregiver and the child or the former foster child.

(B) When the court has ordered the Department to provide services to a pre-adjudicated delinquent, routine contact with juvenile department staff, parents or legal guardians, and the child.

(C) When the child is in substitute care, arranging visitation for the parents or legal guardians and the child.

(D) Timely referral, access to, and use of culturally appropriate services and service providers to address the identified needs, to the extent that resources are available.

(E) Timely preparation of reports to the court or other service providers that may be required.

(g) A statement of the conditions for which the Department will close the family support services case.

(h) Review date. The family support services case plan is reviewed with the parent, legal guardian, caregiver, or former foster child every 90 days; however, the caseworker and the parent, legal guardian, caregiver, or former foster child may agree on a review date at any time within the 90-day period.

(2) The persons involved with the Department in the development of the family support services case plan include the former foster child or the parent, legal guardian, or caregiver; and may include the child, other relatives, substitute caregiver, and other professionals as appropriate.

(3) The family support services case plan must include the signature of the caseworker and each parent, legal guardian, caregiver, or former foster child.

(4) Approval and distribution of the family support services case plan.

(a) The Child Welfare supervisor must approve and sign the family support services case plan.

(b) The caseworker must give a copy of the family support services case plan to the parents, legal guardians, caregiver, or former foster child as soon as possible but no later than seven days after the family support services case plan is approved by the supervisor.

(5) Timeline for family support services case plan development.

(a) Except as provided in subsection (b) of this section, the caseworker must develop the family support services case plan within 30 days of the completion of the determination of service needs.

(b) The supervisor may authorize an extension of the time for developing the family support services case plan when information essential to the development of the family support services case plan is not yet available due to circumstances beyond the control of the Department.

Stat. Auth.: ORS 409.050, 418.005
Stats. Implemented: ORS 418.005
Hist.: CWP 4-2007, f. & cert. ef. 3-20-07

413-030-0019

Developing Service Agreements

(1) The caseworker may develop a Service Agreement with a parent, legal guardian, caregiver, or former foster child with a family support services case plan. The Service Agreement is a time-limited agreement that documents the services and action steps that will occur under the agreement.

(2) When used, the Service Agreement must include all of the following:

(a) One of the service goals in the family support services case plan.

(b) Specific activities or services that will occur to achieve the service goal.

(c) Participants and responsibilities.

(d) Anticipated start and completion dates.

(e) Treatment services for the child or former foster child (if applicable).

(f) Method of measuring progress.

(g) Timeline for review.

(3) The caseworker must give a copy of the Service Agreement to the parents, legal guardians, caregiver, or former foster child no later than seven days after the agreement is signed.

Stat. Auth.: ORS 409.050, 418.005
Stats. Implemented: ORS 418.005
Hist.: CWP 4-2007, f. & cert. ef. 3-20-07

413-030-0023

Contact and Monitoring Requirements for a Family Support Services Case Plan

(1) The caseworker must monitor the family support services case plan and terminate Department involvement in a timely manner.

(2) The caseworker is responsible for all of the following actions:

(a) Regular face-to-face contact and communication with each parent, legal guardian, caregiver, or former foster child about progress toward achieving service goals a minimum of once every 30 days.

(b) Regular face-to-face contact with the child a minimum of once every 30 days, and if the child is in substitute care, regular contact with the substitute caregiver, to monitor child safety per Child Welfare Policy I-B.1, "Monitoring Child Safety", OAR 413-080-0040 to 413-080-0067.

(c) Regular contact with service providers a minimum of once every 90 days, including monitoring the services provided through the family support services case plan.

(d) Monitoring the visitation and contact plan when the child is in substitute care.

(e) Monitoring progress toward achieving service goals.

(f) Ensuring completion of the actions and activities that are the responsibility of the Department.

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(g) Timely response to issues that may impact the safety of the child that become known to the caseworker.

(3) The caseworker must document in FACIS case notes:

(a) Observations made by the caseworker during each visit, and behaviors, conditions, or circumstances of the family or former foster child that support the continuation of the family support services case plan; and

(b) Reports from each service provider on progress of the family, child, or former foster child in meeting the service goals of the family support services case plan.

Stat. Auth.: ORS 409.050, 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 4-2007, f. & cert. ef. 3-20-07

413-030-0026

Family Support Services Case Plan Review

(1) The family support services case plan must be reviewed a minimum of every 90 days. This review must take place in a face-to-face meeting with the parents, legal guardians, caregiver, or former foster child. The meeting may include the child, service providers, attorneys, family members, and the substitute caregiver when the child is in substitute care.

(2) During the case plan review, the caseworker assesses and determines the progress that has been made in achieving the service goals of the case plan.

(3) If a parent, legal guardian, caregiver, or former foster child is not available for the review, the reason must be documented in FACIS case notes.

(4) Within 30 calendar days of receiving an expert evaluation requested by the Department, the caseworker must consider revising the family support services case plan to include the recommendations of the expert evaluation. If the caseworker does not implement the recommendations of the expert evaluation, the caseworker must document the reasons for not implementing the recommendations.

(5) Subsequent to the face-to-face meeting, the caseworker documents all of the following in FACIS:

(a) The services currently provided and the progress of the parents, legal guardians, caregiver, or former foster child in achieving service goals.

(b) Observations of improved behaviors, conditions, or circumstances that have measurably changed.

(c) Written or verbal reports from the child, service providers, attorneys, family members, and the substitute caregiver when the child is in substitute care regarding services currently provided and the progress of the parent, legal guardian, caregiver, or former foster child in achieving service goals.

(6) The Child Welfare supervisor approves and documents approval of the family support services case plan review.

Stat. Auth.: ORS 409.050, 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 4-2007, f. & cert. ef. 3-20-07

413-030-0030

Closing a Family Support Services Case Plan

The caseworker closes a family support services case plan when:

(1) The parent, legal guardian, caregiver, former foster child, or the Department indicates the service objectives have been achieved;

(2) The parent, legal guardian, caregiver, or former foster child states that he or she is withdrawing the request for voluntary family support services;

(3) The caseworker has unsuccessfully attempted to contact the parent, legal guardian, caregiver, or former foster child, after diligent efforts, as documented in FACIS case notes;

(4) The Department, the parent, legal guardian, caregiver, or former foster child determines that the family support services case plan is no longer appropriate or effective;

(5) The child, who had been voluntarily placed in substitute care because a parent or legal guardian had requested voluntary placement of the child, has returned to the home;

(6) The court dismisses a pre-adjudicated delinquent child from Department custody; or

(7) Another community service resource accepts responsibility for providing services to the child, former foster child, or family.

Stat. Auth.: ORS 409.050, 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 4-2007, f. & cert. ef. 3-20-07

413-040-0000

Purpose

These rules (OAR 413-040-0000 to 413-040-0032) describe the activities required to:

(1) Complete a protective capacity assessment;

(2) Use the Family Decision-making Meeting;

(3) Develop a case plan;

(4) Develop an action agreement;

(5) Monitor the case plan;

(6) Review and revise the case plan;

(7) Determine when conditions for return have been met; and

(8) Close the ongoing safety plan and close the case.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 15-1998, f. & cert. ef. 7-27-98; CWP 31-2003, f. & cert. ef. 10-1-03; CWP 4-2007, f. & cert. ef. 3-20-07

413-040-0005

Definitions

The following definitions apply to OAR 413-040-0000 to 413-040-0032:

(1) "Action agreement" means a written document between the Department and a parent or legal guardian that identifies one or more of the services or activities in which the parent or legal guardian will participate to achieve an expected outcome.

(2) "Child" means a person under 18 years of age.

(3) "Case plan" means a goal oriented, time limited individualized plan for the child and the child's family, developed by the Department and the parents or legal guardians, that identifies the family behaviors, conditions, or circumstances, safety threats to the child, and the expected outcomes that will improve the protective capacity of the parents or legal guardians. The family plan described in ORS 417.375(1) is incorporated into the case plan to the extent that it protects the child, builds on family strengths, and is focused on achieving permanency for the child within a reasonable time.

(4) "Concurrent permanent plan" means the alternate permanency plan whenever the child has been placed in substitute care when the goal of the permanency plan is to return the child to the parents. The concurrent permanent plan is developed simultaneously with the plan to return the child to the parents or legal guardians.

(5) "Conditions for return" mean a written statement of the specific behaviors, conditions, or circumstances that must exist within a child's home before a child can safely return and remain in the home with an in-home ongoing safety plan.

(6) "Department" means the Department of Human Services, Child Welfare.

(7) "Expected outcome" means an observable, sustained change in a parent or legal guardian's behavior, condition, or circumstance that, when accomplished, will increase a parent or legal guardian's protective capacity and reduce or eliminate an identified safety threat, and which, when accomplished, will no longer require Child Welfare intervention to manage a child's safety. It is a desired end result and takes effort to achieve.

(8) "Expert evaluation" means a written assessment prepared by a professional with specialized knowledge of a particular subject matter such as physical health, psychological health, mental health, sexual deviancy, substance abuse, and domestic violence. The assessment provides information regarding an individual's functioning in the area of the professional's specialized knowledge, and when the expert is evaluating a parent or legal guardian, whether the individual's functioning impacts his or her protective capacity.

(9) "Family member" means any person related to the child by blood, marriage, or adoption, including, but not limited to the parents, grandparents, stepparents, aunts, uncles, sisters, brothers, cousins, or great-grandparents. Family member also includes a child 12 years of age or older and a child younger than 12 years of age, when appropriate. In a case involving an Indian child under the Indian Child Welfare Act (ICWA), a "family member" is defined by the law or custom of the child's tribe.

(10) "Ongoing safety plan" means a documented set of actions or interventions that manage a child's safety after the Department has identified one or more safety threats to which the child is vulnerable and determined the parent or caregiver is unable or unwilling to protect the child. An ongoing safety plan can be in-home or out-of-home and is adjusted when necessary to provide the least intrusive interventions.

(11) "Parent" means the biological or adoptive mother or the legal father of the child. A legal father is a man who has adopted the child or whose paternity has been established or declared under ORS 109.070, 416.400 to 416.465, or by a juvenile court. In cases involving an Indian child under the Indian Child Welfare Act (ICWA), a legal father includes a man who is a father under applicable tribal law. "Parent" also includes a putative father who has demonstrated a direct and significant commitment

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to the child by assuming or attempting to assume responsibilities normally associated with parenthood unless a court finds that the putative father is not the legal father.

(12) "Permanency plan" means a written course of action for achieving safe and lasting family resources for the child. Although the plan may change as more information becomes available, the goal is to develop safe and permanent family resources with the parents, relatives, or other people who will assume legal responsibility for the child during the remaining years of dependency and be accessible and supportive to the child in adulthood.

(13) "Protective capacity" means behavioral, cognitive, and emotional characteristics that can specifically and directly be associated with a person's ability and willingness to care for and keep a child safe.

(14) "Reunification" means placement with a parent or legal guardian.

(15) "Substitute care" means the out-of-home placement of a child or young adult who is in the legal or physical custody and care of the Department.

(16) "Young adult" means a person aged 18 through 20 years who remains in the care and custody of the Department, and lives in substitute care or lives independently through the Department's Independent Living Subsidy Program.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 8-1996(Temp), f. 11-27-96, cert. ef. 12-1-96; SCF 4-1997, f. 6-19-97, cert. ef. 6-28-97; SOSCF 15-1998, f. & cert. ef. 7-27-98; CWP 31-2003, f. & cert. ef. 10-1-03; CWP 4-2007, f. & cert. ef. 3-20-07

413-040-0006

Requirements for the Protective Capacity Assessment

(1) The Department uses the protective capacity assessment to engage the child's parents or legal guardians in a collaborative process to:

(a) Examine and understand the behaviors, conditions, or circumstances that made the child unsafe;

(b) Examine and understand how the behavioral, cognitive and emotional characteristics of the parents or legal guardians impact their ability to care for and keep the child safe;

(c) Determine the changes (expected outcomes) in the behaviors, conditions, or circumstances of the parents or legal guardians that will increase protective capacity and reduce or eliminate the identified safety threat; and

(d) Identify services or activities that are likely to achieve the expected outcomes.

(2) Whenever possible, the Department and the parents or legal guardians come to agreement on expected outcomes and the actions, services, and activities that will achieve the expected outcomes.

(3) The caseworker must:

(a) Complete the following activities within five days of receipt of the case from the CPS worker:

(A) Review the child welfare case history, case documentation, and the actions and decisions of the most recent CPS assessment.

(B) Review the ongoing safety plan by contacting all participants in the safety plan to verify their continued commitment. Determine whether the ongoing safety plan assures the safety of the child.

(C) Document the review of the ongoing safety plan in FACIS.

(b) Complete the following activities:

(A) Conduct reasonable inquiries for the purpose of identifying individuals who may contribute to the caseworker's understanding of the protective capacity of the parents or legal guardians and the safety of the child. Such individuals may include parents or legal guardians, grandparents, extended family, an Indian child's tribe, and any other family members, persons with significant attachments to the child, other professionals, substitute caregivers, neighbors, and friends of the family. Reasonable inquiries mean, as defined in ORS 417.371(4)(b), efforts that include reviewing the case file for relevant information, contacting the parents or guardians, and contacting additional sources of information for the purpose of ascertaining the whereabouts of family members, if necessary.

(B) Gather information from these individuals through individual interviews or meetings for the purpose of identifying and understanding the needs, concerns, strengths, and limitations associated with the protective capacity of parents or legal guardians and assessing the impact on the child's safety.

(C) Evaluate the relationship between:

(i) The existing protective capacities of parents or legal guardians that contribute to child safety;

(ii) The diminished protective capacities of parents or legal guardians that must change for the parents or legal guardians to care for and keep the child safe; and

(iii) The parents' or legal guardians' readiness to change.

(D) Whenever possible, collaboratively identify with the parents or legal guardians:

(i) Other family members, persons with significant attachments to the child, community members, and members of an Indian child's tribe who will contribute to and actively participate in the ongoing safety plan or enhancing the protective capacity of the parents or legal guardians; and

(ii) Actions and services that will reduce or eliminate identified safety threats or enhance the protective capacity of the parents or legal guardians.

(E) Inform the parents or legal guardians of the Department's actions and decisions regarding identified safety threats, protective capacity, and the ongoing safety plan.

(F) Enter in FACIS the findings of the protective capacity assessment, the information obtained by conducting the activities required in paragraphs (A) to (D) of this subsection.

(4) The caseworker must include the findings of the protective capacity assessment in the case plan.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 4-2007, f. & cert. ef. 3-20-07

413-040-0008

Requirements for a Family Decision-making Meeting

(1) "OFDM" as used in this rule means the family decision-making meeting as defined in ORS 417.365, and is a family-focused intervention facilitated by professional staff that is designed to build and strengthen the natural care giving system for the child. These meetings may include family group conferences, family unity meetings, family mediation, or other professionally recognized interventions that include extended family and rely upon the family to make decisions about planning for its children. The purpose of the family decision-making meeting is to establish a plan that provides for the safety, attachment, and permanency needs of the child. The role of the OFDM is described in ORS 417.365 to 417.375.

(2) When the child has been placed in substitute care for more than 30 days, the Department must consider scheduling an OFDM. When considered appropriate, the meeting is scheduled, whenever possible, between the 30th and 60th day of the out-of-home care placement.

(3) When a decision has been made by the Department and the family to use the OFDM, the Department will conduct and document reasonable inquiries to promptly locate and notify the parents, grandparents, an Indian child's tribe, and any other family member who has had significant, direct contact with the child in the year prior to the substitute care placement. Other participants in the meeting may include a child 12 years of age or older, a child younger than 12 years of age when appropriate, other professionals, foster parents, neighbors, and friends of the family as appropriate.

(4) Family members or an Indian child's tribe who are located after reasonable inquiries will be notified by the Department of the OFDM in a timely manner to allow them the opportunity to prepare for and attend the meeting.

(5) Other participants will be jointly identified by the parents, legal guardians, Indian custodian of the child, and the Department, and the Department will notify identified participants in a timely manner to allow them the opportunity to prepare for and attend the meeting.

(6) To assist the family in developing the family's plan for the child, the Department must provide participants with information regarding the federal timeline for determining permanency for the child and the Oregon Administrative Rules that govern the sufficiency of a safety plan, conditions for return, and reunification.

(7) The located family members may attend the OFDM unless the other participants determine that a family member may threaten or place other participants at risk. A family member who is violent, unpredictable, abusive, or who is an alleged perpetrator of sexual abuse, domestic violence, or severe physical assault are examples of who may be excluded from the OFDM. The Department may exclude family members it determines are violent, unpredictable, or abusive or an alleged perpetrator of sexual abuse, domestic violence, or severe physical assault.

(8) Family members who are not invited or allowed to participate may submit written information and recommendations to the caseworker prior to the scheduled meeting concerning the subjects of the OFDM, including concerns regarding the placement of the child, permanency plan, concurrent permanent plan, and services.

(9) The family plan developed at the OFDM is a written document that includes family recommendations on planning for the child and may include a permanency plan, concurrent permanent plan, placement recommendations, or service recommendations. The family plan also includes

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expectations of the parents of the child and other family members; services the Department will provide; time lines for implementation of the plan; benefits of compliance with the plan; consequences of noncompliance with the plan; and a schedule of future meetings if appropriate.

(10) Any family member or tribal representative participating in an OFDM must sign a written acknowledgment of the content of the family plan developed at the meeting and of his or her attendance at the meeting.

(11) The Department will send a copy of the family plan developed at the OFDM within 21 days after the date of the meeting to family participants, including those who participated by submitting written information and recommendations.

(12) The Department will incorporate the family plan developed at the OFDM into the Department's case plan to the extent that the family plan protects the child, builds on family strengths, and focuses on achieving permanency for the child within a reasonable time. If the family's plan developed at the meeting cannot be incorporated into the Department's case plan, the reasons shall be documented in the Department's case plan.

(13) The Department is responsible for confirming that any family plan developed at an OFDM is sufficient to ensure the safety or permanency of the child before implementing a family plan developed at an OFDM.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 31-2003, f. & cert. ef. 10-1-03; Renumbered from 413-040-0031, CWP 4-2007, f. & cert. ef. 3-20-07

413-040-0009

Requirements for Conditions for Return

(1) The caseworker must determine the conditions that must exist prior to the return of the child to the home of a parent or legal guardian.

(2) The conditions for return are documented in the case plan and must describe:

(a) The specific behaviors, conditions, or circumstances that must exist to develop an ongoing safety plan that assures a child's safety, as described in OAR 413-015-0450(2)(b)(A)(i)-(iii), in the home of a parent or legal guardian; and

(b) The actions, services, and time requirements of all participants in the ongoing safety plan in the home of a parent or legal guardian.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 4-2007, f. & cert. ef. 3-20-07

413-040-0010

Requirements for the Case Plan

(1) The caseworker must analyze the information gathered during the protective capacity assessment to develop a case plan. The case plan must include all of the following information:

(a) Family composition, which includes the identifying information of each child, each young adult, and each parent or legal guardian.

(b) Safety threats identified in the CPS assessment as described in OAR 413-015-0420(1)(f)(A)(i) and (ii).

(c) The ongoing safety plan as described in OAR 413-015-0450 and recorded in FACIS.

(d) The findings of the protective capacity assessment.

(e) Expected outcomes and actions that each parent or legal guardian will take to achieve them.

(f) Treatment services (if applicable) to the child or young adult that include:

(A) The identified needs and services provided to any child or young adult placed in substitute care, and the reasons the substitute care placement is the least restrictive placement to meet the child's identified needs;

(B) Routine and specialized medical and mental health services;

(C) Education services, including the school or educational placement of the child or young adult and any special educational needs;

(D) Services to transition the child or young adult to independent living in all cases when the child is 16 years or older, and if provided to the child who is 14 or 15 years old.

(g) Services the Department will provide including:

(A) Case oversight and routine contact with the parents or legal guardians and the child or young adult;

(B) Appropriate and timely referrals to services and service providers suitable to address identified safety threats or strengthen parental protective capacity; and

(C) Timely preparation of reports to the court or other service providers.

(h) The date that the progress of the parents or legal guardians in achieving expected outcomes will be reviewed. The case plan must be reviewed with the parents or legal guardians every 90 days; however, the

caseworker and parents or legal guardians may agree on a review date at any time within the 90-day period.

(i) When the child or young adult is in substitute care, the case plan must also include:

(A) Current placement information including:

(i) The location of the child or young adult and the substitute caregiver of the child or young adult, except when doing so would jeopardize the safety of the child, young adult, or the substitute caregiver, or the substitute caregiver will not authorize release of the address; and

(ii) Documentation that shows that the child or young adult is receiving safe and appropriate care in the least restrictive environment able to provide safety and well being for the child or young adult.

(B) The visitation and contact plan.

(C) The permanency plan.

(D) The conditions for return.

(E) The concurrent permanent plan, which is the alternate permanent plan when the child or young adult is in substitute care.

(2) As applicable, the caseworker must also include in the case plan:

(a) The goals and activities required for an Indian child under the Indian Child Welfare Act (see Child Welfare Policy I-E.2.1, "Placement of Indian Children", OAR 413-010-0100 to 413-010-0260) or for a refugee child under the Refugee Act (see Child Welfare Policy I-E.2.2, "Placement of Refugee Children", 413-070-0300 to 413-070-0380 and see ORS 418.925 to 418.945).

(b) Recommendations of expert evaluations requested by the Department whenever the recommendations may impact parental protective capacities or treatment services for the child or young adult. If the recommendations are not included in the case plan, the rationale must be documented in FACIS.

(c) Sibling placement, sibling connections, and the Department's efforts to keep siblings together.

(d) Orders of the court.

(3) The persons involved with the Department in the development of the case plan include the parents or legal guardians, unless their participation threatens or places other participants at risk; and may include the child, young adult, adoptive parents, an Indian custodian when applicable, other relatives, persons with significant attachments to the child, the substitute caregiver, and other professionals when appropriate.

(4) The case plan must include the signature of the caseworker and each parent or legal guardian, unless the Department is unable to obtain the signature of the parent or legal guardian as described in subsection (6)(a) or (6)(b) of this rule.

(5) Approval and distribution of the case plan.

(a) The Child Welfare supervisor must approve and sign the case plan.

(b) The caseworker must give a copy of the case plan to the parents or legal guardians of the child or young adult, and the Indian child's tribe when applicable, as soon as possible but no later than seven working days after the case plan is approved by the supervisor, except when doing so would provide information that places another person at risk.

(6) Exceptions and exemptions to the required case plan.

(a) A court may authorize an exception to the involvement of the parents or legal guardians when it determines that reasonable efforts, or active efforts in an ICWA case, to return the child home are not required, as described in Child Welfare Policy I-E.3.6, "Achieving Permanency", OAR 413-070-0515.

(b) When the Department has custody of a child or young adult in substitute care and is unable to obtain the signature of a parent or legal guardian, the caseworker must prepare and send a letter of expectations and a copy of the case plan to the parent or legal guardian within seven working days after the supervisor has approved and signed the case plan. A letter of expectations means an individualized written statement for the family of the child or young adult that identifies family behaviors, conditions, or circumstances that resulted in an unsafe child; the expected outcomes of improved parental capacity; and what the Department expects each parent or legal guardian will do to achieve safety, permanency, and well-being of the child or young adult in the parental home.

(c) A case plan as described in sections (1) to (5) of this rule is not required if a family, child, or young adult is eligible for Family Support Services as described in Child Welfare Policy I-B.2.3.1, "Family Support Services", OAR 413-030-0000 to 413-030-0030.

(7) Timeline for case plan development.

(a) The caseworker must develop the case plan within 60 days of a child's removal from home or within 60 days of the completion of the CPS assessment, in cases where the child remains in the home of a parent or legal guardian.

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(b) The supervisor may authorize an extension of the time for developing the case plan when:

(A) The court has not yet conducted the disposition hearing and the Department intends to include any court-ordered activities or services in the case plan; or

(B) Information essential to the development of the case plan is not yet available due to circumstances beyond the control of the Department.

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

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SCF 8-1996(Temp), f. 11-27-96, cert. ef. 12-1-96; SCF 4-1997, f. 6-19-97, cert. ef. 6-28-97; SOSCF 15-1998, f. & cert. ef. 7-27-98; SOSCF 4-2000(Temp), f. & cert. ef. 1-31-00 thru 7-28-00; SOSCF 19-2000, f. & cert. ef. 8-8-00; CWP 31-2003, f. & cert. ef. 10-1-03; CWP 4-2007, f. & cert. ef. 3-20-07

413-040-0011

Requirements of Action Agreements

(1) The Department develops time-limited Action Agreements in conjunction with the case plan. If sufficient resources are available, the Action Agreement must use culturally appropriate services and service providers whose interventions are focused on the achievement by the parents or legal guardians of the expected outcomes identified in the case plan.

(2) The caseworker must ensure the Action Agreement includes all of the following:

(a) One of the expected outcomes in the case plan.

(b) The specific activities or services required to achieve the expected outcome.

(c) Participants and responsibilities.

(d) Anticipated start and completion dates.

(e) Identification of an order of the court that relates to the expected outcome or specified activities or services.

(f) Method of measuring progress.

(g) Timeline for review.

(3) A caseworker may develop sequential Action Agreements with a parent or legal guardian, and each Action Agreement must include the information required in section (2) of this rule.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 4-2007, f. & cert. ef. 3-20-07

413-040-0013

Requirements for Monitoring the Case Plan

(1) The caseworker must monitor the case plan, make reasonable efforts to reduce the stay of a child or young adult in substitute care to reunify with the parents or legal guardians, and terminate Department intervention services in a timely manner.

(2) The caseworker is responsible for all of the following actions:

(a) Regular 30-day, face-to-face contact and communication with each parent or legal guardian about progress toward achieving the expected outcomes related to enhanced protective capacity.

(b) Regular 30-day, face-to-face contact with the child, young adult, and, when applicable, the individual providing substitute care, to monitor the safety of the child or young adult.

(c) Monitoring the services provided through the case plan through contact with each service provider a minimum of once every 90 days.

(d) Monitoring the ongoing safety plan.

(e) Monitoring action agreements.

(f) Monitoring the visitation and contact plan when a child or young adult is in substitute care.

(g) Monitoring the parent or legal guardian's progress toward meeting the conditions for return when a child or young adult is in substitute care.

(h) Monitoring the parent or legal guardian's progress toward meeting the expected outcomes of the case plan.

(i) Ensuring completion of the actions and activities that are the responsibility of the Department.

(j) Timely review of the progress the parent or legal guardian has made in reducing or eliminating identified safety threats and enhancing parental protective capacity.

(k) Timely response to issues that may impact the safety of the child or young adult which become known to the caseworker.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 4-2007, f. & cert. ef. 3-20-07

413-040-0016

Requirements for Review of the Case Plan

(1) The case plan is reviewed a minimum of every 90 days. This review must take place in a face-to-face meeting with the parents or legal guardians, unless excluded under section (3) of this rule. The meeting may

include the child, young adult, service providers, safety plan participants, substitute caregivers, attorneys, a child's CASA, persons with significant attachments to the child, and family members.

(2) During the case plan review, the caseworker assesses and determines the progress that has been made in achieving the expected outcomes of the case plan, and, when the child is in substitute care, the progress toward meeting the conditions of return.

(3) Exceptions to the face-to-face case plan review. If a parent or legal guardian is not available for the review, the caseworker must document the reason the parent or legal guardian was unavailable and the efforts that were made to involve the parent or legal guardian in the review.

(4) During a case plan review, the caseworker must consider input received from the child or young adult, the service providers, safety plan participants, substitute caregivers, attorneys, a child's CASA, persons with significant attachments to the child, and family members.

(5) Subsequent to the face-to-face meeting, the caseworker documents all of the following in FACIS:

(a) The services provided and the progress of the parents or legal guardians in achieving expected outcomes or, when a child is in substitute care, meeting the conditions of return.

(b) Observations of improved parent or legal guardian protective capacity based on specific behaviors, conditions, or circumstances that have measurably changed.

(c) Input received from service providers, substitute caregivers, attorneys, the child's CASA, persons with significant attachments to the child, and family members.

(d) The reduction or elimination of the identified safety threats.

(e) The actions the Department has taken to develop and implement the concurrent permanent plan for the child or young adult in substitute care if a parent or legal guardian has not demonstrated progress in achieving the conditions for return in a timely manner including:

(A) A review of the child or young adult's education, health, and mental health services to ensure the needs of the child or young adult are being met;

(B) A review of other services provided to address the identified needs of the child or young adult;

(C) An assessment of the need of the child or young adult for a safe and permanent home; and

(D) An assessment of the capacity of the substitute caregiver to meet the identified needs of the child or young adult as described in Child Welfare Policy I-E.3.1 "Placement Matching", OAR 413-070-0640.

(6) Within 30 days of receiving an expert evaluation requested by the Department, the caseworker must consider revising the case plan to include recommendations that will improve parent or legal guardian protective capacity related to the identified safety threats. If the recommendations are not included in the case plan, the rationale must be documented in FACIS.

(7) The Child Welfare supervisor must review the caseworker's documentation of the case plan review, and document completion of the review in FACIS every 90 days. The supervisor must review, approve, and sign the six-month case plan review submitted for required administrative review.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SCF 8-1996(Temp), f. 11-27-96, cert. ef. 12-1-96; SCF 4-1997, f. 6-19-97, cert. ef. 6-28-97; SOSCF 15-1998, f. & cert. ef. 7-27-98, Renumbered from 413-040-0030; CWP 31-2003, f. & cert. ef. 10-1-03, Renumbered from 413-040-0045; Renumbered from 413-040-0063, CWP 4-2007, f. & cert. ef. 3-20-07

413-040-0017

Requirements for Return and Reunification

(1) The caseworker recommends returning the child or young adult to the home of a parent or legal guardian after the caseworker has reviewed the safety threats identified in the CPS assessment that required an out-of-home ongoing safety plan and verified that:

(a) The conditions for return in the case plan have been met;

(b) The identified safety threats have been reduced or eliminated, or protective capacities are sufficiently enhanced, to assure the safety of the child or young adult in the home of the parent or legal guardian with an ongoing safety plan to manage the identified safety threats as they are uniquely occurring within a particular family;

(c) The parents or legal guardians are willing and able to accept an ongoing safety plan with the child or young adult in the home;

(d) The parents or legal guardians are willing and able to continue participating in case plan services;

(e) Service providers who are currently working with the child, young adult, parents or legal guardians, and other involved persons including the child's CASA and attorneys have been informed, in writing, of the plan to return the child or young adult with an in-home ongoing safety plan; and

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(f) No safety concerns for the child or young adult are raised in the caseworker's review of the criminal history records and child welfare protective service records of all persons currently residing in the home.

(2) If the caseworker cannot confirm that identified safety threats can be managed if the child or young adult is returned to the home of a parent or legal guardian with an in-home ongoing safety plan, the child or young adult must remain in substitute care.

(3) The caseworker's supervisor must review and concur that conditions for return have been met, and that any disagreement with the plan to return the child or young adult home has been reviewed and considered in the development of the in-home ongoing safety plan prior to the caseworker recommending to the court that a child or young adult be returned to the home of a parent or legal guardian.

(4) The in-home ongoing safety plan must specifically document the planned caseworker and safety service provider contacts with the child or young adult and the parent or legal guardian, when the child or young adult is returned to the home of the parent or legal guardian.

(5) The caseworker must revise, as necessary, and confirm the sufficiency of an in-home ongoing safety plan that will manage safety threats as they are uniquely occurring within a particular family prior to the child's physical return home.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 31-2003, f. & cert. ef. 10-1-03; CWP 4-2007, f. & cert. ef. 3-20-07

413-040-0024

Requirements for an In-home Ongoing Safety Plan Prior to Return and Next Day Contact

(1) When the caseworker determines the conditions for return have been achieved and identified safety threats can be managed when a child or young adult is returned to the home of a parent or legal guardian (see OAR 413-040-0017), the caseworker must develop an in-home ongoing safety plan as described in OAR 413-015-0450. The caseworker's supervisor must:

(a) Approve the proposed in-home ongoing safety plan during the five working days prior to the return of a child or young adult to the home of a parent or legal guardian of the child or young adult, and must

(b) Document the approval in FACIS.

(2) After a proposed in-home ongoing safety plan is approved by the caseworker's supervisor, the caseworker must complete all of the following activities:

(a) Visit the child or young adult, outside the presence of a parent or legal guardian, at least once during the five days prior to the return by the child or young adult to the home to confirm the readiness of and prepare the child or young adult for the return home.

(b) Visit the parent or legal guardian in the home of the parent or legal guardian, at least once during the five days prior to the return by the child or young adult to the home, to verify:

(A) The behaviors, conditions, and circumstances in the home are safe for the return of the child or young adult;

(B) Confirmation of all persons living in the household;

(C) The parent or legal guardian is ready for the return of the child or young adult;

(D) The parent or legal guardian is willing and able to participate in the ongoing safety plan; and

(E) The parent or legal guardian is willing and able to continue in case plan services.

(c) Confirm the in-home ongoing safety plan with the parent or legal guardian, and obtain the signature of the parent or legal guardian.

(d) Document the revised ongoing safety plan in FACIS.

(3) In the event a court orders the return of a child or young adult to the home of a parent or legal guardian of the child or young adult before an in-home ongoing safety plan can be developed and approved (in accordance with the criteria in OAR 413-015-0450 and this rule):

(a) The caseworker must complete the activities described in this rule as soon as practicable, but not later than seven working days following the court order; and

(b) If the caseworker disagrees with the order of the court, the caseworker must immediately consult with his or her supervisor.

(4) The caseworker must visit the child or young adult in the home of the parent or legal guardian the day following the return home of the child or young adult. The caseworker must:

(a) Confirm the safety of the child or young adult;

(b) Review the in-home ongoing safety plan; and

(c) Document observations and the conditions of the home in FACIS

within seven working days of the visit.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 4-2007, f. & cert. ef. 3-20-07

413-040-0032

Requirements for Closing the In-Home Ongoing Safety Plan and Closing the Case

(1) When a child or young adult is in the home of the parent or legal guardian and the parent or legal guardian can sustain the safety of the child or young adult, the caseworker must assess when the in-home ongoing safety plan should close.

(2) When assessing whether to close the in-home ongoing safety plan, the caseworker must determine whether:

(a) The parent or legal guardian has demonstrated capacity to sustain the safety of the child or young adult based upon:

(A) Observations of the child or young adult and the parent or legal guardian in the home;

(B) Expert evaluations and reports from service providers;

(C) Reports from participants in the in-home ongoing safety plan;

(D) The extent to which the achievement of expected outcomes supports the ability of the parent or legal guardian to sustain the safety of the child or young adult; and

(E) Consultation with other individuals participating with the parent or legal guardian to sustain the safety of the child or young adult.

(b) The child or young adult is safe in the home based upon:

(A) The elimination of the identified safety threats or the protective capacity of the parent or legal guardian is sufficient to manage identified safety threats;

(B) The willingness and ability of the parent or legal guardian to protect the child or young adult; and

(C) Caseworker confidence in the ability of the parent or legal guardian to sustain the safety of the child or young adult over time.

(3) The caseworker must document the determination to close the in-home ongoing safety plan and the facts supporting the ability of the parent or legal guardian to provide safety for the child or young adult and to sustain the safety of the child or young adult.

(4) The caseworker's supervisor must review the caseworker's documentation to ensure the criteria in section (2) of this rule are met, and concur with the documented reasons for closing the in-home ongoing safety plan prior to approving the closure of the safety plan.

(5) The caseworker petitions the court to dismiss wardship. When wardship is returned to a parent or legal guardian, the case is closed.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 4-2007, f. & cert. ef. 3-20-07

413-070-0600

Purpose

The purpose of these rules (OAR 413-070-0600 to 413-070-0645) is:

(1) To prescribe the requirements for assessing the child's needs when the Department initially places the child in substitute care to assure the child's safety;

(2) To identify the most appropriate, available substitute care provider who can meet the child or young adult's needs; and

(3) To prescribe the requirements for assessing the substitute care placement in meeting the child or young adult's need for safety, permanency, and well-being.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 13-1999, f. 7-8-99, cert. ef. 7-12-99; CWP 4-2007, f. & cert. ef. 3-20-07

413-070-0620

Definitions

The following definitions apply to OAR 413-070-0600 to 413-070-0645:

(1) "Caregiver relationship" means a relationship between a person and a child that has existed for the 12 months immediately preceding the initiation of a dependency proceeding, for at least six months during a dependency proceeding, or for half of the child's life if the child is less than six months of age and the person had physical custody of the child or resided in the same household as the child; the person provided the child on a daily basis with the love, nurturing and other necessities required to meet the child's psychological and physical needs; and the child depended on the relationship to meet the child's needs. "Caregiver relationship" does not include a relationship between a child and a person who is an unrelated foster parent of the child unless the relationship continued for a period of at least six consecutive months.

(2) "Department" means the Department of Human Services, Child Welfare.

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(3) "FACIS" means the Family and Child Information System.

(4) "Foster parent" means a person who operates a home that has been approved by the Department to provide care for an unrelated child or young adult placed in the home by the Department.

(5) "Parent" means the biological or adoptive mother or the legal father of the child. A legal father is a man who has adopted the child or whose paternity has been established or declared under ORS 109.070, 416.400 to 416.465, or by a juvenile court. In cases involving an Indian child under the Indian Child Welfare Act (ICWA), a legal father includes a man who is a father under applicable tribal law. "Parent" also includes a putative father who has demonstrated a direct and significant commitment to the child by assuming or attempting to assume responsibilities normally associated with parenthood, unless a court finds that the putative father is not the legal father.

(6) "Provider" means a person approved by a licensed private child-caring agency to provide care for a child or young adult, or an employee of a licensed private child-caring agency approved to provide care for a child or young adult.

(7) "Relative Caregiver" means a person who operates a home that has been approved by the Department to provide care for a related child or young adult who is placed in the home by the Department.

(8) "Substitute care" means an out-of-home placement of a child or young adult who is in the legal or physical custody and care of the Department.

(9) "Substitute caregiver" means a relative caregiver, foster parent, or provider who is authorized to provide care to a child or young adult who is in the legal or physical custody of the Department.

(10) "Young adult" means a person aged 18 through 20 years who remains in the care and custody of the Department, and lives in substitute care or lives independently through the Department's Independent Living Subsidy Program.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005, 419B.192

Hist.: SOSCF 13-1999, f. 7-8-99, cert. ef. 7-12-99; CWP 4-2007, f. & cert. ef. 3-20-07

413-070-0625

Identifying and Assessing the Child's Needs when Initial Placement in Substitute Care is Required

(1) To determine a child's immediate needs when an out-of-home ongoing safety plan is required, the caseworker must:

(a) Involve the child's parent or legal guardian in identifying substitute care placement resources whenever possible.

(b) Assess the ability of each potential substitute caregiver to provide safety for the child.

(c) Consider potential substitute care placements that meet the needs of the child in the following order of preference:

(A) A relative who can and will meet the child's needs for safety and can be certified by the Department through a diligent search for the child's relatives;

(B) A person who has a caregiver relationship with the child and can be certified by the Department;

(C) An unrelated person to whom the child has significant attachment or who has significant attachment to the child, and can be certified by the Department; or

(D) A foster parent who is certified by the Department, or a provider who is certified through a licensed child-caring agency.

(d) Identify which person has the closest existing personal relationship with the child if more than one person requests to have the child placed with them.

(e) Consider whether the substitute care placement:

(A) Has the ability to provide safety for the child;

(B) Is willing to cooperate with any restrictions placed on contact between the child and others;

(C) Has the ability to prevent anyone from influencing the child in regard to the allegations of the case;

(D) Has the ability to support the efforts of the Department to implement the permanent plan for the child; and

(E) Has the ability to meet the child's physical, emotional, and educational needs, including the child's need to continue in the same school or educational placement.

(f) Assure that the substitute care placement is the most home-like, least restrictive available to meet the child's needs.

(g) Assure that the race, color, or national origin of the child or a substitute care placement is not a consideration when assessing a substitute care placement.

(h) If the child is an Indian or Refugee child, follow OAR 413-070-0220 and OAR 413-070-0320 regarding placement preferences.

(2) Within 30 days of the child's placement in substitute care, the caseworker must reconsider whether the substitute caregiver is able to meet the considerations in subsection (1)(e) of this rule and assess whether the substitute caregiver meets the following placement preferences:

(a) Is in close proximity to the child's parents or caregivers;

(b) Is in close proximity to the child's community;

(c) Can keep siblings together; and

(d) Can support the child's culture and family identity.

(3) When the substitute care placement does not meet one or more of the placement considerations in subsection (1)(e) or section (2) of this rule, the caseworker must determine whether remaining in the substitute care placement is in the best interests of the child.

(a) If the caseworker determines that remaining in the current substitute care placement is in the best interests of the child, the child should remain in the placement.

(b) If the caseworker determines that remaining in the current substitute care placement is not in the best interests of the child, the caseworker must work with Department staff to secure another substitute care placement for the child.

(4) The caseworker must document the section (3) determination in FACIS and explain the basis for the determination as it relates to the best interests of the child.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005, 419B.192

Hist.: CWP 4-2007, f. & cert. ef. 3-20-07

413-070-0630

Monitoring the Ongoing Substitute Care Placement Needs of the Child or Young Adult

(1) The caseworker must monitor the substitute care placement of the child or young adult to determine whether the foster parent, relative caregiver, or provider:

(a) Meets the placement considerations of OAR 413-070-0625(1)(e) and (2); and

(b) Is an appropriate and safe substitute care placement if the child or young adult cannot safely return to the home of a parent or legal guardian within a reasonable period of time.

(2) The caseworker must assess the ongoing and permanency needs of the child or young adult:

(a) For physical and emotional safety;

(b) To preserve existing attachments to family;

(c) For continuity and familiarity;

(d) For appropriate educational, developmental, emotional, and physical support;

(e) For stability; and

(f) For maintaining his or her identity and cultural and religious heritage.

(3) During the required face-to-face contacts with the child or young adult, the caseworker must confirm that the substitute caregiver can maintain the safety and well-being of the child or young adult, as described in Child Welfare Policy I-B.1, "Monitoring Child Safety", OAR 413-080-0059(2)(a)(D)(i)-(xii) when the child or young adult is with a relative caregiver or foster home or OAR 413-080-0059(3)(a)(D)(i)-(xi) when the child or young adult is with a provider. In addition, the caseworker must:

(a) Develop and maintain a good working relationship with the child or young adult;

(b) Observe the child or young adult in an age-appropriate and comfortable setting;

(c) Gather updated information on the child or young adult's physical and mental health as well as educational, behavioral, and developmental progress;

(d) Share updated case plan or child-specific information with the child or young adult's foster parent, relative caregiver, or provider and with the child or young adult as appropriate; and

(e) Document the date, time, location, observations, and updated information in FACIS case notes.

(4) For purposes of this rule, "face-to-face" is an in-person interaction between individuals.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005, 419B.192

Hist.: SOSCF 13-1999, f. 7-8-99, cert. ef. 7-12-99; CWP 4-2007, f. & cert. ef. 3-20-07

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413-070-0640

Review of the Substitute Care Placement During Case Plan Review

(1) When the child or young adult is in substitute care at the time of each 90 day case plan review, the caseworker must include in the review written documentation of the extent to which the child or young adult's substitute care placement meets the child or young adult's ongoing need for safety, permanency, and well-being.

(a) To determine the extent to which the placement meets the child or young adult's needs for physical and emotional safety, the caseworker must determine whether the following conditions exist in the home.

(A) The substitute caregiver has the skill level or willingness to acquire the skills necessary to meet the physical, emotional and supervisory needs for each child or young adult in the placement;

(B) The substitute caregiver has the skill level to care for the age, number, and gender of the children or young adults currently in the placement;

(C) The behavioral characteristics of children or young adults currently in the placement are such that the child or young adult will be protected from further victimization and from harming self or others;

(D) The substitute caregiver has the ability to protect the child or young adult from inappropriate contact with those who may harm the child or young adult; and

(E) The physical layout of the home permits the substitute caregiver to safely supervise the children or young adults in the home.

(b) To determine the extent to which the placement meets the need of the child or young adult to preserve existing attachment to the family, the caseworker must consider whether:

(A) The family has expressed a preference in placement;

(B) The child or young adult has requested a particular placement;

(C) The relative caregiver, foster parent, or provider has demonstrated the ability:

(i) To support the attachment of the child or young adult through visitation and other types of contact with the child's family;

(ii) To accommodate regular contact between siblings when siblings cannot be placed together and regular contact is in the best interests of the child or young adult; and

(iii) To provide mutual care when both the child and parent require placement. As used in this rule, "mutual care" means the out-of-home placement of a parent and child together where one or both are in the legal custody of the Department.

(c) To determine the extent that the placement meets the need of the child or young adult for continuity and familiarity, the caseworker must consider:

(A) The extent of the child or young adult's pre-existing relationship with the relative caregiver, foster parent, or provider;

(B) The placement is appropriate to meet the permanency and well-being needs of the child because of its proximity to the child or young adult's neighborhood, school or educational placement, and parent or legal guardian; and

(C) Whether the relative caregiver, foster parent, or provider can provide a permanent home or facilitate transition to a permanent home for the child or young adult.

(d) To determine the extent that a particular placement meets the need of the child or young adult for appropriate educational, developmental, emotional, and physical support, the caseworker must consider:

(A) Whether the relative caregiver, foster parent, or provider demonstrates competency in meeting the child or young adult's specific and unique needs or is acquiring the skills necessary to meet the child or young adult's specific and unique needs;

(B) Whether the ability of the relative caregiver, foster parent, or provider to meet the child or young adult's specific and unique needs is influenced by the number and type of children in the placement; and

(C) Whether the ability and willingness of the relative caregiver, foster parent, or provider to assist, participate in, and act as an advocate for the child or young adult in his or her education and treatment plan is sufficient to meet the needs of the child or young adult.

(e) To determine the extent to which the placement meets the need of the child or young adult for stability, the caseworker must consider:

(A) Whether the relative caregiver, foster parent, or provider has expressed a desire to provide permanency for a particular child or young adult;

(B) Whether the ability of the relative caregiver, foster parent, or provider to provide support and to nurture the child or young adult is influenced by the number of children or young adults in placement;

(C) Whether the relative caregiver, foster parent, or provider is willing to provide care for the child or young adult as long as needed;

(D) Whether the capacity of the relative caregiver, foster parent, or provider to recognize the child or young adult's needs and build on the child or young adult's strengths is sufficient to meet the long-term placement needs of the child or young adult.

(f) To determine whether the placement can support the child or young adult's identity, development, and cultural and religious background, the caseworker must consider:

(A) Whether the relative caregiver, foster parent, or provider has the ability to appreciate, nurture, support, and reinforce the identity and cultural and religious background of the child or young adult;

(B) Whether the relative caregiver, foster parent, or provider has the ability to support the development of the individual child or young adult, and help the individual child or young adult with problems that the child or young adult may encounter. (Refer to Child Welfare Policies I-E.2, "Multiethnic Placements", OAR 413-070-0000 to 413-070-0033 and I-E.2.1, "Placement of Indian Children", 413-070-0100 to 413-070-0260);

(C) Whether the relative caregiver, foster parent, or provider has the ability to communicate effectively with the child or young adult; and

(D) Whether the child or young adult has adjusted to the placement.

(2) The caseworker must document the extent to which the child or young adult's relative caregiver, foster parent, or provider meets the child or young adult's need for safety and well-being:

(a) In FACIS case notes at the 90-day case plan review; or

(b) In the case plan (0333a), Child Description, Their Needs and Well Being section, at the six-month case plan review.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005, 419B.192

Hist.: SOSCF 13-1999, f. 7-8-99, cert. ef. 7-12-99; CWP 4-2007, f. & cert. ef. 3-20-07

413-070-0645

Involving the Substitute Caregiver in the Concurrent Permanency Plan

When the parent or legal guardian has made little or no progress in meeting the conditions for return as described in the case plan, the caseworker must:

(1) Determine whether the relative caregiver, foster parent, or provider is willing to continue as the placement resource, has the skills and abilities to meet the child or young adult's need for safety and well-being, and is willing to work with the Department while the concurrent permanency plan for the child or young adult is implemented by the Department;

(2) Provide the relative caregiver or foster parent with the opportunity to have input into a permanency plan; and

(3) Determine whether the relative caregiver, foster parent, provider, or any other person has been granted intervention and has moved to be considered the permanent placement resource for the child (ORS 419B.116(9)(b)) at any time after a court has determined at a permanency hearing that the permanent plan for the child or young adult should be something other than return home.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005, 419B.192

Hist.: CWP 4-2007, f. & cert. ef. 3-20-07

413-070-0800

Purpose

The purpose of these rules (OAR 413-070-0800 to 413-070-0880) is to describe the Department's responsibilities in arranging frequent contact between any child or young adult in substitute care, the family, and other people with whom the child or young adult has a significant connection. In all cases, the contact is intended to:

(1) Support and enhance attachment with the child or young adult's family, including siblings, and continue the child or young adult's relationships with significant others, including siblings;

(2) Reduce the trauma to the child or young adult associated with separation from primary attachment figures; and

(3) Assure that the safety and well-being of the child or young adult are the paramount concerns in developing a child-family contact plan.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 16-2000, f. & cert. ef. 7-17-00; CWP 4-2007, f. & cert. ef. 3-20-07

413-070-0810

Definitions

The following definitions apply to OAR 413-070-0800 to 413-070-0880:

(1) "Child" means a person under 18 years of age.

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(2) "Child-family contact" means communication between the child or young adult and family and includes but is not limited to visitation with the child or young adult, participation in the child or young adult's activities, and appointments, phone calls, e-mail, and written correspondence.

(3) "Department" means the Department of Human Services, Child Welfare.

(4) "FACIS" means the Family and Child Information System.

(5) "Family member" means any person related to the child by blood, marriage, or adoption, including, but not limited to the parents, grandparents, stepparents, aunts, uncles, sisters, brothers, cousins, or great-grandparents. Family member also includes a child 12 years of age or older and a child younger than 12 years of age, when appropriate. In a case involving an Indian child under the Indian Child Welfare Act (ICWA), a "family member" is defined by the law or custom of the child's tribe.

(6) "Foster parent" means a person who operates a home that has been approved by the Department to provide care for unrelated child or young adult placed in the home by the Department.

(7) "Parent" means the biological or adoptive mother or the legal father of the child. A legal father is a man who has adopted the child or whose paternity has been established or declared under ORS 109.070, 416.400 to 416.465, or by a juvenile court. In cases involving an Indian child under the Indian Child Welfare Act (ICWA), a legal father includes a man who is a father under applicable tribal law. "Parent" also includes a putative father who has demonstrated a direct and significant commitment to the child by assuming or attempting to assume responsibilities normally associated with parenthood, unless a court finds that the putative father is not the legal father.

(8) "Provider" means a person approved by a licensed private child-caring agency to provide care for a child or young adult, or an employee of a licensed private child-caring agency approved to provide care for a child or young adult.

(9) "Relative caregiver" means a person who operates a home that has been approved by the Department to provide care for a related child or young adult who is placed in the home by the Department.

(10) "Substitute care" means the out-of-home placement of a child or young adult who is in the legal or physical custody and care of the Department.

(11) "Substitute caregiver" means a relative caregiver, foster parent, or provider who is authorized to provide care to a child or young adult who is in the legal or physical custody of the Department.

(12) "Supervised visit" means a child-family contact that includes a designated third party to protect the emotional and physical safety of a child or young adult.

(13) "Visit" means planned, in-person contact between the child or young adult and one or more family members.

(14) "Young adult" means a person aged 18 through 20 years who remains in the care and custody of the Department, and lives in substitute care or lives independently through the Department's Independent Living Subsidy Program.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 16-2000, f. & cert. ef. 7-17-00; CWP 4-2007, f. & cert. ef. 3-20-07

413-070-0830

The Right to Visit

Subject to the limitation of section (4) of this rule:

(1) The child or young adult, a parent or legal guardian, and each sibling have the right to visit each other while the child or young adult is in substitute care. The child or young adult, the parent or legal guardian, and each sibling have a right to visit as often as reasonably necessary to support and enhance their attachment to each other.

(2) The acts or omissions of the parent or legal guardian that are unrelated to the child or young adult may not constitute a ground for prohibiting or canceling visits, unless there is reason to believe that there is a risk of child abuse or neglect.

(3) When Department resources alone cannot meet the family contact and visitation needs of the child or young adult, the caseworker must solicit help from family and community resources.

(4) The Department will prohibit a visit if:

(a) There is reason to believe that a supervised visit will not assure safety; or

(b) A court order prohibits visits.

(5) If a parent or legal guardian objects to the contact and visit requirements and limitations that the Department imposes, the parent or legal guardian may seek the juvenile court's review of the requirements and limitations.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 16-2000, f. & cert. ef. 7-17-00; CWP 4-2007, f. & cert. ef. 3-20-07

413-070-0840

Orientation Activities

Prior to the first contact and after each revision of the Visit and Contact Plan, the Department must explain to the child or young adult's family and substitute caregiver (and the child or young adult when appropriate) the rights and expectations regarding child-family visitation and contact, including its importance to the child or young adult. The Department must explain the reason for arranging supervised or unsupervised visits to the involved parties.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 16-2000, f. & cert. ef. 7-17-00; CWP 4-2007, f. & cert. ef. 3-20-07

413-070-0855

Determining Priority in Visit and Contact Plans

(1) The caseworker determines a hierarchy of the child or young adult's attachments and prioritizes visits with the child or young adult's parents or legal guardians, and siblings. The caseworker may consider the preferences expressed by the child or young adult.

(2) When the permanency plan is reunification with a parent or legal guardian, the first priority of the caseworker will be to provide visits to parents or legal guardians, siblings, and each intervenor granted visitation by the court.

(3) When the permanency plan is a plan other than return to the parents or legal guardians, the visitation priority of the caseworker shall be to both preserve the child or young adult's attachment to parents or legal guardians and siblings and promote the child or young adult's attachment to the permanent placement resource.

(4) When appropriate, the caseworker may consider establishing visits with the child or young adult's family members and non-related persons with whom the child or young adult has a significant attachment.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 16-2000, f. & cert. ef. 7-17-00; CWP 4-2007, f. & cert. ef. 3-20-07

413-070-0860

Types of Visit and Contact Plans

(1) The Temporary Visit and Contact Plan.

(a) The caseworker must jointly develop a written Temporary Visit and Contact Plan (CF 0831A) with the parents or legal guardians, and should involve other family members who are able to participate in facilitating visitation and supporting the ongoing safety plan when the child first enters substitute care or at the time of the first court hearing required by ORS 419B.183, whichever is first.

(b) The caseworker must arrange a Temporary Visit and Contact Plan (CF 0831A) that assures child safety.

(c) The plan must include the following:

(A) The names of each person, including the child's siblings, with whom the child may have contact; and

(B) A description of the contact permitted with each person that includes:

(i) The type, time of day, frequency, length, and location of the visits; and

(ii) The reason for supervised visits when supervision is required.

(d) If the first visit does not occur within the first week of a child's placement in substitute care, the caseworker must document the reason the visit did not occur in FACIS case notes.

(e) The caseworker must provide a copy of the Temporary Visit and Contact Plan to the parents or legal guardians and, when appropriate, to others participating in the Temporary Visit and Contact Plan.

(2) The Ongoing Visit and Contact Plan.

(a) The caseworker must develop an Ongoing Visit and Contact Plan (CF 0831B) within 30 days from the date that the child enters substitute care. The caseworker should involve the child or young adult whenever appropriate, the child or young adult's parents or legal guardians, the substitute caregiver, and others in the development of the visit and contact plan as appropriate. A copy of the written plan is given to each participant.

(b) The caseworker must arrange an Ongoing Visit and Contact Plan that supports child safety and the ongoing safety plan.

(c) When an Ongoing Visit and Contact Plan is revised, the caseworker completes a revised Ongoing Visit and Contact Plan and provides a copy of the revised plan to each participant.

(d) A plan that prohibits a parent, legal guardian, or sibling's visit must include the reason for each prohibition and state, if applicable, the conditions under which the Department would begin or resume contact.

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(e) The caseworker must document the implementation of the Ongoing Visit and Contact Plan in the case plan.

(f) The caseworker must develop the written Ongoing Visit and Contact Plan which must:

(A) Include the purpose and conditions of visits and contacts including type, time of day, frequency, length, and location;

(B) Describe the reason for supervision when supervision is required;

(C) Identify the individual who will supervise the visit or assist a parent or legal guardian in meeting the needs of the child or young adult during visitation;

(D) Support the ongoing safety plan; and

(E) Use language that parents or legal guardians can understand.

(g) In developing an Ongoing Visit and Contact Plan, the caseworker must:

(A) Arrange visits so that the type, time of day, frequency, length, and location of visits maximize contact between the parents or legal guardians and the child or young adult and support the ongoing safety plan;

(B) Meet the unique needs of the child or young adult, especially the child or young adult's chronological or developmental age and sense of time as they affect the child or young adult's attachment to a parent or legal guardian and other family members;

(C) Arrange visits that do not disrupt the school schedule of the child or young adult whenever possible;

(D) Arrange additional contact such as telephone calls, e-mail, and letters, and other activities the family and child or young adult may do together that support the ongoing safety plan, such as attendance by parents or legal guardians at doctor appointments, school events, and church;

(E) Address barriers to visitation that must be overcome in order for the parent, legal guardian, child or young adult to participate in the visits, including transportation, adaptations for those traveling long distances, health care requirements, and arranging child care for a child's sibling;

(F) Work within each parent's or legal guardian's employment and treatment obligations;

(G) Ensure that the Ongoing Visit and Contact Plan considers the safety needs of any non-offending parent or legal guardian in cases involving domestic violence, including but not limited to different visiting schedules or arranging safe drop-off and pick-up locations;

(H) Explain to a parent or legal guardian the consequences of failure to attend a visit;

(I) Explain known or anticipated reasons for ending the visit (such as health or safety);

(J) Take the actions necessary to assure culturally relevant and language appropriate visitation services; and

(K) Discuss alternatives when visits are canceled due to circumstances of the parent or legal guardian, substitute caregiver, or the Department.

(3) The Ongoing Visit and Contact Plan may be reviewed or revised at any time and must be reviewed every 90 days.

(4) An Ongoing Visit and Contact Plan must comply with the Interstate Compact on the Placement of Children.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 16-2000, f. & cert. ef. 7-17-00; CWP 4-2007, f. & cert. ef. 3-20-07

413-070-0870

Supervision of Visitation

(1) If supervision of visits is necessary to protect the child from risk of child abuse or neglect or to manage child safety, the Ongoing Visit and Contact Plan must state the reason for the supervision.

(2) When delegating supervision to persons that are not employees of the Department, the Department will ensure that the persons supervising the visit understand and comply with the ongoing safety plan, the dynamics of the individual family, the purpose of supervision, the specific circumstances that require the supervision, and the documentation requirements.

(3) When delegating supervision to other Department staff, the Department will ensure the Department employee who participates in the Ongoing Visit and Contact Plan understands the documentation requirements of OAR 413-070-0880.

(4) The caseworker must inform the parents or legal guardians of the reason for the supervision of the visits or contact, and, as resources allow, all supervision should be culturally relevant and language appropriate.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 16-2000, f. & cert. ef. 7-17-00; CWP 4-2007, f. & cert. ef. 3-20-07

413-070-0880

Documentation of Contact

(1) When Department staff supervise a visit, documentation of the visit must be included in the case file and must document:

(a) The location of the visit, who attended, and the length of the visit;

(b) Activities that occurred during the supervised visit;

(c) The impact of the visit on the child or young adult;

(d) Any missed visit and the reasons for the missed visit; and

(e) Any interrupted or terminated visits and reasons for the interruption or termination.

(2) When the caseworker arranges supervision by a person other than Department staff, the caseworker must require that the person supervising the visit provides complete written documentation of the visit, as required by section (1) of this rule, to the caseworker within seven days of each visit.

(3) When other types of contact in addition to face-to-face visits are included in the Ongoing Visit and Contact Plan, the caseworker must request regular feedback from the participants regarding the impact of the contact on the child or young adult.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 16-2000, f. & cert. ef. 7-17-00; CWP 4-2007, f. & cert. ef. 3-20-07

413-080-0040

Monitoring Child Safety

The purpose of these rules (OAR 413-080-0040 to 413-080-0067) is to describe the responsibilities of the Department in monitoring child and young adult safety and well-being.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 3-2004(Temp), f. & cert. ef. 3-1-04 thru 8-27-04; CWP 15-2004, f. & cert. ef. 8-25-04; CWP 4-2007, f. & cert. ef. 3-20-07

413-080-0050

Definitions

The following definitions apply to OAR 413-080-0040 to 413-080-0067:

(1) "Child" means a person under 18 years of age.

(2) "Certifier" means a Child Welfare employee who conducts assessments of applicants interested in providing relative or foster care to a child in the care or custody of the Department, determines whether or not to recommend approval of the operation of a relative care or foster home, and monitors the compliance of a relative care or foster care home with Child Welfare certification rules.

(3) "Contact" means any communication between a Child Welfare caseworker and a child, parent or legal guardian, foster parent or relative caregiver, provider, or other individual involved in a Child Welfare safety plan or case. Contact includes, but is not limited to, communication in person, by telephone, by video-conferencing, or in writing. Contact may occur, for instance, during a face-to-face visit; a treatment review meeting for a child, young adult, parent, or legal guardian; a court or Citizen Review Board hearing; or a family meeting.

(4) "Department" means the Department of Human Services, Child Welfare.

(5) "Face-to-face" means an in-person interaction between individuals.

(6) "FACIS" means the Family and Child Information System.

(7) "Foster parent" means a person who operates a home that has been approved by the Department to provide care for an unrelated child or young adult placed in the home by the Department.

(8) "Ongoing safety plan" means a documented set of actions or interventions that manage a child's safety after the Department has identified one or more safety threats to which the child is vulnerable and determined the parent or caregiver is unable or unwilling to protect the child. An ongoing safety plan can be in-home or out-of-home and is adjusted when necessary to provide the least intrusive interventions.

(9) "Parent" means the biological or adoptive mother or the legal father of the child. A legal father is a man who has adopted the child or whose paternity has been established or declared under ORS 109.070, ORS 416.400 to 416.465, or by a juvenile court. In cases involving an Indian child under the Indian Child Welfare Act (ICWA), a legal father includes a man who is a father under applicable tribal law. "Parent" also includes a putative father who has demonstrated a direct and significant commitment to the child by assuming or attempting to assume responsibilities normally associated with parenthood, unless a court finds that the putative father is not the legal father.

(10) "Placement support plan" means a documented set of actions or resources that is developed to assist a relative caregiver or foster parent to

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maintain conditions that provide safety and well-being for children or young adults in the home.

(11) "Protective capacity" means behavioral, cognitive, and emotional characteristics that can specifically and directly be associated with a person's ability and willingness to care for and keep a child safe.

(12) "Provider" means a person approved by a licensed private child-caring agency to provide care for a child or young adult, or an employee of a licensed private child-caring agency approved to provide care for a child or young adult.

(13) "Relative caregiver" means a person who operates a home that has been approved by the Department to provide care for a related child or young adult who is placed in the home by the Department.

(14) "Screener" means a Child Welfare employee with training required to provide screening services.

(15) "Substitute care" means the out-of-home placement of a child or young adult who is in the legal or physical custody and care of the Department.

(16) "Young adult" means a person aged 18 through 20 years who remains in the care and custody of the Department, and lives in substitute care or lives independently through the Department's Independent Living Subsidy Program.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 3-2004(Temp), f. & cert. ef. 3-1-04 thru 8-27-04; CWP 15-2004, f. & cert. ef. 8-25-04; CWP 4-2007, f. & cert. ef. 3-20-07

413-080-0052

Mandatory Reporting of a New Safety Threat on an Open Case

When a caseworker identifies a new or unscreened safety threat in an open case, the caseworker must:

(1) Immediately report the information regarding the safety threat to a screener; and

(2) Consult with the caseworker's supervisor to determine any immediate protective action required to assure the safety of the child.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 4-2007, f. & cert. ef. 3-20-07

413-080-0055

Monitoring Child Safety with an In-home Ongoing Safety Plan

(1) To manage an in-home ongoing safety plan and monitor the child's safety when the child is in the home of the parent or legal guardian, the assigned caseworker must contact the following individuals, as described below:

(a) The caseworker must have contact with the following individuals a minimum of once every 30 days:

(A) Face-to-face contact with the child;

(B) Face-to-face contact with the child's parents or legal guardians in the home of the parents or legal guardians; and

(C) Contact with each participant in the ongoing safety plan.

(b) The caseworker must also have face-to-face contact with the child and the child's parents or legal guardians within five working days of learning any of the following:

(A) A parent or legal guardian has violated a condition of the ongoing safety plan.

(B) A change in the protective capacity of a parent or legal guardian may negatively impact the ongoing safety plan.

(C) A change in the family circumstances may negatively impact the ongoing safety plan.

(D) A change in the composition of the household may negatively impact the ongoing safety plan.

(E) The caseworker is assigned a case that had been assigned to another caseworker (case transfer).

(2) To monitor the safety of the child, during each contact with a child, parent, or legal guardian required by section (1) of this rule, the caseworker must complete each of the following:

(a) Look for and assess any changes in the protective capacity of parents or legal guardians and changes in the ability or willingness of a parent or legal guardian to keep the child safe.

(b) Have a conversation with a verbal child or young adult.

(c) Assess whether the ongoing safety plan keeps the child safe by determining:

(A) Whether the home environment is stable enough for safety service providers to be in the home and be safe; and

(B) Whether the parent or legal guardian states that he or she is:

(i) Agreeable to the services in the ongoing safety plan;

(ii) Cooperating in services provided as prescribed by the ongoing safety plan;

(iii) Cooperating with all participants in the ongoing safety plan;

(iv) Participating in the actions and the time requirements of the ongoing safety plan; and

(v) Meeting the expectations detailed in the ongoing safety plan.

(d) Determine whether:

(A) The condition of the child is satisfactory; and

(B) Safety threats to the child are managed.

(e) Immediately notify his or her supervisor if he or she determines, during a contact with the child, parent, or legal guardian, that the in-home ongoing safety plan is insufficient to assure the safety of the child, to determine if any immediate protective action is necessary to assure the child's safety.

(3) Through contact with the participants in the ongoing safety plan, required by section (1) of this rule, the caseworker must determine whether:

(a) Participants in the ongoing safety plan are engaged and active in the safety activities;

(b) The parents or legal guardians are cooperating with the safety services prescribed by the ongoing safety plan;

(c) The safety service providers are engaged with the parents or legal guardians;

(d) The safety service providers can report that the specified intervention is effective;

(e) The participants and safety service providers agree that the level of intervention assures the ongoing safety of the child; and

(f) The services are the least intrusive available to assure the child's safety.

(4) Whenever a participant in the ongoing safety plan or a safety service provider reports information indicating that there is a new safety threat, the caseworker must determine whether the information has been reported to a screener. If the information has not been reported, the caseworker must:

(a) Immediately report the information to a screener; and

(b) Consult with his or her supervisor to determine whether an immediate protective action is required to assure the child's safety.

(5) The caseworker must determine whether:

(a) Behaviors, conditions, or circumstances within the family require an increase in the level of safety intervention; or

(b) A less intrusive ongoing safety plan can assure the safety of the child.

(6) The caseworker must revise the level of intervention of the in-home ongoing safety plan based on what is uniquely occurring within the family.

(a) The caseworker must reduce the level of intervention whenever:

(A) The improved protective capacity of the parent or legal guardian is sufficient to impact his or her ability to control safety threats as they are occurring within the family; and

(B) A safety threat can be managed with less intrusive actions or services.

(b) The caseworker must increase the level of intervention whenever:

(A) A parent or legal guardian is unable or unwilling to control the safety threats to the child as they are occurring within the family with the ongoing safety plan; or

(B) Any identified safety threat cannot be managed with the current ongoing safety plan.

(c) When the assessment of the behaviors, conditions, or circumstances occurring within the family results in a determination to revise the ongoing safety plan, the revised ongoing safety plan must comply with the criteria of OAR 413-015-0450(2)(d)(A)-(H).

(d) The revised ongoing safety plan must be approved by the caseworker's supervisor.

(7) The caseworker must document in FACIS case notes:

(a) The date, type, and location of each contact with the child, parents, or legal guardians;

(b) The date and type of each contact with each participant in the in-home ongoing safety plan;

(c) Observations and condition of the child during the home visit;

(d) Observations and condition of each parent or legal guardian during the home visit;

(e) Changes in the ability of each parent or legal guardian to parent and provide protective care;

(f) Observations or reports from ongoing safety plan participants and service providers;

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(g) How the ongoing safety plan continues to manage the safety threats as they are occurring within the family, or any revised ongoing safety plan and the facts supporting that revision;

(h) How any revision in the ongoing safety plan is the most suitable, least intrusive action available; and

(i) Any immediate protective action if required to assure the safety of the child.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 3-2004(Temp), f. & cert. ef. 3-1-04 thru 8-27-04; CWP 15-2004, f. & cert. ef. 8-25-04; CWP 4-2007, f. & cert. ef. 3-20-07

413-080-0059

Monitoring the Safety and Well-Being of the Child or Young Adult in Substitute Care

(1) To monitor the safety and well-being of the child or young adult when the parent or legal guardian is unable or unwilling to protect the child or young adult from the identified safety threats and substitute care is necessary to assure child safety, the caseworker must make the following contacts:

(a) Face-to-face contact with the child or young adult every 30 days;

(b) Contact with the relative caregiver, foster parent, or provider every 30 days; and

(c) Face-to-face contact with the relative caregiver, foster parent, or provider in the home or facility a minimum of once every 60 days. The face-to-face contact must include at least one of the certified or licensed adults who provide direct care for the child or young adult.

(2) Monitor and assess the child or young adult's safety and well-being in substitute care with a relative caregiver or foster parent.

(a) Within each 30-day period, the caseworker must complete all of the following activities:

(A) Have a conversation with a verbal child or young adult.

(B) Assess the child or young adult's progress in and adjustment to the placement.

(C) Receive updates from the child or young adult and from the relative caregiver or foster parent.

(D) Assess the safety and well-being of the child or young adult in the home by determining whether each of the following conditions exists in the home:

(i) The child or young adult is comfortable and the environment of the home is supportive and safe.

(ii) Adults in the home take an active role in caring for and supervising the child or young adult in the home.

(iii) Adult family members possess the physical, emotional, and cognitive capacity to sufficiently care for the child or young adult.

(iv) Family members and the child or young adult have formal and informal contact with others in the community.

(v) The child or young adult is accepted as part of the household.

(vi) The relative caregiver or foster family understands and is attentive to the vulnerability and need for protection of the child or young adult.

(vii) The relative caregiver or foster family is amenable to Department oversight and willing to partner with the Department.

(viii) When the child or young adult is placed with a relative caregiver, the child or young adult's parents and other family members understand the role of the relative caregiver in managing safety as a substitute care resource.

(ix) The child has a sufficiently positive relationship with the relative caregiver or foster family's own children who live in the home.

(x) The relative caregiver or foster family is caring for children matching the preferences and experience of the family.

(xi) The interactions between the child or young adult and other children placed in the home are sufficient to assure safety.

(xii) The present demands of the home do not exceed the ability of the relative caregiver or foster parent to provide safe and protective care.

(E) Document the date, time, location, and observations of the conditions that exist in the home in FACIS case notes.

(b) If one or more of the conditions described in paragraph (a)(D) of this section do not exist in the home, and the caseworker cannot confirm safety and well-being of the child or young adult in the home of the relative caregiver or foster parent, the caseworker must:

(A) Assess child safety immediately and determine if there is a safety threat as described in OAR 413-015-0420(1)(f)(A)(i) and (ii).

(B) If a safety threat is identified, immediately:

(i) Consult with the caseworker's supervisor to determine any immediate protective action required to assure the child's safety or any action required to assure the safety of the young adult; and

(ii) Contact a CPS screener and report the identified safety threat to the child.

(C) Document the behaviors, conditions, or circumstances observed in the home and any immediate protective actions in FACIS.

(c) When the child or young adult is currently safe in the home, but the conditions described in this rule or Child Welfare Policy II-B.1, "Certification Standards for Foster Parents, Relative Caregivers, and Pre-Adoptive Parents", (OAR 413-200-0301 to 413-200-0396) are not fully met, the caseworker must:

(A) Document date, time, location, and current behaviors, conditions, or circumstances observed in the home in FACIS notes and notify the certifier or certifier's supervisor within one working day.

(B) The caseworker must have face-to-face contact with the relative caregiver or foster parent within the next 30 days and the visit must occur in the home. The caseworker must observe the behaviors, conditions, or circumstances of the foster parent or relative caregiver, the child, and other children in the home, and conditions in the home.

(i) When the caseworker can confirm that current conditions in the home provide safety and well-being for the child or young adult, the caseworker must:

(I) Document the date, time, location, and observations of the condition of the environment in FACIS notes; and

(II) Notify the certifier of the improved behaviors, conditions, or circumstances in the home.

(ii) When the caseworker cannot confirm that current conditions in the home provide safety and well-being for the child or young adult, the caseworker must:

(I) Consult with the supervisor to determine whether to recommend to the certifier implementation of a Placement Support Plan to assist the relative caregiver or foster parent, or whether the child or young adult should no longer remain in the home because the conditions necessary to provide safety and well-being cannot be sustained in this home.

(II) Send written notification to the certifier of the behaviors, conditions, or circumstances in the home.

(III) Document the date, time, location, and the behaviors, conditions, or circumstances in the home in FACIS notes.

(3) Monitoring and assessing safety when the child or young adult is in a provider placement.

(a) During each 30-day period, the caseworker must:

(A) Assess the progress in and adjustment to the placement of the child or young adult;

(B) Have a conversation with a verbal child or young adult;

(C) Receive updates from the child or young adult and from the provider;

(D) Assess the safety of the child or young adult in the home or facility by determining whether each of the following conditions exists:

(i) The child or young adult is comfortable and the environment is supportive and safe.

(ii) Adults take an active role in caring for and supervising the child or young adult.

(iii) Adults possess the physical, emotional, and cognitive capacity to sufficiently care for the child or young adult.

(iv) The child or young adult has formal and informal contact with others in the community.

(v) The child or young adult is accepted as part of the household or facility.

(vi) The provider understands and is attentive to the vulnerability and need for protection of the child or young adult.

(vii) The provider is amenable to Department oversight and willing to partner with the Department.

(viii) The child or young adult has a sufficiently positive relationship with other children in the home or facility of the provider.

(ix) The provider is caring for children matching the preferences and experience of the provider.

(x) The interactions between the child or young adult and other children placed in the home or facility is sufficient to assure safety.

(xi) The present demands of the home or facility do not exceed the ability of the provider to provide safe and protective care.

(E) Document the date, time, location, and observations of the condition of the environment in FACIS.

(b) If one or more of the conditions described in paragraph (a)(D) of this section do not exist in the home or facility, and the caseworker cannot confirm safety and well-being of the child or young adult, the caseworker must:

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(A) Assess child safety immediately and determine if there is a safety threat as described in OAR 413-015-0420(1)(f)(A)(i) and (ii).

(B) If a safety threat is identified, immediately:

(i) Consult with the caseworker's supervisor to determine any immediate protective action required to assure the child's safety or any action required to assure the safety of the young adult; and

(ii) Contact a CPS screener and report the identified safety threat to the child.

(C) Document the behaviors, conditions, or circumstances observed in the home or facility and any immediate actions in FACIS case notes.

(c) If the caseworker does not identify a safety threat but the conditions described in paragraph (a)(D) of this section are not fully met, the caseworker must complete the following activities:

(A) Contact the child-caring agency's management to report the conditions in the home or facility and request additional supportive resources for the provider.

(B) Document in FACIS the contact required in paragraph (A) of this subsection.

(C) Have face-to-face contact with the provider within the next 30 days in the home or facility of the provider, and:

(i) Observe the actions and behaviors of the provider, the child or young adult, and other children in the home or facility, and conditions in the home or facility.

(ii) Confirm that current conditions in the home or facility provide safety and well-being for the child or young adult.

(iii) Contact the child-caring agency's management to confirm the conditions in the home or facility provide safety and well-being for the child or young adult.

(D) When the caseworker cannot confirm that current conditions in the home or facility provide safety and well-being for the child or young adult, the caseworker must consult with the supervisor to determine:

(i) Whether an immediate protective action is required to assure the child's safety or any other action is required to assure the safety of the young adult; or

(ii) Whether consultation with the child-caring agency's management is necessary to determine what additional support is necessary to assure the safety of the child or young adult in the home or facility of the provider.

(E) Document the date, time, location, and observations of the condition of the home or facility and any actions in FACIS case notes.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: CWP 4-2007, f. & cert. ef. 3-20-07

413-080-0063

Additional Documentation Required when a Child or Young Adult is Placed in Oregon through ICPC

(1) "ICPC" means the Interstate Compact for the Placement of Children (see ORS 417.200).

(2) When the child or young adult is placed in Oregon from another state, the caseworker must:

(a) Meet the requirement of monitoring the safety of the child or young adult's conditions and circumstances in substitute care, and

(b) Document and submit a report to Oregon's central office ICPC staff whenever conditions have not been met, and must include:

(A) Observations of the child or young adult and the relative caregiver, foster parent, or provider during the most recent contact; and

(B) Any actions taken by the caseworker to support the placement or ensure the safety and well-being of the child or young adult.

(3) The caseworker must submit a written report to Oregon's central office ICPC staff every 90 days. The report must include:

(a) Dates of all contacts in the previous 90-day period;

(b) Documentation of caseworker's observations of the child or young adult and relative caregiver, foster parent, or provider; and

(c) An analysis of the safety and well-being of the child in substitute care.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: CWP 4-2007, f. & cert. ef. 3-20-07

413-080-0067

Contact Requirements and Exceptions; Required Face-to-Face Contact

(1) The caseworker may make scheduled or unscheduled face-to-face contacts with the child or young adult, parent, legal guardian, relative caregiver, foster parent, or provider.

(2) The caseworker's supervisor may approve and designate a child welfare supervisor, the Child Welfare program manager, a Consultant,

Education, Trainer (CET), or another caseworker to make the contact required by these rules (OAR 413-080-0040 to 413-080-0067) when a caseworker's schedule or special circumstances prevent the caseworker from making the contact.

(a) Prior to arranging the required face-to-face contact, the designee must have information regarding the ongoing safety plan, the parents or legal guardians, and the child or young adult, including any special needs of the child or young adult.

(b) The staff person making the contact is responsible for assessing the safety of the child or young adult and completing the contact requirements set forth in these rules (OAR 413-080-0040 to 413-080-0067).

(3) The caseworker's supervisor or the Child Welfare program manager may approve an exception to the requirement of caseworker face-to-face contact with the child or young adult, parent, legal guardian, foster parent, relative caregiver, or provider when:

(a) The safety and well-being of the child or young adult can be confirmed by another responsible adult who has face-to-face contact with the child or young adult and confirms the child or young adult is safe, without a face-to-face contact by the caseworker.

(b) Approval for the exception is documented in the case file, including:

(A) The reason for approval of the exception;

(B) The length of time the exception is in effect, which shall be no longer than 90 days unless the caseworker obtains the approval of the Child Welfare program manager or designee (for purposes of this section, "designee" means a person under the direct and immediate supervision, or a person equal or higher in management position and responsibility to the designator); and

(C) The designee confirms the facts demonstrating that child safety and well-being are confirmed without the required face-to-face contact.

(c) Reasons for granting an exception to the face-to-face contact requirements include but are not limited to:

(A) The child or young adult is unavailable.

(B) The child or young adult has been placed in a planned permanent living arrangement that has been approved by the court (an exception may be allowed, if appropriate, for face-to-face caseworker contact every 90 days with the child or young adult and the relative caregiver, foster parent, or provider).

(C) The child or young adult has been placed in residential care (an exception may be allowed, if appropriate, for face-to-face caseworker contact with the child or young adult every 60 days).

(D) The parent or legal guardian of the child or young adult is unavailable.

(E) A parent or legal guardian of the child or young adult presents a safety risk to the caseworker or Department staff, which has been documented in the case file.

(F) A young adult is receiving only Independent Living Services. (An exception may be allowed, when appropriate, for face-to-face contact every 60 days. Face-to-face contact with a young adult confirms the appropriateness of services, not safety.)

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005

Hist.: CWP 3-2004(Temp), f. & cert. ef. 3-1-04 thru 8-27-04; CWP 15-2004, f. & cert. ef. 8-25-04; Renumbered from 413-080-0060, CWP 4-2007, f. & cert. ef. 3-20-07

413-200-0270

Purpose

(1) The purpose of these rules (OAR 413-200-0270 to 413-200-0296) is to describe:

(a) The activities of the Department related to the certification of a relative caregiver, foster parent, or pre-adoptive parent;

(b) Monitoring a certified family's compliance to the Certification Standards; and

(c) Recertification of a family.

(2) A certified relative caregiver, foster parent, and pre-adoptive parent will be referred to as a certified family throughout these rules.

(3) Regardless of the nature of the relationship between a family and a child or young adult, a family must be assessed and certified prior to the placement of the child or young adult in the home. No child or young adult in the care or custody of the Department may be placed in an uncertified home.

(4) In these rules, unless otherwise indicated, a child or young adult refers to a child or young adult in the care or custody of the Department.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005 - 418.640
Hist.: SOSCF 17-1999, f. & cert. ef. 8-12-99; CWP 4-2007, f. & cert. ef. 3-20-07

ADMINISTRATIVE RULES

413-200-0272

Definitions

The following definitions apply to OAR 413-200-0270 to 413-200-0296:

(1) "Applicant" means an individual or individuals who apply for a Certificate of Approval to become a certified family.

(2) "Certificate of Approval" means a document that the Department issues to approve the operation of a child-specific relative caregiver home, child-specific foster home, pre-adoptive home, or a regular foster home.

(3) "Certified family" means an individual or individuals who hold a Certificate of Approval from the Department to operate a home to provide care, in the home in which they reside, to a child or young adult in the care or custody of the Department.

(4) "Certifier" means a Child Welfare employee who conducts assessments of applicants interested in providing relative or foster care to a child or young adult in the care or custody of the Department, determines whether or not to recommend approval of the operation of a relative care or foster home, and monitors the compliance of a relative care or foster care home with Child Welfare certification rules.

(5) "Child" means a person under 18 years of age.

(6) "Child-Specific Certificate of Approval" means a document authorizing an individual or individuals to operate a home to provide care for a specific child or young adult in the care or custody of the Department.

(7) "Criminal records check" means the process for obtaining and reviewing an individual's criminal history information.

(8) "Department" means the Department of Human Services, Child Welfare.

(9) "Denial" means the refusal of the Department to issue an initial or renew a Certificate of Approval to operate a certified home to provide care for a child or young adult in the care or custody of the Department.

(10) "Designee" means a person whom the designator directly and immediately supervises, or a person with equal or greater management responsibility than the designator.

(11) "Discipline" means a training process a certified family uses to help a child or young adult develop the self control and self direction necessary to assume responsibilities, make daily living decisions, and learn to conform to accepted levels of social behavior.

(12) "Firearm" means a weapon from which a dangerous projectile can be expelled by gas, air, spring, or an explosive. This includes, but is not limited to, any hand gun, pellet gun, BB gun, or soft air gun.

(13) "Foster parent" means a person who operates a home that has been approved by the Department to provide care for an unrelated child or young adult placed in the home by the Department.

(14) "Home study" means a document containing an analysis of the ability of the applicant to provide safe and appropriate care of a child or young adult in the care or custody of the Department.

(15) "Inactive Referral Status" means a period of time, not to exceed 12 months, during which neither the Department nor any other agency will place an additional child or young adult with a certified family. The certified family or the Department may initiate the Inactive Referral Status.

(16) "Member of the household" means any adult or child living in the home, including any caregiving employees and volunteers who may reside in the home.

(17) "Placement support plan" means a documented set of actions or resources that is developed to assist a relative caregiver or foster parent to maintain conditions that provide safety and well-being for children or young adults in the home.

(18) "Pre-adoptive parent" means an individual with a current Certificate of Approval to operate a home to provide care for a child placed by the Department for purposes of adoption.

(19) "Psychotropic medication" means medication, the prescribed intent of which is to affect or alter thought processes, mood, or behavior, including, but not limited to antipsychotic, antidepressant, and anxiolytic medication and behavior medications. The classification of a medication depends upon its stated, intended effect when prescribed because it may have many different effects.

(20) "Relative caregiver" means a person who operates a home that has been approved by the Department to provide care for a related child or young adult placed in the home by the Department.

(21) "Relief or Respite Care" means:

(a) A formal planned arrangement to relieve a certified family's responsibilities by a person temporarily assuming responsibility for the care and supervision of the child or young adult; or

(b) Assistance provided by a person who comes into the home of the certified family to care for the child or young adult in the care or custody of the Department.

(22) "Revocation" means an administrative act by the Department that rescinds an existing Certificate of Approval.

(23) "Young adult" means a person aged 18 through 20 years who remains in the care and custody of the Department, and lives in substitute care or lives independently through the Department's Independent Living Subsidy Program.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005 - 418.640

Hist.: SOSCF 17-1999, f. & cert. ef. 8-12-99; Renumbered from 413-200-0280, CWP 4-2007, f. & cert. ef. 3-20-07

413-200-0274

Responsibilities for Certification

(1) Sections (2) to (5) of this rule cover Department responsibilities for an expedited process for certification of an applicant for a Child-Specific Certificate of Approval. Sections (6) and (7) cover Department responsibilities for certification of all other applicants.

(2) To complete the assessment for an applicant for a Child-Specific Certificate of Approval, the certifier must:

(a) Review the completed application.

(b) Have face-to-face contact with the applicant and all members of the household. If a member of the household is unavailable when conducting face-to-face contact for a child-specific certificate of approval, the certifier must:

(A) Obtain the approval of the supervisor to delay face-to-face contact with that member of the household; and

(B) Determine a date and time for the face-to-face contact within one week of the date the member of the household becomes available.

(c) Verify applicant identity by viewing photo identification of each applicant.

(d) Explain the certification process.

(e) Discuss with the applicant the role and responsibility of the Department.

(f) Assess the applicant's motivation for and interest in caring for the child or young adult.

(g) Complete a home visit. Observe and assess the safety of the physical environment and complete a Safety Assessment of the home.

(h) Gather and analyze information, through interview and observation, as it relates to each applicant's personal qualifications and assess the conditions that appear to exist in the home that provide safety and well-being for a child or young adult.

(i) Assure completion of criminal records checks on all members of the household; and, at the Department's discretion, any child under 18 who lives at the applicant's address, as described in Child Welfare Policy I-G.1.4, "Criminal History", OAR 413-120-0400 to 413-120-0470.

(A) Assess any safety concerns regarding the applicant or member of the household; and

(B) If appropriate, obtain an exception pursuant to OAR 413-120-0450(6) for any criminal history of an applicant or member of the household.

(j) Assure initiation of Child Abuse History Background Checks for each adult member of the household.

(A) A child abuse history background check must be completed in the state of Oregon and requested from any other state where the individual has resided in the last five years;

(B) Assess any safety concerns regarding the applicant or member of the household; and

(C) If appropriate, obtain approval from the District Manager or designee on a form approved by the Department when Child Protective Services has concluded that a member of the household is the perpetrator of a Founded Disposition or has on his or her record an Unable to Determine Child Abuse or Neglect Disposition in Oregon or has a similar disposition from another state to continue certification.

(k) Obtain at least two personal references for the applicant.

(l) Assure the applicant possesses a valid driver license and auto insurance if the applicant will transport a child or young adult in the care or custody of the Department.

(m) Determine, with input from the applicant, the gender, ages, and maximum number of children and young adults that may be placed in the home by the Department.

(n) If appropriate, obtain approval from the Child Welfare program manager or designee on a form approved by the Department when:

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(A) The applicant or a member of the household is an in-home day care provider or foster care provider licensed by another child-caring agency, unless placement is authorized under an Interagency Agreement;

(B) The applicant or a member of the household is an adult foster care or in-home adult day care provider; or

(C) The applicant applying to become a relative caregiver is 18, 19, or 20 years of age.

(o) If appropriate, obtain approval from the District Manager on a form approved by the Department, when the applicant applies for a child specific Certificate of Approval through an office other than the office in the county in which the family resides.

(p) If appropriate, obtain the approval of the Child Welfare program manager when the children or young adults placed in the home will exceed the maximum number of children or young adults as described in OAR 413-200-0276.

(q) After completing the activities in section (2)(a)—(p) of this rule, the Department may issue a child-specific Certificate of Approval for up to 90 days.

(3) Within 90 days of the date the Child-Specific Certificate of Approval is issued, the certifier must:

(a) Obtain at least two additional references.

(b) Contact the caseworker of the child or young adult placed in the home regarding the child or young adult's adjustment in placement and the certified family's ability to meet the child or young adult's needs.

(c) Conduct another home visit to gather social history information regarding personal qualifications of the certified family and assess the conditions that appear to exist in the home that provide safety and well-being for a child or young adult.

(d) Complete the Child Abuse History Background Checks for each member of the household.

(e) Verify that the certified family will have completed:

(A) Orientation within 30 days after the Child-Specific Certificate of Approval was issued; and

(B) Foundations of Relative Care, Foster Care, and Pre-Adoptive Care (Foundations) training before or within 12 months after the date on which the Certificate of Approval was issued, or have written documentation of completion of equivalent training content from another licensed child-caring agency within two years of an applicant's dated application for a Certificate of Approval from the Department.

(f) Discuss and develop a training plan with the certified family.

(g) Document the assessment of the certified family's ability to provide safety and well-being for the child or young adult in a home study.

(4) After completing the activities in section (3) of this rule, the Department may extend the Child-Specific Certificate of Approval to a two-year period, beginning the date the initial Child-Specific Certificate of Approval was issued.

(5) When the activities described in subsections (3)(a) to (3)(g) of this rule have not been completed within 90 days, the District Manager or designee may extend the Child-Specific Certificate of Approval for:

(a) No longer than 60 days; or

(b) Longer than 60 days if an activity has not been completed due to circumstances beyond the control of the Department.

(6) To complete the assessment for the certification of all other applicants, the certifier must:

(a) Review the completed application.

(b) Have face-to-face contact with the applicant and all members of the household.

(c) Verify applicant identity by viewing the photo identification of each applicant.

(d) Explain the certification process.

(e) Discuss with the applicant the role and responsibility of the Department.

(f) Assess the applicant's motivation for and interest in caring for the child or young adult.

(g) Complete a minimum of two home visits. Observe and assess the safety of the physical environment and complete a Safety Assessment of the home.

(h) Gather social history information through interview and observation. Analyze information as it relates to each applicant's personal qualifications and assess the conditions that appear to exist in the home that provide safety and well-being for a child or young adult.

(i) Assure completion of criminal records checks on all members of the household; and, at the Department's discretion, any child under 18 who lives at the applicant's address, as described in Child Welfare Policy I-G.1.4, "Criminal History", OAR 413-120-0400 to 413-120-0470.

(A) Assess any safety concerns regarding the applicant or member of the household; and

(B) If appropriate, obtain an exception pursuant to OAR 413-120-0450(6) for any criminal history of an applicant or member of the household.

(j) Assure completion of Child Abuse History Background Checks for each adult member of the household.

(A) If the applicant or an adult member of the household has lived outside the state of Oregon in the previous five years, a child abuse history background check must be obtained from each state where the individual resided in the last five years;

(B) Assess any safety concerns regarding the applicant or member of the household; and

(C) If appropriate, obtain approval from the District Manager or designee on a form approved by the Department when Child Protective Services has concluded that a member of the household is the perpetrator of a Founded Disposition, has on his or her record an Unable to Determine Child Abuse or Neglect Disposition in Oregon, or has a similar disposition from another state to continue certification.

(k) Obtain at least four personal references for the applicant.

(l) Assure the applicant possesses a valid driver license and auto insurance if the applicant will transport a child or young adult in the care or custody of the Department.

(m) Determine, with input from the applicant, the gender, ages, and maximum number of children and young adults that may be placed in the home by the Department.

(n) If appropriate, obtain approval from the Child Welfare program manager or designee on a form approved by the Department when:

(A) The applicant or a member of the household is an in-home day care provider or foster care provider licensed by another child-caring agency, unless placement is authorized under an Interagency Agreement;

(B) The applicant or a member of the household is an adult foster care or in-home adult day care provider; or

(C) The applicant applying to become a relative caregiver is 18, 19, or 20 years of age.

(o) If appropriate, obtain approval from the District Manager on a form approved by the Department when the applicant applies for certification through an office other than the office in the county in which the family resides.

(p) If appropriate, obtain the approval of the Child Welfare program manager when the children or young adults placed in the home will exceed the maximum number of children or young adults as described in OAR 413-200-0276.

(q) Verify that the applicant has completed Orientation and Foundations of Relative Care, Foster Care, and Pre-Adoptive Care (Foundations) or has written documentation of completion of equivalent training content from another licensed child-caring agency within two years of an applicant's dated application for a Certificate of Approval from the Department.

(r) Discuss and develop a training plan with the applicant.

(s) Document the assessment of the applicant's ability to provide safety and well-being for the child or young adult in a home study.

(7) After completing the activities in section (6) of this rule, the Department may issue a Certificate of Approval for a two-year period.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005 - 418.640

Hist.: CWP 4-2007, f. & cert. ef. 3-20-07

413-200-0276

Responsibility to Determine the Maximum Number of Children or Young Adults in a Certified Family Home

(1) Unless extraordinary circumstances exist, a supervisor may not issue a Certificate of Approval that, when the home is fully occupied, exceeds the following maximum number of children or young adults living in the home:

(a) A total of four children or young adults to one certified adult living in the home;

(b) A total of seven children or young adults to two certified adults living in the home; or

(c) A total of two children under the age of three.

(2) When making the determination of the maximum number of children or young adults in the home as described in section (1) of this rule, the supervisor includes all children and young adults residing in the home.

(3) The Child Welfare program manager may approve placing additional children or young adults in the home in extraordinary circumstances.

(a) Extraordinary circumstances include, but are not limited to:

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(A) Placing siblings together; or
(B) Placing a special needs child or young adult with a family that has demonstrated extraordinary ability in meeting the special needs of a child or young adult.

(b) In these extraordinary circumstances, the certifier must assess:

(A) The skills, abilities, and training of the certified family related to the quantity of services that are required by the child or young adult;

(B) The skills, abilities, and special needs of the child or young adult;

(C) The amount of Departmental supervision the certified family requires and the certified family's network of support to the child or young adult related to the child or young adult's needs;

(D) The maximum safe physical capacity of the home, including sleeping arrangements; and

(E) The plan for each individual to escape from the home in case of fire or other emergency.

(4) The certifier must document the assessment described in subsection (3)(b) of this rule on a form approved by the Department and obtain Child Welfare program manager approval prior to permitting the home to exceed the maximum number of children or young adults specified in section (1) of this rule.

(5) When a Child Welfare program manager approves placing additional children or young adults in a certified home, the certifier must:

(a) Visit the home every 90 days;

(b) Assess the certified family's compliance with certification standards; and

(c) Document the family's compliance with certification standards after each visit.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005 - 418.640

Hist.: CWP 4-2007, f. & cert. ef. 3-20-07

413-200-0278

Responsibilities for Issuing a Certificate of Approval

(1) The Department must complete the assessment activities described in OAR 413-200-0274 and issue a Certificate of Approval or provide notice of intent to deny a Certificate of Approval within 180 days of receipt of the application, unless the application is withdrawn or the assessment period is extended by the District Manager or designee.

(2) The supervisor reviews all assessment activities, ensures all safety components of the certification standards are met, ensures any required exception has been obtained for OAR 413-200-0274(2)(i)(B) or 413-200-0274(6)(i)(B), and required approvals have been obtained for OAR 413-200-0274(2)(j)(C), 413-200-0274(2)(n)-(p), 413-200-0274(6)(j)(C), 413-200-0274(6)(n)(A)-(C), or 413-200-0274(6)(o) or (p) prior to the Department issuing a Certificate of Approval.

(a) The Department may issue a Child-Specific Certificate of Approval for up to 90 days when all activities required in OAR 413-200-0274(2) have been completed; or

(b) When all assessment activities are completed and written documentation has been submitted, the Department may issue a two-year Certificate of Approval.

(3) A Certificate of Approval must include the following information:

(a) The name of each primary adult, including married couples and domestic partners, approved as the certified family;

(b) The address to which the certificate applies;

(c) The age range (birth - 20) and gender of the children or young adults for whom the certified family is approved to provide care;

(d) The maximum number of children or young adults that can be placed in the home;

(e) The provider number that the Department has given the home;

(f) The beginning and expiration dates of the certificate; and

(g) The signature of the Child Welfare program manager or designee.

(4) A Child-Specific Certificate of Approval must state the number, age range, and gender of the specific children or young adults placed in the home.

(5) The Department may at its discretion modify the Certificate of Approval to increase or decrease the maximum number of children or young adults, within the limits prescribed in OAR 413-200-0276(1), the age range, or the gender of the children or young adults for whom the family is certified.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005 - 418.640

Hist.: CWP 4-2007, f. & cert. ef. 3-20-07

413-200-0281

Alternate Caregivers

The certifier must:

(1) Discuss with the certified family the plan for providing care to a child or young adult, when the certified family will be unavailable to provide care.

(2) Assure completion of criminal records checks on any person the certified family has identified to provide relief or respite care for the certified family; review the information, and, if needed and appropriate, obtain an exception as described in Child Welfare Policy I-G.1.4, "Criminal History", OAR 413-120-0400 to 413-120-0470 prior to the individual providing relief or respite care.

(3) Conduct Child Abuse history background checks on any person the certified family has identified to provide relief or respite care and review the information to assure the person presents no safety concerns.

(4) Analyze information under sections (2) and (3) of this rule prior to determining the person is safe and appropriate to provide relief or respite care and authorizing the person to provide relief and respite care.

(5) Document the analysis under section (4) of this rule in the certification record.

(6) Notify the certified family of the authorization for the person identified to provide relief or respite care.

(7) Verify that any certified family identified to provide relief or respite care for another certified family has a current Certificate of Approval.

(8) When the analysis under section (4) of this rule results in a determination that the person is not either a safe or appropriate person to provide relief or respite care, notify the certified family that the person cannot be used to provide relief or respite care.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005 - 418.640

Hist.: CWP 4-2007, f. & cert. ef. 3-20-07

413-200-0283

Responsibilities to Monitor Certification Compliance

(1) The certifier must monitor each certified family's compliance with Child Welfare Policy II-B.1, "Certification Standards for Foster Parents, Relative Caregivers, and Pre-Adoptive Parents", OAR 413-200-0301 to 413-200-0396. To monitor compliance, a certifier must:

(a) Conduct a minimum of one home visit every 180 days to assure compliance with Certification Standards.

(b) When a certified family has been approved to exceed the maximum number of children or young adults as prescribed in OAR 413-200-0276(1), conduct a minimum of one home visit every 90 days as long as the approval is applicable.

(c) Whenever it becomes known that the certified family wishes to become an in-home child care, an adult foster care, or in-home adult day care provider, assess the certified family's ability to maintain conditions in the home that provide safety and well-being for the child or young adult placed in the home by the Department and, when appropriate, obtain approval from the Child Welfare program manager or designee on a form approved by the Department, as described in OAR 413-200-0274(2)(n)(A)-(B) and (4)(n)(A)-(B) when appropriate.

(d) Whenever it becomes known that another agency wishes to place a child or young adult in a certified home, obtain approval from the Child Welfare program manager or designee on a form approved by the Department prior to the placement of the child or young adult.

(2) To complete the monitoring responsibilities, the certifier must:

(a) Seek input from the caseworkers of children placed or living in the home during the past 180 days and assess the conditions that appear to exist in the home that provide safety and well-being for the child or young adult;

(b) Assess the information that the certifier learns from these contacts to determine whether conditions appear to exist in the home that provide safety and well-being for the child or young adult placed in the home by the Department;

(c) Review and assess the conditions that appear to exist in the home that provide safety and well-being for the child or young adult when any extraordinary circumstances described in OAR 413-200-0276(3)(a) exist; and

(d) Document the contacts with the certified family and the assessment information obtained under this rule in the certification record.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005 - 418.640

Hist.: CWP 4-2007, f. & cert. ef. 3-20-07

413-200-0285

Responsibilities When Developing a Placement Support Plan

(1) When a certifier determines that a certified family needs additional support to maintain conditions that provide safety and well-being in the home, the certifier must develop a Placement Support Plan. A Placement

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Support Plan is appropriate when one or both of the following circumstances apply:

(a) The certified family needs additional training or instruction to improve the care giving practices to meet the needs of the children or young adults placed in the certified family's home.

(b) The certified family is not in compliance with one or more of the Department's certification standards, and the non-compliance does not result in a safety threat to a child.

(2) When a Placement Support Plan is appropriate to support a certified family, the certifier must gather information regarding current circumstances from:

(a) The certified family;

(b) The children or young adults placed in the certified family's home, when appropriate;

(c) The caseworkers of the children or young adults currently placed in the home; and

(d) Other collateral contacts that may have information regarding the characteristics of substitute care provided in the certified family's home.

(3) The certifier must schedule a meeting with the certified family to discuss the current circumstances and appropriate supports and services to assist the certified family.

(4) The certifier must prepare a Placement Support Plan that specifies:

(a) The actions or services in which the certified family will participate;

(b) The actions or services the Department will provide to support the certified family in maintaining conditions that provide safety and well-being for the children or young adults placed in the home by the Department;

(c) Written agreement that the certified family is willing and able to participate in the actions or services;

(d) Written agreement to review the Placement Support Plan on a specified date, which is within at least 90 days; and

(e) The anticipated end date of the Placement Support Plan.

(5) A supervisor must approve the Placement Support Plan.

(6) When the Placement Support Plan has been approved, the certifier must:

(a) Provide a copy to the certified family;

(b) File a copy in the certification file;

(c) Document a summary of the Placement Support Plan in FACIS, provider notes; and

(d) Provide written notification to the caseworkers of each child or young adult placed in the home of the Placement Support Plan.

(7) The certifier must contact the certified family prior to the anticipated end date of the Placement Support Plan to assure that all activities and services have been completed, or the certified family can meet the needs of the children or young adults placed in the home by the Department and is in compliance with Department certification standards.

(8) The certifier must document the end of a Placement Support Plan in the certification file, in FACIS provider notes, and notify the caseworkers of each child or young adult placed in the certified family's home.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005 - 418.640

Hist.: CWP 4-2007, f. & cert. ef. 3-20-07

413-200-0287

Responsibilities Regarding Recertification

(1) A certified family must be assessed every two years. The Department must complete the assessment and provide written notice of the decision to renew a certificate approval or intent to deny the renewal of the certified family's certificate of approval, prior to expiration of the existing certificate. To renew a Certificate of Approval, the certifier must complete all of the following:

(a) Complete a home visit and have face-to-face contact with all members of the household.

(b) Review the completed Certified Family Certificate Renewal or Change of Status Application.

(c) Confirm completion of required hours of training, and develop a training plan for the new certification period.

(d) Assure completion of criminal records checks on all adult members of the household; and, at the Department's discretion, any child under 18 who lives at the applicant's address, as described in Child Welfare Policy I-G.1.4, "Criminal History", OAR 413-120-0400 to 413-120-0470:

(A) Assess any safety concerns regarding the applicant or member of the household; and

(B) Obtain an exception per OAR 413-120-0450(6) Criminal History Checks for any new criminal history conviction for an applicant or member of the household, if appropriate.

(e) Assure completion of Child Abuse History Background Checks for all individuals living at the applicant's address.

(A) If the applicant or an adult member of the household has lived outside the state of Oregon in the previous five years, and an out-of-state child abuse history background check has not been completed, a child abuse history background check must be requested from each state where the individual resided in the last five years.

(B) Assess any safety concerns regarding the applicant or adult member of the applicant's household.

(C) If appropriate, obtain approval from the District Manager or designee, on a form approved by the Department, when Child Protective Services has concluded that a member of the applicant's household is the perpetrator of a Founded Disposition or has on his or her record an Unable to Determine Child Abuse or Neglect Disposition or similar disposition from another state to continue certification.

(f) Review and assess whether conditions appear to exist in the home that provide safety and well-being for the child or young adult.

(g) Review and analyze the certified family's skills and abilities in maintaining conditions in the home that provide safety and well-being for the child or young adult, maintaining relationships with the community and the Department, and supporting the child or young adult's case plan.

(h) Update the home study including results of the assessment completed in subsections (a) to (g) of this section and submit to the supervisor for approval.

(2) The supervisor reviews and may approve or deny the home study and, if he or she approves, the Department issues a two-year certificate of approval.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005 - 418.640

Hist.: CWP 4-2007, f. & cert. ef. 3-20-07

413-200-0289

Responsibilities Regarding Voluntary Termination of an Application or an Existing Certificate of Approval

(1) When an applicant requests to withdraw his or her application for a Certificate of Approval, the certifier must document his or her communication regarding the applicant's request.

(2) When a certified family requests to close their home or does not wish to renew a Certificate of Approval, the certifier must document his or her communication regarding the certified family's request.

(3) A Child-Specific Certificate of Approval terminates when the specific child or young adult leaves the certified home. The certifier must confirm the certified family understands that the Child-Specific Certificate of Approval is void when the child or young adult is no longer placed in the home. When a child-specific certified family requests to become certified as a foster parent, the certifier must:

(a) Provide the family with a Certified Family Certificate Renewal or Change of Status Application; and

(b) Assess the family as a general applicant.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005 - 418.640

Hist.: CWP 4-2007, f. & cert. ef. 3-20-07

413-200-0292

Responsibilities when Re-Opening a Certified Home

(1) When a certified family has been closed less than six months, the previous Certificate of Approval would not have expired during the months the home was closed (if the Certificate of Approval was not revoked), the certified family continues to live in the same residence, and the certified family requests that the Department reopen the Certificate of Approval, the certifier must:

(a) Provide the family with a Certified Family Certificate Renewal or Change of Status Application;

(b) Conduct a home visit to identify and assess any changes in the environment or family;

(c) Observe and assess the safety of the physical environment and complete a Safety Assessment of the home; and

(d) Document in the certification file the circumstances that the Department reopened the Certificate of Approval.

(2) When a certified family has been closed for six months or more or the previous Certificate of Approval would have expired during the months the home was closed, and the previously certified family contacts the Department to become certified again, the certifier must:

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(a) Provide the necessary documents for an initial application for a Certificate of Approval to provide care to the certified family for completion;

(b) Complete the assessment process as described in OAR 413-020-0274(6);

(c) Update the family's home study and document any changes in the family's circumstances since the most recent closure of the Certificate of Approval; and

(d) Submit the updated home study to the supervisor for approval.

(3) The supervisor reviews and may approve or deny the home study and, if he or she approves, issue a two-year Certificate of Approval.

(4) Foundations training is required if a family previously certified by the Department has not been certified within the last two years.

(5) When the certified family moves to another residence in the State of Oregon, the Certificate of Approval automatically terminates. The Department may issue a new Certificate of Approval for the new residence after the activities described in this section have been completed. Within 14 working days, the certifier must:

(a) Provide the certified family a Certified Family Certificate Renewal or Change of Status Application;

(b) Review the completed Certified Family Certificate Renewal or Change of Status Application;

(c) Conduct a home visit and Safety Assessment prior to recommending a Certificate of Approval for the family to the supervisor; and

(d) Document in the certification file the circumstances of the family's relocation.

(6) When a certified family has been initially certified by the local Child Welfare office in the county in which the family resides and the family moves to another county, all of the following actions are required:

(a) The issuing Child Welfare office's certification supervisor must notify the certification supervisor in a Child Welfare office in the county to which the certified family is moving;

(b) The certification file and ongoing Department responsibilities are transferred to a Child Welfare office in the county to which the certified family is moving, unless the District Manager in the county to which the certified family is moving has approved that Department certification responsibilities remain in the Child Welfare office in the county from which the certified family is moving.

(c) Complete the actions described in section (5) of this rule.

(7) When a certified family wishes to move outside the State of Oregon with a child or young adult, refer to Child Welfare Policy I-B.3.4.2, "Interstate Compact on the Placement of Children", OAR 413-040-0200 to 413-040-0330.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005 - 418.640

Hist.: CWP 4-2007, f. & cert. ef. 3-20-07

413-200-0294

Responsibilities Regarding Inactive Referral Status

(1) The certified family or the Department may initiate an Inactive Referral Status. When a certified family is on inactive referral status, no additional child or young adult may be placed in the home.

(2) A certified family may ask the Department to place their home on Inactive Referral Status for any reason for up to 12 months. The inactive referral status begins immediately upon the request of the family.

(3) The certifier must immediately notify Department staff responsible for placement that the home is unavailable for placement of a child or young adult.

(4) Within 30 days of a certified family requesting inactive referral status, the certifier must send a letter to the certified family that documents the inactive status, the reasons for the status, and the requested length of the inactive referral status.

(5) The Department may place a certified family on Inactive Referral Status for one or more of the following reasons:

(a) The special needs of a child or young adult, who is currently in the home, require so much of the certified family's care and attention that no agency should place an additional child or young adult in the home.

(b) The family or members of the household are experiencing significant family or life stress.

(c) The certified family does not currently meet one or more of the certification standards.

(6) The Department must place a certified family on Inactive Referral Status when the Department is assessing an allegation of child abuse or neglect in the home.

(7) Within 14 days of the Department's initiating inactive referral status, the certifier must send a letter to the certified family that documents the

beginning date of inactive referral status, the reason for the inactive referral status, and any specific certification standards that have been violated, if any.

(a) The certifier and the certified family may collaborate to develop a Placement Support Plan to address the concerns precipitating the inactive referral status; and

(b) The certification supervisor reviews and approves the Placement Support Plan.

(8) The Department may revoke a Certificate of Approval if a certified family is unable to remedy a violation of a certification rule within the time frame of the Inactive Referral Status.

(9) When the certified family initiates Inactive Referral Status, the inactive status ends at the request of the certified family.

(10) When the Department initiates Inactive Referral Status, the Department determines, within the time frame of the Inactive Referral Status, when the conditions that warranted the Inactive Referral Status have been resolved.

(11) When the Inactive Referral Status ends, the certifier must:

(a) Document removal of the Inactive Referral Status in the certification file;

(b) Send written notification to the family within 30 days; and

(c) Notify Department staff responsible for placement that the home is available for placement of a child or young adult.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005 - 418.640

Hist.: CWP 4-2007, f. & cert. ef. 3-20-07

413-200-0296

Responsibilities Regarding Denial or Revocation of a Certificate of Approval

(1) The Department may deny an application for a Certificate of Approval or revoke a Certificate of Approval when the applicant or certified family does not meet one or more of the certification rules. The certifier must provide the applicant a written notice of the intent to deny a Certificate of Approval, which must state the reason or reasons for the denial.

(2) The Department must revoke a Certificate of Approval when a certified family violates one or more of the rules in Child Welfare Policy II-B.1, "Certification Standards for Foster Parents, Relative Caregivers, and Pre-Adoptive Parents", OAR 413-200-0301 to 413-200-0396, and at the conclusion of a CPS assessment, the Department determines that a child is unsafe and the certified family cannot or will not protect the child.

(3) The Department may deny an application or revoke a Certificate of Approval if the Department discovers an Applicant or certified family has falsified information (by act of commission or omission) before or after the Certificate of Approval has been issued or if a certified family fails to provide information or inform the Department of any disqualifying condition that arises after the Certificate of Approval has been issued.

(4) The certifier must provide the certified family a written notice of revocation, which must state each reason for the revocation.

(5) The Department must remove from the home all the children or young adults in the care or custody of the Department upon making the decision to revoke the certified family's Certificate of Approval.

(6) When the Department has revoked a family's Certificate of Approval or denied an application for a Certificate of Approval, the Department has the discretion to require a waiting period of up to five years before the Department will accept a new application.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005 - 418.640

Hist.: CWP 4-2007, f. & cert. ef. 3-20-07

413-200-0301

Purpose of Certification Standards

(1) The purpose of these rules (OAR 413-200-0301 to 413-200-0396) is to describe the criteria for becoming a certified relative caregiver, foster parent, or pre-adoptive parent. A certified relative caregiver, foster parent, or pre-adoptive parent will be referred to as a certified family throughout these rules.

(2) These rules apply to any person requesting a Certificate of Approval, any person who has a current Certificate of Approval, or any person who is requesting re-certification to provide immediate, temporary, or permanent care for a child or young adult in the care or custody of the Department. The person may be an adult related to the child, an unrelated adult with an existing relationship to the child, or an adult unrelated and unknown to the child.

(3) In these rules, unless otherwise indicated, a child or young adult refers to a child or young adult in the care or custody of the Department.

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Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005 - 418.640
Hist.: SOSCF 29-2000(Temp), f. & cert. ef. 9-27-00 thru 3-23-01; SOSCF 7-2001, f. & cert. ef. 3-23-01; CWP 4-2007, f. & cert. ef. 3-20-07

413-200-0305

Authorization

(1) Title IV-E, section 471 (a)(10) Social Security Act, requires the State of Oregon to establish a state authority responsible for establishing and maintaining standards for foster family homes and child care institutions.

(2) ORS 418.005—418.640 give the Department the authority and responsibility to approve homes for children and young adults in the care or custody of the Department. ORS 418.005—418.640 further authorize the Department to develop rules to approve homes.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005 - 418.640
Hist.: SOSCF 29-2000(Temp), f. & cert. ef. 9-27-00 thru 3-23-01; SOSCF 7-2001, f. & cert. ef. 3-23-01; CWP 4-2007, f. & cert. ef. 3-20-07

413-200-0306

Definitions

The following definitions apply to OAR 413-200-0301 to 413-200-0396:

(1) "Applicant" means an individual or individuals who apply for a Certificate of Approval to become a certified family.

(2) "Certificate of Approval" means a document that the Department issues to approve the operation of a child-specific relative caregiver home, child-specific foster home, pre-adoptive home, or a regular foster home.

(3) "Certified family" means an individual or individuals who hold a Certificate of Approval from the Department to operate a home to provide care, in the home in which they reside, to a child or young adult in the care or custody of the Department.

(4) "Certifier" means a Child Welfare employee who conducts assessments of applicants interested in providing relative or foster care to a child or young adult in the care or custody of the Department, determines whether or not to recommend approval of the operation of a relative care or foster home, and monitors the compliance of a relative care or foster care home with Child Welfare certification rules.

(5) "Child" means a person under 18 years of age.

(6) "Child-Specific Certificate of Approval" means a document authorizing an individual or individuals to operate a home to provide care for a specific child or young adult in the care or custody of the Department.

(7) "Criminal records check" means the process for obtaining and reviewing an individual's criminal history information.

(8) "Department" means the Department of Human Services, Child Welfare.

(9) "Denial" means the refusal of the Department to issue or renew a Certificate of Approval to operate a home to provide care for a child or young adult in the care or custody of the Department.

(10) "Designee" means a person who the designator directly and immediately supervises, or a person with equal or greater management responsibility than the designator.

(11) "Discipline" means a training process a certified family uses to help a child or young adult develop the self control and self direction necessary to assume responsibilities, make daily living decisions, and learn to conform to accepted levels of social behavior.

(12) "Firearm" means a weapon from which a dangerous projectile can be expelled by gas, air, spring, or an explosive. This includes, but is not limited to, any hand gun, pellet gun, BB gun, or soft air gun.

(13) "Foster parent" means a person who operates a home that has been approved by the Department to provide care for an unrelated child or young adult placed in the home by the Department.

(14) "Inactive Referral Status" means a period of time, not to exceed 12 months, during which neither the Department nor any other agency will place an additional child or young adult with a certified family. The certified family or the Department may initiate the Inactive Referral Status.

(15) "Member of the household" means any adult or child living in the home, including any caregiving employees and volunteers who may reside in the home.

(16) "Pre-adoptive parent" means an individual with a current Certificate of Approval to operate a home to provide care for a child placed by the Department for purposes of adoption.

(17) "Psychotropic medication" means medication, the prescribed intent of which is to affect or alter thought processes, mood, or behavior, including but not limited to, antipsychotic, antidepressant, and anxiolytic medication and behavior medications. The classification of a medication

depends upon its stated, intended effect when prescribed because it may have many different effects.

(18) "Relative caregiver" means a person who operates a home that has been approved by the Department to provide care for a related child or young adult placed in the home by the Department.

(19) "Relief or Respite Care" means:

(a) A formal planned arrangement to relieve a certified family's responsibilities by a person temporarily assuming responsibility for the care and supervision of the child or young adult; or

(b) Assistance provided by a person who comes into the home of the certified family to care for the child or young adult in the care or custody of the Department.

(20) "Revocation" means an administrative act by the Department that rescinds an existing Certificate of Approval.

(21) "Young adult" means a person aged 18 through 20 years who remains in the care and custody of the Department, and lives in substitute care or lives independently through the Department's Independent Living Subsidy Program.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005 - 418.640
Hist.: SOSCF 7-2001, f. & cert. ef. 3-23-01; CWP 4-2007, f. & cert. ef. 3-20-07

413-200-0308

Personal Qualifications of Applicants and Certified Families

(1) An applicant has the burden of proving that he or she possesses the required qualifications to become a certified family.

(2) To provide care for a child or young adult, an applicant must be at least 21 years of age unless:

(a) Otherwise specified in Child Welfare Policy I-E.2.1, "Placement of Indian Children", OAR 413-070-0100 to 413-070-0260; or

(b) A Child Welfare program manager or designee has approved an applicant, between the ages of 18 through 20 years, to become a relative caregiver.

(3) An applicant must:

(a) Possess an ability to exercise sound judgment and demonstrate responsible, stable, emotionally mature behavior;

(b) Possess the ability to manage the applicant's home and personal life;

(c) Maintain conditions in the home that provide safety and well-being for the child or young adult;

(d) Have supportive relationships with adults and children living in the household and with others in the community;

(e) Have a lifestyle and personal habits free of criminal activity, and abuse or misuse of alcohol or drugs;

(f) Have adequate financial resources to support the household independent of the monthly foster care payments; and

(g) Have the physical and mental capacity to care for a child or young adult. Upon request, an applicant must provide copies of medical reports from a health care professional, or may be required to complete an expert evaluation with a report provided to the Department.

(4) To maintain a Certificate of Approval, in addition to continuing to meet the personal qualifications in sections (1) to (3) of this rule, a certified family must:

(a) Learn and apply effective childrearing and behavior intervention practices focused on helping a child or young adult grow, develop, and build positive personal relationships and self-esteem;

(b) Incorporate into the family's care-giving practices positive non-punitive discipline and ways of helping a child or young adult build positive personal relationships, self-control, and self-esteem;

(c) Respect and support the child or young adult's relationships with the birth family and other significant persons in the child or young adult's life;

(d) Respect each child or young adult's spiritual beliefs, lifestyles, sexual orientation, disabilities, national origin, cultural identities, and provide opportunities to enhance the child or young adult's heritage;

(e) Work in partnership with the Department to identify the strengths and needs of each child or young adult;

(f) Follow through and comply with prescribed services, activities, and restrictions of each child or young adult in the care or custody of the Department placed in the certified home; and

(g) Use reasonable efforts to prevent anyone from influencing the child or young adult regarding allegations in a judicial or administrative proceeding in which the child or young adult's family or legal guardian, the child or young adult, or other persons may be involved.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005 - 418.640
Hist.: SOSCF 7-2001, f. & cert. ef. 3-23-01; CWP 4-2007, f. & cert. ef. 3-20-07

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413-200-0314

Process to Apply for a Certificate of Approval

(1) To become a certified family, the applicant must:

(a) Apply for certification in the county of the applicant's residence, except as provided in OAR 413-200-0274(2)(o)(A) and 413-200-0274(4)(o)(A);

(b) Complete a Department application;

(c) Provide the names and contact information of four references who can attest to the applicant's character and ability to provide safe and protective care for a child or young adult, and the names and contact information of at least two persons with whom the certified family is likely to remain in contact if displaced due to a natural disaster;

(d) Complete all required paperwork requested by the Department;

(e) Allow Department staff to conduct an in home assessment of conditions that appear to exist in the home that provide safety and well-being for the child or young adult;

(f) Provide social and family history information to the Department; and

(g) Provide information about any current or previous licenses, certifications, or applications for relative care, foster care, day care, adoption, or any other types of services for vulnerable individuals including adult care giving. Information must include the organization's name, any denials, suspensions, revocations, or terminations.

(2) All adult members of the applicant's household must have face-to-face contact with a Department certifier and must provide:

(a) Information regarding criminal involvement, including arrests and convictions regarding any member of the household; and

(b) Consent to a criminal records check.

(3) The applicant must allow the Department, at its discretion, to gather information regarding the criminal records of any child under 18 who lives at the applicant's address.

(4) All adult members of the applicant's household must provide:

(a) Information regarding any previous allegations of child abuse and neglect; and

(b) Consent to a child abuse and neglect background check.

(5) Withdrawal of Application. Applicants who have applied or are applying for a Certificate of Approval may voluntarily withdraw their application to provide care for a child or young adult. The family must provide their voluntary withdrawal notice:

(a) On a form provided by the Department;

(b) In a written format of their choice; or

(c) Verbally to a certifier or certifier's supervisor.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005 - 418.640

Hist.: SOSCF 7-2001, f. & cert. ef. 3-23-01; Renumbered from 413-200-0381, CWP 4-2007, f. & cert. ef. 3-20-07

413-200-0335

Certification Standards Regarding the Home Environment

(1) The home and surrounding environment of a certified family must comply with all of the following requirements:

(a) Be the primary residence of the certified family and the residence where the child or young adult resides with the certified family.

(b) Have adequate space for each member of the household, including space for safe and appropriate sleeping arrangements.

(A) A certified family and Department staff must consider a child or young adult's age, gender, special needs, behavior, and history of abuse or neglect in determining appropriate sleeping arrangements.

(B) Unrelated foster children may not share a bed.

(c) Have safe and adequate drinking water and an adequate source of safe water to be used for personal hygiene.

(d) Have access to a working telephone to make and receive phone calls.

(e) Have the necessary equipment for the safe preparation, storage, serving, and clean-up of food.

(f) Provide safe storage of all medications in the household, and store psychotropic medications for any member of the household in locked storage.

(g) Have easily accessible first aid supplies, and a reasonable understanding of how to use such supplies.

(h) Have a safe, properly maintained, and operational heating system. Space heaters must be plugged directly into a wall outlet and must be equipped with tip-over protection.

(2) In order to maintain a safe environment for a child or young adult, a certified family must:

(a) Comply with state and local ordinances and consider a child or young adult's age, special needs and capabilities, to establish the necessary safeguards around potential water hazards, outdoor play equipment, or other outdoor tools, chemicals, or potentially dangerous hazards.

(b) Assure that:

(A) Swimming pools, wading pools, ponds, hot tubs and other water hazards are inaccessible to a child or young adult unless responsibly supervised;

(B) Outdoor tools and equipment, machinery, chemicals, flammables, and combustibles are stored in a safe manner;

(C) Animals are properly cared for and kept in compliance with local ordinances; and

(D) A child or young adult's access to potentially dangerous animals is restricted.

(c) Consider the child or young adult's age, special needs and capabilities when determining if an animal is a safe and appropriate pet.

(3) Except as provided otherwise in subsections (d) and (e) of this section, a certified family that has or uses firearms must:

(a) Store all firearms unloaded and in a locked location inaccessible to a child or young adult.

(b) Store ammunition in a locked container and separate from firearms.

(c) When transporting a child or young adult, any firearm in the vehicle must be unloaded with the ammunition locked in a separate container.

(d) Law enforcement officers are exempt from this section only when they are complying with their law enforcement agency's firearm-safety procedures.

(e) Assure that any members of the household who possess a concealed weapons permit provide the Department with a:

(A) Copy of the permit; and

(B) Written plan to keep concealed weapons secure from a child or young adult in the care or custody of the Department when in the home or in vehicles when transporting a child or young adult.

(f) Notify and receive authorization from a child or young adult's caseworker or the caseworker's supervisor prior to a child or young adult's beginning hunting or target practice.

(4) In order to protect the safety of a child or young adult in care, a certified family must store hunting and sporting equipment, such as knives, spears, arrows, hunting sling shots, bows, and martial art weapons, in a safe and secure manner, and inaccessible to a child or young adult.

(5) The certified family must comply with all of the following fire safety requirements.

(a) The home of a certified family must:

(A) Have at least one working smoke alarm on each floor and one in each bedroom where a child or young adult sleeps;

(B) Have at least one operable fire extinguisher rated 2-A:10-B-C or higher;

(C) Have at least one means of emergency exit and one means of rescue from the home;

(D) Have a barrier around fireplaces, wood stoves, or other heating systems which may cause burns to a child or young adult developmentally unable to reasonably follow safety rules regarding such devices; and

(E) Have operable, quick-release mechanisms on barred windows. No bedroom occupied by a child or young adult, who is unable to use the quick-release mechanism, may have a barred window.

(b) Provide to the Department and display in the home a written comprehensive home evacuation plan, share the plan with each child or young adult at the time of placement, and practice the evacuation plan at least every six months. A certified family must include in the written comprehensive home evacuation plan a provision for the safe exit of a child or young adult who is not capable of understanding or participating in the evacuation plan.

(c) Assure that a bedroom used by a child or young adult has:

(A) One unrestricted exit;

(B) At least one secondary means of exit or rescue;

(C) A working smoke alarm; and

(D) Unrestricted, direct access, at all times, to hallways, corridors, living rooms or other such common areas.

(6) Any door that locks on the inside must be operable from the outside of the room, and any door that locks on the outside must be operable from the inside of the room.

(7) Transportation requirements.

(a) A certified family must have available, and be willing to use, a safe and reliable method of transportation.

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(b) Any member of the household transporting a child or young adult must provide proof of a valid driver's license and current insurance, as required by law, on any family-owned motorized vehicle by which a child or young adult might be transported when a family has applied for certification and at each re-certification.

(c) As required by current state law, a certified family must assure that:

(A) Only a licensed and insured driver transports a child or young adult in motorized vehicles; and

(B) A child or young adult uses a seat belt or age and size appropriate safety seat when transported in motorized vehicles.

(d) A certified family must obtain written authorization from the Department prior to transporting a child or young adult out of the State of Oregon.

(8) Smoking limitations. A certified family must assure that:

(a) A child or young adult is not exposed to any type of second-hand smoke in the certified family's home or vehicle; and

(b) No member of the household provides any form of tobacco products to a child or young adult.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005 - 418.640

Hist.: SOSCF 29-2000(Temp), f. & cert. ef. 9-27-00 thru 3-23-01; SOSCF 7-2001, f. & cert. ef. 3-23-01; CWP 4-2007, f. & cert. ef. 3-20-07

413-200-0348

Requirements Regarding the Number of Children and Young Adults Placed by the Department

(1) Except as provided in section (3) of this rule, a certified family may not exceed the following maximum number of children and young adults in the home:

(a) A total of:

(A) Four children or young adults when one certified adult lives in the home; or

(B) Seven children or young adults when two certified adults live in the home.

(b) Two children under the age of three.

(2) The limits in section (1) of this rule include all children or young adults residing in the home.

(3) Under extraordinary circumstances, a Child Welfare program manager may approve placement of a child or young adult in a certified family that exceeds the maximum number of children and young adults in section (1) of this rule.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005 - 418.640

Hist.: SOSCF 7-2001, f. & cert. ef. 3-23-01; CWP 4-2007, f. & cert. ef. 3-20-07

413-200-0352

Requirements for the Care of Children and Young Adults

A certified family must:

(1) Work cooperatively with the Department, the child or young adult, and his or her family to meet the child or young adult's needs for educational, physical, recreational, social, intellectual, and emotional development;

(2) Include the child or young adult as part of the family household;

(3) Assure that when a child or young adult leaves the certified home, the child or young adult's belongings, both those brought with him or her and those obtained while living in the home, remain with the child or young adult;

(4) Not subject any child to abuse, as described in ORS 419B.005;

(5) Not accept a child or young adult for placement from another agency without prior approval of the Child Welfare program manager or designee; and

(6) Not provide formal or informal adult foster care or child day care without prior approval of the Child Welfare program manager or designee.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005 - 418.640

Hist.: SOSCF 29-2000(Temp), f. & cert. ef. 9-27-00 thru 3-23-01; SOSCF 7-2001, f. & cert. ef. 3-23-01; Renumbered from 413-200-0375, CWP 4-2007, f. & cert. ef. 3-20-07

413-200-0354

Requirements Regarding a Child or Young Adult's Education

(1) The certified family must comply with all of the following requirements:

(a) Enroll the child or young adult in his or her school or educational placement, after the school or educational placement has been determined by the Department.

(b) Support the child or young adult in his or her school or educational placement.

(c) Assure the child or young adult regularly attends the school or educational placement and monitor the child or young adult's educational progress, including keeping records of:

(A) The child or young adult's report cards;

(B) Any reports received from the teacher or the school or educational placement;

(C) Any evaluations received as a result of educational testing or assessment; and

(D) Disciplinary reports regarding the child or young adult.

(d) Monitor the child or young adult's educational successes, learning style, and potential learning difficulties.

(e) Work with the child or young adult's caseworker when referring the child or young adult for assessment of a possible disability.

(f) Notify the child or young adult's caseworker of the certified family's interest in or intent to be appointed as the child or young adult's educational surrogate parent.

(2) The certified family may authorize special educational testing of any child or young adult when a certified parent is considered the surrogate parent.

(3) The certified family may consent to routine school-related activities, such as school enrollment, field trips within the state of Oregon, routine social events, sporting events, and cultural events.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005 - 418.640

Hist.: CWP 4-2007, f. & cert. ef. 3-20-07

413-200-0358

Requirements Regarding a Child or Young Adult's Discipline

(1) When disciplining a child or young adult, the certified family must not use corporal punishment, verbal abuse, or withholding food or other items essential to a child or young adult's protection, safety, or well-being. Examples of prohibited discipline include, but are not limited to, the following:

(a) Use of or threatened use of any form of physical force.

(b) Verbal abuse including derogatory remarks about the child or young adult, the child or young adult's family characteristics, physical traits, culture, ethnicity, language, sexual orientation, or traditions.

(c) Denying a child or young adult visits, telephone, or other types of contact with persons authorized in a visit and contact plan.

(d) Assigning extremely strenuous exercise or work.

(e) Use of or threatened use of restraining devices.

(f) Punishment for bed-wetting or punishment related to toilet training.

(g) Directing a child or young adult or permitting a child or young adult to punish another child or young adult.

(h) Threat of removal from the certified family home as punishment.

(i) Use of the shower as punishment.

(j) Group punishment for the misbehavior of one child or young adult.

(k) Extreme isolation as a means of punishment that restricts a child or young adult's ability to talk with or associate with others.

(1) Locking a child or young adult in a room.

(2) The certified family must demonstrate a willingness to understand the meaning of the child or young adult's behaviors and the ability to develop and use appropriate strategies to address challenging behaviors. Appropriate strategies may include:

(a) Concentrating on changing only the behavior that is causing the most difficulty for the child or young adult and others;

(b) Emphasizing ways to help the child or young adult develop self-control;

(c) Taking a positive approach to changing challenging behavior;

(d) Selecting and implementing strategies that respect and involve the child or young adult in the change process; and

(e) Being mindful of the child or young adult's age, developmental level, and past experiences with abuse and neglect.

(3) The certified family may use a time-out only for the purpose of giving the child or young adult a short break to allow the child or young adult to calm himself or herself and regain control, and not as a punishment. The certified family must take into consideration the child or young adult's age and developmental level in determining the length of a time-out.

(4) Only an adult in a certified family or Department staff, who have been trained to use a physical restraint, may do so, except in circumstances described in Child Welfare Policy I-B.1.6, "Behavior Intervention", OAR 413-020-0200 to 413-020-0245 (starting May 1, 2007) when a child, young adult, or others are at imminent risk of danger. Physical restraint must be a safety measure of last resort.

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(5) The certified family must notify and request assistance of the Department when the child or young adult's challenging behavior may be beyond the certified family's ability to discipline in a positive manner.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005 - 418.640

Hist.: SOSCF 7-2001, f. & cert. ef. 3-23-01; Renumbered from 413-200-0347, CWP 4-2007, f. & cert. ef. 3-20-07

413-200-0362

Requirements Regarding a Child or Young Adult's Medical Care and Notification Requirements

(1) In addressing the health care for a child or young adult, the certified family must:

(a) Work collaboratively with the Department in managing the child or young adult's health care needs;

(b) Regularly exchange the child or young adult's medical information with the Department;

(c) Work collaboratively with medical providers in managing the child or young adult's health care needs; and

(d) Maintain documentation of each child or young adult's:

(A) Medical appointments;

(B) Medical information regarding the child or young adult;

(C) Medical appointment follow-up reports; and

(D) Immunization records.

(2) A certified family must comply with the Department's direction on obtaining medical care for a child or young adult.

(3) A certified family may consent to routine medical care for a child or young adult in the Department's custody, including vaccinations, immunizations, routine examinations, and laboratory tests.

(4) Except as provided in section (5) of this rule, the certified family must contact the child or young adult's caseworker to obtain appropriate prior consent from the Department before a child or young adult receives any medical care or undergoes a procedure, other than routine medical care.

(5) In an emergency, a certified family must notify the child or young adult's caseworker as soon as possible and no later than 24 hours after an injury requiring medical treatment.

(6) Medication management requirements.

(a) The certified family must comply with all of the following requirements:

(A) Administer prescription medications to a child or young adult only in accordance with the written prescription or authorization.

(B) Record the dosage, date, and time that all medications are administered to a child or young adult on a form approved by the Department. If medication is given in a location other than the certified home, such as at school or in daycare, the institution or program's medication log must be attached to the Department form. The medication form, with any attachments, must be submitted to the child or young adult's caseworker monthly.

(C) Take the medication form to each medical appointment and share with the medical provider.

(D) Inform the child or young adult's caseworker or his or her supervisor within one working day when a child or young adult is prescribed a psychotropic medication or the dosage of any existing prescription is changed.

(E) Maintain the documentation received from the caseworker when a child is prescribed a psychotropic medication or when the dosage of any existing prescription for a psychotropic medication is changed.

(b) The certified family must store all medications in such a way that the medications are inaccessible to a child or young adult and must store all psychotropic medications in locked storage.

(c) When a child or young adult is learning to manage his or her own medications, the certified family, the child or young adult, and the caseworker may collaborate on an individualized, written plan for the child or young adult to access the medication. The child or young adult must not have access to medication that is not his or her own. The plan must state how the medication will be inaccessible to other children or young adults in the home. The certified family, the child, and the caseworker will keep a copy of the plan.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005 - 418.640

Hist.: SOSCF 7-2001, f. & cert. ef. 3-23-01; Renumbered from 413-200-0346, CWP 4-2007, f. & cert. ef. 3-20-07

413-200-0371

Responsibilities and Notification Requirements for Selection and Use of Alternate Caregivers

(1) Except as provided in section (2) of this rule, the certified family is responsible for identifying and selecting safe and responsible alternate caregivers for a child or young adult placed in their home, and take into consideration:

(a) Each child or young adult's age, special needs, attachment, and individual behaviors; and

(b) The length of time that the child or young adult will be with the alternate caregivers described in this rule.

(2) The Department may determine that a particular alternate caregiver is inappropriate based upon the needs of the child or young adult.

(3) Responsibilities when Using a Babysitter.

(a) The certified family must use a responsible person 14 years of age or older for short-term intermittent child care, and must:

(A) Have an available method through which they may be contacted in an emergency;

(B) Assure the babysitter is capable of assuming child care responsibilities required to meet the needs of the children in the certified family's home, and will be present at all times; and

(C) Assure the babysitter does not provide overnight care.

(b) A babysitter does not need to complete a criminal history background check.

(4) Responsibilities and notification requirements when using Relief Care or Respite Care.

(a) The certified family must select a relief or respite caregiver who is:

(A) At least 18 years of age;

(B) Capable of assuming child care responsibilities, including meeting any special needs of each child or young adult; and

(C) Present at all times.

(b) The certified family must:

(A) Have an available method through which they may be contacted in an emergency; and

(B) Provide to the Department the name, address, and telephone number of the relief or respite caregiver for the purpose of the Department's conducting the criminal records check and child abuse and neglect history check, prior to the person providing relief or respite care.

(c) The certified family must receive Department approval prior to using a relief or respite caregiver.

(5) A certified family may use a licensed, registered, or approved childcare center or day care provider for a child or young adult and must notify the Department in advance of using the licensed childcare center or day care provider.

(6) Family and childhood activities.

(a) The certified family may give consent for a child or young adult in the Department's care or custody to participate in ordinary childhood activities, such as sleepovers with friends and organized activities provided by schools, churches, civic organizations, scouts, or similar groups.

(b) The certified family must verify that the event is safe, adequately supervised, and appropriate for the child or young adult based upon his or her needs.

(c) When the certified family has any questions regarding the child or young adult participating in the activity, the family must consult with the child or young adult's caseworker.

(7) The certified family must notify the child or young adult's caseworker prior to the child or young adult being absent from the certified family for more than 24 hours.

(8) The certified family is responsible for notifying the certifier or the certifier's supervisor in advance when the certified family plans to provide relief or respite care for another certified family and the number of children or young adults in the home will exceed the maximum number of children or young adults on the certified family's Certificate of Approval.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005 - 418.640

Hist.: SOSCF 29-2000(Temp), f. & cert. ef. 9-27-00 thru 3-23-01; SOSCF 7-2001, f. & cert. ef. 3-23-01; SOSCF 15-2002(Temp), f. & cert. ef. 12-19-02 thru 6-17-03; CWP 29-2003, f. 7-31-03 cert. ef. 8-1-03; CWP 4-2007, f. & cert. ef. 3-20-07

413-200-0377

Confidentiality

(1) The certified family must exercise good judgment in sharing personal information about the child or young adult and the child or young adult's family. The certified family must store documents regarding the child or young adult or child or young adult's family in a way that protects

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the privacy of the child or young adult and the child or young adult's family.

(2) The certified family may not disclose confidential information regarding a child or young adult or the family of a child or young adult, except when necessary to promote or to protect the health and welfare of the child, young adult, or the community.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005 - 418.640
Hist.: SOSCF 7-2001, f. & cert. ef. 3-23-01; CWP 4-2007, f. & cert. ef. 3-20-07

413-200-0379

Education and Training for Applicants and Certified Families

(1) All applicants must participate in the Department's Orientation prior to receiving a Certificate of Approval, or within 30 days after the placement of a child or young adult in a home that has been issued a Child-Specific Certificate of Approval.

(2) Applicants and certified families must complete the Foundations of Relative Care, Foster Care, and Pre-Adoptive Care (Foundations) training, or have written documentation of completion of equivalent training content from another licensed child-caring agency within two years of an applicant's dated application for a Certificate of Approval from the Department.

(3) The certified family and the Department certifier must develop a training plan for the certified family to complete at least 30 hours of training during each two-year certification period.

(4) Applicants and certified families who have limited English proficiency or a hearing or visual impairment, and cannot meet the training requirements outlined in sections (1) to (3) of this rule may be provided an individualized training plan prepared by the certifier and approved by the Children, Adults and Families Division, Foster Care Program Office.

(5) The Department may require a certified family to obtain more than the 30 hours of training for a two-year certification period depending on the needs of the child or young adult placed in their home or the knowledge, skills, and abilities of the certified family.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005 - 418.640
Hist.: SOSCF 7-2001, f. & cert. ef. 3-23-01; Renumbered from 413-200-0349, CWP 4-2007, f. & cert. ef. 3-20-07

413-200-0383

Other Required Notifications

A certified family must notify the certifier or certifier's supervisor of all of the following:

- (1) Any person joining or leaving the household.
- (2) Any anticipated change in address.
- (3) Any physical or structural changes in the home in which they live.
- (4) Any arrests or court convictions for any member of the household.

This notification must occur within one working day.

(5) Any known allegation of child abuse or neglect perpetrated by any member of the household, or an individual who regularly visits the home. Such notification must occur on the day that the certified family learns of the allegation.

(6) The suspension of a driver's license of any adult on the Certificate of Approval or any member of the household.

(7) Any change in the physical or mental health of a member of the household that reasonably could affect the member's or the family's ability to meet the needs of safety, health, and well-being of a child or young adult.

(8) Any time any member of the household applies to become an in-home child care provider, an adult foster care, or in-home adult day care provider, in order to obtain the approval of the Department prior to providing such care.

(9) Any time another agency wishes to place a child or young adult in the certified home, in order to obtain the approval of the Department prior to providing such care.

(10) Any time the certified family agrees to provide relief or respite care for another certified family.

(11) Any other circumstance that could reasonably affect the safety or well-being of a child or young adult.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005 - 418.640
Hist.: CWP 4-2007, f. & cert. ef. 3-20-07

413-200-0386

Requirements Regarding Mandatory Reporting

Any member of the household and any certified family's employee, independent contractor, or volunteer who works in the certified family's home, must report the pertinent information to the Department upon rea-

sonable cause to believe that any child with whom the person comes in contact has suffered abuse or neglect or that any adult with whom the person comes in contact has abused or neglected a child.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005 - 418.640
Hist.: CWP 4-2007, f. & cert. ef. 3-20-07

413-200-0388

Requirements Regarding Visits in the Certified Family's Home

For purposes of assessing the conditions in the home that provide safety and well-being for the child or young adult, a certified family must:

(1) Allow on-going in-home visits, both scheduled and unscheduled, by Department staff; and

(2) Allow Department staff unsupervised contact with a child or young adult.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005 - 418.640
Hist.: CWP 4-2007, f. & cert. ef. 3-20-07

413-200-0390

Requirements Regarding the Certificate of Approval

(1) An applicant may receive a Child-Specific Certificate of Approval for up to 90 days when assessment activities described in Child Welfare Policy II-B.1.1, "Department Responsibilities for Certification and Supervision of Relative Caregivers, Foster Parents, and Pre-Adoptive Parents", OAR 413-200-0274(2)(a)-(p) have been completed; and, when all assessment activities have been completed, may receive a Certificate of Approval for up to two years.

(2) A certified family must apply every two years to be re-certified as a foster parent, relative caregiver, or pre-adoptive parent.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.630 - 418.640
Hist.: SOSCF 29-2000(Temp), f. & cert. ef. 9-27-00 thru 3-23-01; SOSCF 7-2001, f. & cert. ef. 3-23-01; CWP 4-2007, f. & cert. ef. 3-20-07

413-200-0393

Requirements Regarding Inactive Referral Status

(1) A certified family may request that the Department place their home on Inactive Referral Status for any reason for up to 12 months. The inactive referral status begins immediately and while it is in effect:

(a) The Department will place no additional child or young adult in the home; and

(b) The certified family may not accept placement of any child or young adult from another agency.

(2) Inactive Referral Status, when requested by the certified family, ends:

- (a) At the request of the certified family; or
- (b) When the certificate expires and:

(A) The family has not timely applied for renewal of the certificate;

or

(B) The Department has not renewed the certificate.

(3) The Department may initiate a certified family's inactive referral status under the conditions described in Child Welfare Policy II-B.1.1, "Department Responsibilities for Certification and Supervision of Relative Caregivers, Foster Parents and Pre-Adoptive Parents", OAR 413-200-0294(5) or (6). When the Department initiates inactive referral status, the Department must:

(a) Provide written notification to the certified family of the inactive referral status within fourteen working days; and

(b) Provide written notification to the certified family when inactive referral status ends.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005 - 418.640
Hist.: SOSCF 7-2001, f. & cert. ef. 3-23-01; CWP 4-2007, f. & cert. ef. 3-20-07

413-200-0394

Requirements Regarding Termination of a Certificate of Approval

(1) A certified family may voluntarily request that the Department terminate the Certificate of Approval and close the home. The certified family must give the Department ten-days notice before the Certificate of Approval is terminated. The Department must remove any child or young adult in the care or custody of the Department from the home before closing the home.

(2) When a child or young adult leaves a home that has a Child-Specific Certificate of Approval, the Department terminates the Child-Specific Certificate of Approval and closes the home.

(3) When a certified family moves to a different residence, the Department terminates the Certificate of Approval and closes the home.

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The Department may issue a new Certificate of Approval when the activities described in OAR 413-200-0292(5) have been completed.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005 - 418.640
Hist.: SOSCF 7-2001, f. & cert. ef. 3-23-01; CWP 4-2007, f. & cert. ef. 3-20-07

413-200-0395

Requirements Regarding Denial and Revocation of a Certificate of Approval

(1) The Department may deny an application for a Certificate of Approval if an applicant fails to provide requested information within 90 days of a written request from the Department.

(2) The Department may deny an application or revoke a Certificate of Approval when:

(a) The applicant or certified family does not meet one or more of these rules (OAR 413-200-0301 to 413-200-0396);

(b) The Department discovers an applicant or a certified family has falsified information (by act of commission or omission) before or after the Certificate of Approval has been issued; or

(c) An applicant or certified family fails to provide information to or inform the Department of any disqualifying condition that arises after the Certificate of Approval has been issued.

(3) The Department must provide the certified family a written notice of revocation or denial, which must state the reason or reasons for the revocation or the denial.

(4) The Department must revoke a Certificate of Approval when a certified family violates one or more of these rules (OAR 413-200-0301 to 413-200-0396) and, at the conclusion of a CPS assessment, the Department determines that a child or young adult is unsafe and the certified family cannot or will not protect the child or young adult.

(5) Upon deciding to revoke a certified family's Certificate of Approval, the Department must remove from the home any child or young adult in the Department's care or custody.

(6) When the Department revokes a certified family's Certificate of Approval or denies an application, the Department has the discretion to require up to a five-year waiting period before the individual or family can reapply as a relative caregiver or foster parent.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005 - 418.640
Hist.: SOSCF 29-2000(Temp), f. & cert. ef. 9-27-00 thru 3-23-01; SOSCF 7-2001, f. & cert. ef. 3-23-01; CWP 4-2007, f. & cert. ef. 3-20-07

413-200-0396

Requirements Regarding Contested Case Hearings

(1) Except as provided in section (4) of this rule, an applicant may request a contested case hearing to contest the Department's decision to deny the approval of the application for a Certificate of Approval.

(2) A certified family may request a contested case hearing to contest the Department's decision to revoke the Certificate of Approval.

(3) The applicant or family requests a contested case hearing, as provided in ORS Chapter 183, by providing a Child Welfare program manager a written request for a hearing within 30 days of the date that the Department mailed the notice of denial or revocation.

(4) ORS Chapter 183 does not provide a contested case process for adoptive applicants who are denied approval as an adoptive resource.

(5) If the Department does not receive a request for a contested case hearing within 30 days of the date that the Department mailed the notice of denial or revocation, the certified family or applicant has waived the right to a hearing, except as provided in OAR 137-003-0003(1).

(6) When a contested case hearing is timely requested but such request is subsequently withdrawn, the Department will document in the certification file the circumstance of the withdrawal.

(7) Child Welfare Policy I-A.5.2.1, "Contested Case Hearings", outlines the procedures for handling a request for a contested case hearing due to the denial or revocation of a Certificate of Approval.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005 - 418.640
Hist.: SOSCF 7-2001, f. & cert. ef. 3-23-01; CWP 4-2007, f. & cert. ef. 3-20-07

Rule Caption: Changing OARs affecting Child Welfare programs.

Adm. Order No.: CWP 5-2007

Filed with Sec. of State: 3-30-2007

Certified to be Effective: 4-1-07

Notice Publication Date: 1-1-07

Rules Amended: 413-090-0000, 413-090-0005, 413-090-0010, 413-090-0030, 413-090-0040, 413-090-0050, 413-090-0100, 413-090-0110, 413-090-0120, 413-090-0130, 413-090-0140, 413-090-0150,

413-090-0160, 413-090-0170, 413-090-0180, 413-090-0190, 413-090-0200, 413-090-0210

Rules Repealed: 413-090-0000(T), 413-090-0005(T), 413-090-0010(T), 413-090-0030(T), 413-090-0050(T), 413-090-0100(T), 413-090-0110(T), 413-090-0120(T), 413-090-0130(T), 413-090-0140(T), 413-090-0150(T), 413-090-0160(T), 413-090-0170(T), 413-090-0180(T), 413-090-0190(T), 413-090-0200(T), 413-090-0210(T), 413-090-0220(T), 413-090-0220

Subject: The Department is amending rules about maintenance and treatment payments, special rates, and personal care for clients of Child Welfare. These amendments change the foster care basic rates, Family Shelter Care, and Family Group Home payment rates, and the Special Rate/Personal Care Hourly Reimbursement and Transportation reimbursements; most of these changes were made initially by temporary rules on October 13, 2006. These rules are also being amended to clarify and update language and conform to current practices. OAR 413-090-0050 is being amended to extend the time period for out-of-state payment for family foster care and relative caregivers. OAR 413-090-0170 is being amended to state the current practice on reimbursement for school transportation. OAR 413-090-0220 about the location of procedures and forms is being repealed.

Rules Coordinator: Annette Tesch—(503) 945-6067

413-090-0000

Purpose

These rules (OAR 413-090-0000 to 413-090-0050) describe the requirements for payment for maintenance and treatment services for all children and young adults placed with substitute caregivers who are funded by the Department.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 9-2003, f. & cert. er. 1-7-03; CWP 20-2006(Temp), f. & cert. ef. 10-13-06 thru 4-10-07; CWP 5-2007, f. 3-30-07, cert. ef. 4-1-07

413-090-0005

Definitions

The following definitions apply to OAR 413-090-0000 to 413-090-0050:

(1) "Adoption Assistance" means financial or medical assistance to adoptive families to assist them with costs associated with their adoptive child's needs. Financial benefits are funded by the Department's Adoption Assistance budget. Assistance can be in the form of cash, medical coverage, special payments, a combination of these, or "Agreement Only" as defined in OAR 413-130-0010(4).

(2) "BRS" means Behavior Rehabilitation Services, which are Medicaid funded programs that provide behavioral intervention, counseling, and skill building services in professional, shelter, or residential (including therapeutic foster care formerly referred to as "proctor care") placement settings.

(3) "CAF" means the Children, Adults and Families Division of the Department.

(4) "Department" means the Department of Human Services, Child Welfare.

(5) "District" means a geographic area of one or more counties served by the Department and managed by a District Manager.

(6) "Foster parent" means a person who operates a home that has been approved by Child Welfare to provide care for an unrelated child or young adult placed in the home by the Department.

(7) "Provider" means a person approved by a licensed private child-caring agency to provide care for a child or young adult, or an employee of a licensed private child-caring agency approved to provide care for a child or young adult.

(8) "Relative caregiver" means a person who operates a home that has been approved by Child Welfare to provide care for a related child or young adult who is placed in the home by the Department.

(9) "Sub-Acute Care" means psychiatric and mental health treatment under the direction of a psychiatrist provided as an alternative to hospitalization in a residential psychiatric treatment setting.

(10) "Young adult" means a person aged 18 through 20 years, who remains in the care and custody of the Department, and lives in substitute care or lives independently through the Department's Independent Living Subsidy Program.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005

ADMINISTRATIVE RULES

Hist.: SOSCF 20-1999, f. 9-15-99, cert. ef. 9-20-99; CWP 9-2003, f. & cert. ef. 1-7-03; CWP 20-2006(Temp), f. & cert. ef. 10-13-06 thru 4-10-07; CWP 5-2007, f. 3-30-07, cert. ef. 4-1-07

413-090-0010

Payments — General Guidelines

(1) Family Foster Care

(a) Payment by the Department — to foster parents or relative caregivers who care for a child or young adult who meets the eligibility standards prescribed by Child Welfare Policy I-E.6.1, “Title IV-E-FC and General Assistance”, OAR 413-100-0000 to 413-100-0360 — for a child or young adult’s room, food, clothing, incidentals, and cash allowance (known as the regular foster care rate) is made on a monthly basis, or prorated for portions of a month, after the month in which the care has been provided. It includes the day the child or young adult enters the home, but excludes the day the child or young adult leaves the home. Costs of special care or service may also be provided if essential for the child or young adult’s well being and if specifically authorized by Child Welfare. See Child Welfare Policy I-E.5.1.2, “Special Rates/Personal Care” OAR 413-090-0100 to 413-090-0220.

(b) Regular foster care rates are based upon the age of the child or young adult and the type of program services they are receiving; Family Foster Care, Family Shelter Care, or Family Group Home. The rate structure is established by the Department, subject to the availability of funds, and is uniform throughout the state. The current monthly reimbursed regular rates effective April 1, 2006 are:

(A) Monthly Family Foster Care Rates:

- (i) Age of Child or Young Adult — 0-5 — 6-12 — 13-21.
- (ii) Room/Board/Other — \$334 — \$ 331 — \$ 395.
- (iii) Clothing Replacement — \$45 — \$ 51 — \$ 73.
- (iv) Personal Allowance — \$ 8 — \$ 20 — \$ 29
- (v) Total — \$ 387 — \$ 402 — \$ 497.

(B) Family Shelter Care — \$ 20.71 per day.

(C) Foster Family Group Home — \$1,218 per month.

(c) Payments to foster parents or relative caregivers certified by the Department shall be inalienable by any assignment or transfer and exempt from execution, levy, attachment, garnishment and other legal process under the laws of this state.

(2) Residential Treatment. Payment by the Department to purchase of care providers must be made as provided in signed contracts.

(3) Payments Prohibited.

(a) Payment may not be made for two simultaneous 24 hour out-of-home care services, such as foster care, relative care, family group homes, or residential treatment.

(b) Neither payment nor utilization credit may be given for simultaneous contracted treatment services, such as day treatment and residential treatment.

(c) Payment by the Department may not be authorized for the care of children or young adults in a home or facility supported by public funds and maintained only as a secure facility under the jurisdiction of a juvenile court.

(d) Any exceptions to these rules must be approved in writing by the director, or if for a Target Planning Child, by the CAF Target Planning and Consultation Committee. Exceptions will be considered only when federal funds will not be claimed.

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

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005, 418.470

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 2-1999, f. & cert. ef. 3-5-99; SOSCF 20-1999, f. 9-15-99, cert. ef. 9-20-99; CWP 9-2003, f. & cert. ef. 1-7-03; CWP 20-2003(Temp), f. 1-31-03 thru 7-30-03; CWP 27-2003, f. & cert. ef. 7-31-03; CWP 34-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 4-28-04; CWP 7-2004, f. & cert. ef. 4-1-04; CWP 20-2006(Temp), f. & cert. ef. 10-13-06 thru 4-10-07; CWP 5-2007, f. 3-30-07, cert. ef. 4-1-07

413-090-0030

Payment for Temporary Absences

(1) Family Foster Care:

(a) Continued payment may be made to the foster parent, relative caregiver, or provider during a child or young adult’s temporary absence when:

(A) The plan is for the child or young adult to return to the care of the same foster parent, relative caregiver, or provider; and

(B) No other foster parent, relative caregiver, or provider is receiving a maintenance payment for the child or young adult during the period of the absence.

(b) The caseworker may authorize payment for up to seven days for a child or young adult’s temporary absence from the home of the foster par-

ent, relative caregiver, or provider for a home visit, vacation, or special activity or when the child or young adult is on runaway.

(c) The caseworker must obtain authorization from the District Manager or designee for payment for more than seven days for a child or young adult’s temporary absence from the home of the foster parent, relative caregiver, or provider.

(d) Hospitalization. The foster parent, relative caregiver, or provider will continue to receive payment when 24-hour medical care is required for a short period of time and the foster parent, relative caregiver, or provider continues to exercise caregiving responsibilities in anticipation of the return of the child or young adult. (Hospitalization for medical treatment is not considered a substitute care placement with a duplicate maintenance or board and room payment.)

(2) Residential Treatment.

(a) Payments or utilization credit may be made to contracted providers for days the child or young adult is on a home visit or planned visit to another provider in the following circumstances:

(A) The visit is part of planned activities identified in the BRS service plan of the child or young adult. Caseworkers will be aware of the inclusion of planned visits in the service plan due to their involvement in the service planning process as outlined in Child Welfare Policy I-E.4.3, “Residential Services”, OAR 413-080-0200 to 413-080-0270.

(B) The assigned caseworker is informed prior to the visit taking place.

(b) Although a child or young adult may be allowed more than four consecutive visit days or eight total days per month, Department workers may not authorize payment or utilization credit for more than four consecutive days or eight total visit days per month under any circumstances.

(c) Department workers may not authorize payment or utilization credit for days a child or young adult has runaway before physically entering a provider’s facility or therapeutic foster home or for days after the child or young adult has physically left a provider’s facility or a therapeutic foster home as discharged.

(d) Hospitalization and “Sub-Acute” Care. The provider will continue to receive payment when 24-hour medical care is required for a short period of time and the provider continues to exercise caregiving responsibilities in anticipation of the return of the child or young adult. (Hospitalization and “Sub Acute” Care for medical treatment is not considered a substitute care placement with a duplicate maintenance of board and room payment.)

(e) Planned Visits to Another Provider. It is the responsibility of the purchase-of-care provider to reimburse the resource that the child or young adult visits at a reasonable rate to be agreed upon by both parties. The Department may not make maintenance payments to two providers for a child or young adult at the same time.

(f) A purchase of service client invoice must be completed in accordance with Department billing procedures.

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

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 20-1999, f. 9-15-99, cert. ef. 9-20-99; CWP 9-2003, f. & cert. ef. 1-7-03; CWP 20-2006(Temp), f. & cert. ef. 10-13-06 thru 4-10-07; CWP 5-2007, f. 3-30-07, cert. ef. 4-1-07

413-090-0040

Payments During Adoptive Supervision

(1) The Department does not make a foster care payment after a child is free for adoption and placed in a home designated by the adoption manager as the child’s adoptive placement. See OAR 413-130-0000 to 413-130-0130 for the eligibility requirements of the Adoption Assistance Program.

(2) The Department does not make foster care payments to foster parents who plan to adopt the child after a child’s status changes from foster care placement to adoptive placement or from a “legal risk adoptive placement” to an “adoptive placement”. A reasonable period of time shall be allowed to determine adoption assistance eligibility. If an application for adoption assistance is in process, the Department will continue to make foster care payments for 120 days or until adoption assistance is in place, whichever occurs first.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 20-1999, f. 9-15-99, cert. ef. 9-20-99; CWP 9-2003, f. & cert. ef. 1-7-03; CWP 5-2007, f. 3-30-07, cert. ef. 4-1-07

ADMINISTRATIVE RULES

413-090-0050

Family Foster Care and Relative Caregiver Out-of-State Payment Rates

(1) Foster parents and relative caregivers who receive Department approval to move out-of-state with a child that the Department has placed in their home may continue to receive current foster care payments for that child for up to 180 days or until licensed or certified in the receiving state, whichever is earlier.

(2) The CAF Administrator or Foster Care Program Manager may extend the 180 day limit for continuing to receive current foster care payments when the licensure or certification process in the receiving state has not been completed due to circumstances beyond the control of the Department and the foster parents or relative caregivers.

(3) Once the home is licensed or certified in the receiving state, the Department will authorize payment at the receiving state's established foster care payment rates.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 20-1999, f. 9-15-99, cert. ef. 9-20-99; CWP 9-2003, f. & cert. ef. 1-7-03; CWP 20-2006(Temp), f. & cert. ef. 10-13-06 thru 4-10-07; CWP 5-2007, f. 3-30-07, cert. ef. 4-1-07

413-090-0100

Purpose

These rules (OAR 413-090-0100 to 413-090-0220) describe the requirements for a monthly payment to a substitute caregiver in addition to the foster care maintenance payment. This payment is for services to a child or young adult in the care and custody of the Department who has special needs inconsistent with his or her age.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 20-2006(Temp), f. & cert. ef. 10-13-06 thru 4-10-07; CWP 5-2007, f. 3-30-07, cert. ef. 4-1-07

413-090-0110

Definitions

The following definitions apply to OAR 413-090-0100 to 413-090-0220:

(1) "Activities of Daily Living (ADL)": Personal functional activities required by an individual for continued well-being, which includes eating and nutrition, dressing, personal hygiene, mobility, toileting, and behavior management.

(2) "Alternate caregiver": Any person, other than the substitute caregiver with whom the child was placed by the Department, who is charged with supervision of a special needs child.

(3) "Child": A person under 18 years of age.

(4) "Delegated nursing procedure": Routine and skilled nursing procedures identified in OAR 851-047-0000 to 851-047-0040 (Standards for Registered Nurse Delegation and Assignment of Nursing Care Tasks to Unlicensed Persons) that can be safely assigned to an unlicensed person to perform.

(5) "Department": The Department of Human Services, Child Welfare.

(6) "Direct educational costs": Costs prior authorized by the Department that are incurred by the substitute caregiver that include educational services not eligible for payment by the local school district, educational services required to maintain this child in the home provided by a private resource, transportation to educational services excluded as part of the child's Individual Education Plan, and planned recreation which is part of the treatment plan. Educational cost is one of the four fiscal categories used by the Department to track special rate payments to foster parents.

(7) "Direct maintenance costs": Costs to maintain the child in a foster home as a result of increased daily supervision and direct costs essential to a child's care plan goals. Title IV-E defines "Maintenance" as "Maintenance payments directly related to a child's special needs to cover the cost of (and cost of providing) food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to the child, and reasonable travel to the child's home for visitation."

(8) "District": A geographic area of one or more counties served by the Department and managed by a District Manager.

(9) "Extraordinary needs": Physical, mental, behavioral, emotional or educational needs inconsistent with the age of the child.

(10) "Personal Care Services": One-on-one medically oriented services for children with documented physical or mental impairments whose supportive care needs require a registered nurse assessment and RN care plan, and periodic RN care plan review to allow the child to live safely in the most independent, least restrictive living situation. The cost of person-

al care services is one of four fiscal categories used by the Department to track special rate payments to foster parents.

(11) "Physician's order": A written order by a physician that states personal care services are required to meet the child's care needs.

(12) "Provider" means a person approved by a licensed private child-caring agency to provide care for a child or young adult or an employee of a licensed private child-caring agency approved to provide care for a child or young adult.

(13) "Registered nurse": An individual licensed and registered to practice nursing.

(14) "Relative caregiver" means a person who operates a home that has been approved by the Department to provide care for a related child or young adult who is placed in the home by the Department.

(15) "RN Assessment and Care Plan": A registered nurse assessment of a child's needs and an RN Care Plan which indicates the care, treatments, and procedures that are to be provided by the caregiver to meet the child's needs.

(16) "Special need": A trait or impairment peculiar to a child that requires extraordinary care or attention.

(17) "Special Rate": A supplemental payment for children in foster care that is determined by calculating direct maintenance costs and direct educational costs. Special rates help to maintain the child in foster care by assisting substitute caregivers providing care, supervision, and other services identified to address the child's extraordinary physical, mental, behavioral, and emotional needs.

(18) "Special Rate Review Committee": A committee of Department staff representing the District Child Welfare office that may include a registered nurse and foster parents.

(19) "Substitute care": The out-of-home placement of a child or young adult who is in the legal or physical custody and care of the Department.

(20) "Substitute caregiver": A relative caregiver, foster parent, or provider who is authorized to provide care to a child or young adult who is in the legal or physical custody of the Department.

(21) "Young adult" means a person aged 18 through 20 years who remains in the care and custody of the Department, and lives in substitute care or lives independently through the Department's Independent Living Subsidy Program.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 19-1999, f. 9-15-99, cert. ef. 9-20-99; SOSCF 6-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 20-2006(Temp), f. & cert. ef. 10-13-06 thru 4-10-07; CWP 5-2007, f. 3-30-07, cert. ef. 4-1-07

413-090-0120

Policy

(1) Children and young adults with special needs impose additional costs on substitute caregivers and require additional services of substitute caregivers. The substitute caregivers may be reimbursed for these extra costs and services.

(2) The child or young adult's special rate or Personal Care payment reimburses the substitute caregiver for these additional costs and services. The Department tracks them in three fiscal categories: direct maintenance costs (Title IV-E); non-Title IV-E eligible expenses (General Fund, and/or TANF); and personal care services (Title XIX).

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 19-1999, f. 9-15-99, cert. ef. 9-20-99; CWP 20-2006(Temp), f. & cert. ef. 10-13-06 thru 4-10-07; CWP 5-2007, f. 3-30-07, cert. ef. 4-1-07

413-090-0130

Special Rate/Personal Care Eligibility Requirements

For a child or young adult to be eligible for a special rate, all of the following conditions must be met:

(1) All Department policies related to child or young adult and substitute caregiver eligibility must be met.

(2) The caseworker has explored the following resources from the following sources and found them insufficient or inappropriate to meet the identified needs of the child or young adult: the child or young adult, the family, friends, the community, and other Department resources.

(3) A determination that the child or young adult is eligible for Personal Care Services. This determination includes checking Supplemental Security Income (SSI) eligibility, and determining whether

ADMINISTRATIVE RULES

the child or young adult has a documented, diagnosed physical or mental impairment.

(a) To be eligible for Personal Care Services, a child or young adult must:

(A) Be eligible for medicaid, either funded from the state general fund or Title XIX; and

(B) Have care needs which exceed the norm for the age of the child or young adult and can be met through provision of Personal Care Services.

(b) To initiate the provision of Personal Care Services, a registered nurse must assess the Personal Care Service needs of the child or young adult, develop an RN Care Plan based on a documented physical or mental impairment, secure the physician's signed prescription of the Personal Care Services to be provided, and recommend the number of hours per month of care required to meet the RN Care Plan.

(4) The child or young adult must be eligible for a basic foster care maintenance payment.

(5) The substitute caregiver of the child or young adult must be certified by the Department or certified or approved by a licensed child caring agency.

(a) If Personal Care Services are to be provided, a registered nurse must evaluate the substitute caregiver and verify in writing that the substitute caregiver of the child or young adult is competent to provide the care authorized in the RN Care Plan of the child or young adult.

(b) If Personal Care Services include RN delegated nursing tasks, the RN must use form CF 172RNT to document the introductory explanation, demonstration, and return demonstration of all delegated nursing tasks. Detailed written instructions that include side effects, adverse reactions, and actions to be instituted should side effects occur, must also be provided during the initial delegation process, per Oregon State Board of Nursing (OSBN) Guidelines.

(c) It is the responsibility of the substitute caregiver to select alternate caregivers who are knowledgeable of the specific care needs of the child or young adult and can understand and follow the RN Care Plan of the child or young adult. If alternate caregivers perform RN delegated nursing tasks for the child or young adult, they may receive RN training and written instructions per OSBN guidelines at the same time as the substitute caregiver. If this is not possible, an RN must notify the caseworker that alternate caregivers need delegation training and request authorization to schedule training for the alternate caregivers prior to alternate caregivers providing care for the child or young adult. RN delegations are not transferrable.

(6) The identified special needs of the child or young adult must be documented on the Department's Integrated Information System.

(7) The child or young adult must have one or more diagnosed physical or mental impairments that may include, but are not limited to, the following needs or conditions:

(a) Non-ambulatory, inconsistent with their age, and need individual care, such as lifting, bathing, toileting, feeding, dressing.

(b) Enuresis or encopresis inconsistent with their age, necessitating extra laundry such as clothing, bed linen (including protective mattress coverings), or diaper changing.

(c) Special diets prescribed in writing by a physician.

(d) Special treatment such as exercise or other physical therapy. Such services must be part of the written prescribed medical treatment plan.

(e) Medical supervision or care.

(f) Twenty-four hour supervision for their own protection or the protection of others.

(g) Aggressive, acting-out behavior which causes excessive damage to their own or their substitute caregiver's property; such as destruction of bed linen, furnishings, furniture, and other household equipment.

(h) Special treatment prescribed by a physician or clinic that can be provided by substitute caregivers with or without supplementary training or supervision.

(i) Extremely withdrawn or depressed behaviors which require frequent reassurance, attention, or stimulation.

(j) Delay in development of social or personal hygiene skills that require intensive provision of day-to-day learning experiences by the substitute caregiver in keeping with the abilities of the child or young adult.

(k) Developmental delays requiring skilled care.

(l) Aggressive, acting-out, abusive and disruptive behavior.

(m) Delinquent behavior.

(n) Extreme school problems which require substitute caregiver involvement.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 19-1999, f. 9-15-99, cert. ef. 9-20-99; SOSCF 6-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 20-2006(Temp), f. & cert. ef. 10-13-06 thru 4-10-07; CWP 5-2007, f. 3-30-07, cert. ef. 4-1-07

413-090-0140

Periodic Review of Eligibility Requirements

(1) The eligibility of a child or young adult for a special rate or personal care must be reviewed by the child or young adult's caseworker and supervisor at intervals of six months or less from the effective date of the authorization.

(a) The child or young adult's caseworker and supervisor must provide the District Manager or designee a recommendation and supporting documentation to continue, change, or terminate the special rate or personal care payment.

(b) The caseworker assures that the RN Care Plan is appropriate and meets the needs of the child or young adult. A caseworker may consult with the RN or request the RN to complete a new assessment for this review.

(2) A re-assessment for a Special Rate or Personal Care may occur at any time if the behavioral or medical conditions of the child or young adult change enough to warrant re-assessment. The re-assessment must be authorized by the caseworker or supervisor for the child or young adult.

(3) An Annual Review must be completed for every child or young adult receiving a Special Rate or Personal Care service.

(a) This review must be completed by the caseworker or RN depending on the type of assessment necessary.

(b) Physician's Order. At least annually, the child or young adult's physician prescribing the continuation or revision of Personal Care Services must evaluate the care need of the child or young adult and have face-to-face contact with the child or young adult.

(4) The Department must notify substitute caregivers of any intended rate changes prior to approval of the Special Rate or Personal Care Services payments. The agreement must be forwarded to the substitute caregiver within 30 days of approval.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 19-1999, f. 9-15-99, cert. ef. 9-20-99; CWP 20-2006(Temp), f. & cert. ef. 10-13-06 thru 4-10-07; CWP 5-2007, f. 3-30-07, cert. ef. 4-1-07

413-090-0150

Cost Determination

(1) Special maintenance costs must be determined by the caseworker based on direct costs required to maintain the child or young adult in the home.

(a) Direct maintenance costs (Title IV-E eligible) are:

(A) Diet - specify type (cost above regular diet).

(B) Laundry services — launder clothing and bedding for the child or young adult due to his or her special needs (a service beyond typical needs of a child or young adult this age) (cost per load times the number of loads).

(C) Transportation — cost associated with transporting the child or young adult for parental visitation.

(D) Supervision — cost not eligible for Personal Care services to maintain the child or young adult in the home, documented on the CF 172NPC, Part A.

(E) Other — payment to cover the cost of (and cost of providing) clothing, school supplies, or a child or young adult's personal incidentals, that occur on an ongoing basis. The Department also provides Title IV-E foster care maintenance payments to cover the necessary costs incurred on behalf of a child who resides with his or her minor parent in substitute care. That payment must be based on the current basic foster care maintenance rate. This may not be used to reimburse one-time payments.

(b) Direct costs (non Title IV-E eligible expenses) eligible are:

(A) Education services provided by a private resource and necessary to the maintenance of the child or young adult in the home, (allowed only if not eligible to be paid by the local school district).

(B) Transportation related to education services which has been excluded as a part of the cost of the child's Individual Education Plan.

(C) Medical-related transportation that has been verified by the Division of Medical Assistance Programs (DMAP) of the Department of Human Services as not qualifying for payment according to its medical policy (DMAP Medical Transportation Services Guide; Case Workers Guide, Ch. 23).

(D) Planned recreation which is part of the treatment plan for a physically or mentally impaired child or young adult.

(E) Relief Care: Based on the special needs of the child or young adult, an alternate caregiver provides temporary care of the child or young adult in substitute care.

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(2) Personal Care Services payment amounts must be determined by the Special Rate Review Committee based upon the Personal Care Services to the child or young adult prescribed by a physician and described in the RN Assessment and RN Care Plan. Personal Care Services (Title XIX eligible) include all of the following:

(a) Basic personal hygiene, including bathing, hair grooming, nail care, foot care, dressing and undressing, and skin care.

(b) Toileting, including bowel and bladder care required for the total toileting process, helping to and from the bathroom, diapering and bedpan routine.

(c) Ambulation and transfer, including repositioning and assistance with or without mechanical aids.

(d) Feeding and eating with or without mechanical aids, including assurance of adequate fluid intake and preparation of special diets.

(e) Behavior management, in conjunction with a diagnosis from a qualified professional contained in the "Diagnostic and Statistical Manual of Mental Disorders, (DSM IV)," including problems related to adaptation, judgment, behavioral demands on others and incomplete socialization.

(f) Administration of prescribed and over-the-counter medications, including dispensing, observing for reactions, and assuring prescriptions are refilled when necessary.

(g) Nighttime Care Needs. Nighttime Care is the time required to assist a child or young adult through the night.

(h) Supportive Services. Supportive services are those tasks authorized on the RN Care Plan that are not Activities of Daily Living, but are required to meet the identified goals of the child or young adult, such as: preparation of a special diet, household assistance essential to the child or young adult's health and comfort, travel to medical appointments, and shopping for a child or young adult's health care or nutritional needs.

(i) Routine and Skilled Nursing Procedures. Nursing procedures are procedures related to Activities of Daily Living which can be delegated by a registered nurse to a person who is not a nurse. Procedures include but are not limited to mobility, care of unstable fracture or new cast; feeding, feeding per nasogastric tube; bladder, catheter care; bowel, care of colostomy or ileostomy; skin and nails, care of non-healing wounds, nail care for diabetics; care for a child or young adult requiring soft restraints due to a diagnosed medical condition; oxygen or ventilator, administration; tracheotomy care and suctioning, sterile care of stoma, suctioning; medications, injections, finger stick or other blood sugar tests; heart monitor supervision. A delegated nursing procedure shall be reviewed every 60 days or more frequently based on the RN recommendation.

(j) Development of RN Care Plan. Based on the assessment, the RN will develop an RN Care Plan which identifies the child or young adult's impairment-related problem(s) and provides instructions for the care required.

(A) The registered nurse must enter on the assessment form a recommendation for the number of hours required monthly to meet the RN Care Plan.

(B) The caseworker must recommend to the Special Rate Review Committee a rate based upon the number of hours of Personal Care Services per month.

(C) The Special Rate Review Committee may add additional hours under Intensive Supervision Services, and Relief Care for the care provided to the child or young adult who requires intensive behavioral supervision beyond the RN assessment. This need for intensive supervision must be documented.

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

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 19-1999, f. 9-15-99, cert. ef. 9-20-99; SOSCF 6-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 20-2006(Temp), f. & cert. ef. 10-13-06 thru 4-10-07; CWP 5-2007, f. 3-30-07, cert. ef. 4-1-07

413-090-0160

Costs Reimbursable by the Department

(1) The Department will reimburse a substitute caregiver for extraordinary services and supplies that are required on a daily, weekly, monthly or other continuing basis. The costs are separated into three areas: Costs which are reimbursable to the state under Title IV-E federal guidelines (CF 172A, Part A); costs paid with state general funds and TANF (CF 172A, Part B); and Title XIX federal guidelines (CF 172A, Part C).

(2) Supervision costs above standard maintenance costs may be paid by a combination of Title IV-E and TANF or Title XIX allowable costs.

(3) Supervision costs above standard maintenance costs include one or more of the following:

(a) Supervision Eligible for Title IV-E Funding (CF 172NPC, Part A). Supervision eligible for Title IV-E funding is only for behaviors or direct

care needs that are beyond the normal requirements for a child or young adult of a similar age and the child or young adult does not have a documented diagnosis.

(b) Supervision Eligible for Title XIX (CF 172A, Part C). Supervision eligible for Title XIX is for behaviors or direct care needs that are beyond the normal requirements for a child or young adult of a similar age and the child has a documented diagnosis and an RN assessment and RN Care Plan has been completed.

(c) Relief Care is only for a child or young adult whose documented behavioral supervision needs exceed the normal requirements for a child or young adult of a similar age and additional supervision is necessary to maintain the child or young adult in the home.

(4) The narrative for any supervision costs must:

(a) Document the behaviors and direct care and supervision needs of the child or young adult that are beyond the normal requirements for a child or young adult of a similar age.

(b) Describe the interventions and services that the substitute caregiver must provide for each special need, including expected outcome which, if not achieved, would require placing the child or young adult in a higher level of care program.

(c) Describe the substitute caregiver's skill and experience which enable the substitute caregiver to provide appropriate care for the special needs and behaviors of the child or young adult.

(5) Reimbursement rate structure effective April 1, 2006. A rate structure was established to provide rate parity for similar type activities and equitable rates for similar types of special needs of children or young adults. An exception to policy may be granted through documentation and approval (OAR 413-090-0200).

(a) Hourly Rate for Supervision — \$4.60

(b) Transportation Cost — Per Mile — \$.44

(c) Laundry — Per Additional Load — \$1.00

(d) Relief Care — Hourly Rate — \$4.60

(e) Program Educational Expenses Direct Cost Incurred — (Prior Approved)

(f) Diet Cost — Direct Cost Incurred — (Prior Approved)

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

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 19-1999, f. 9-15-99, cert. ef. 9-20-99; SOSCF 6-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 20-2003(Temp), f. 1-31-03 thru 7-30-03; CWP 28-2003, f. & cert. ef. 7-31-03; CWP 35-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 4-28-04; CWP 6-2004, f. & cert. ef. 4-1-04; CWP 20-2006(Temp), f. & cert. ef. 10-13-06 thru 4-10-07; CWP 5-2007, f. 3-30-07, cert. ef. 4-1-07

413-090-0170

Costs Not Compensated by the Department

Direct costs not compensated are:

(1) Kindergarten.

(2) Day care.

(3) Clothing.

(4) Transportation to and from school unless the substitute caregiver provides transportation for a child who attends the school that the child attended prior to removal from the home of the parent or legal guardian.

(5) Special needs which may be paid for through Child Welfare Policy I-E.5.2, "Payments for Special and/or Extraordinary Needs", OAR 413-090-0300 to 413-090-0380.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 19-1999, f. 9-15-99, cert. ef. 9-20-99; SOSCF 6-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 20-2006(Temp), f. & cert. ef. 10-13-06 thru 4-10-07; CWP 5-2007, f. 3-30-07, cert. ef. 4-1-07

413-090-0180

Reimbursement Requirements

Requirements for Special Rate payment include:

(1) Billing. Billing for the service must be submitted on the Department's approved reimbursement form.

(2) Periods of Absence. The Department will not pay a substitute caregiver for services not provided. (See Child Welfare Policy I-E.5.1, OAR 413-090-0030.)

(3) Employer-Employee Relationship. There is not an employer-employee relationship between the Department and the substitute caregiver or the Department and the substitute caregiver's alternate caregiver authorized to receive reimbursement through the Special Rate Program.

(4) Special Rate or Personal Care Services Foster Care Authorization Form. A substitute caregiver may only be paid an amount above the standard foster care maintenance payment for services authorized on the Special Rate or Personal Care Services Foster Care Authorization form, CF 172A.

ADMINISTRATIVE RULES

(5) Provider Contract. When a provider is under contract with a licensed child caring agency to serve a child or young adult in the provider's home, the Department will not pay for services covered under another contract or maintenance payment.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 6-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 20-2006(Temp), f. & cert. ef. 10-13-06 thru 4-10-07; CWP 5-2007, f. 3-30-07, cert. ef. 4-1-07

413-090-0190

Payment Authorization

(1) Payment of a special rate or for personal care may be made only after:

(a) The Special Rate Review Committee has:

(A) Reviewed the methods used to arrive at the special rate or personal care amount;

(B) Considered the amounts paid for services provided that may apply to more than one child or young adult; such as supervision, relief care, in-home assistance, laundry, transportation; and

(C) Considered the equitability of rates for similar types of children or young adults.

(b) The agreement (CF 172A) has been authorized by the signatures of the caseworker, substitute caregiver, and supervisor. Exceptions additionally have been authorized by the Special Rate Committee chairperson and District Manager or designee.

(c) The required payment information has been entered on the Department's integrated information system.

(2) A new agreement (CF 172A or CF 172NPC) is required if there is a change in the substitute caregiver or a revision of the special rate produces a different rate than the previous special rate.

(3) Children or young adults, who are placed with substitute caregivers outside the county with custody and require a special rate or personal care, must have an agreement completed by the Child Welfare office in the county with custody. The Child Welfare office in the county where the child or young adult is placed, if asked, is responsible to participate in assessing the child or young adult's needs and in completing the agreement. Agreement authorization must be completed by the Child Welfare office in the county with custody.

(4) The special rate is effective from the date of the local Child Welfare office authorization. For special rate (CF 172NPC – Non-Personal Care) services provided prior to the date of the authorizing signature, the District Manager or designee may make the effective date of the agreement retroactive up to 90 days prior to the signature date.

(5) For Personal Care Rates, section (4) of this rule does not apply. The Personal Care Rate is effective from the date that the RN performs the assessment. For Personal Care services provided prior to the date of the RN's assessment, the District Manager or designee may make the effective date of the agreement retroactive only to the first day of the month in which the RN did the assessment.

(6) End Date: The maximum period of time for a special rate or Personal Care Authorization is 12 months. A special rate or personal care may be authorized for a lesser period as determined by the District Manager or designee. If a special rate or Personal Care Authorization expires and is not renewed before the next regular scheduled payment date, the foster care payment must revert to the basic maintenance rate.

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

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 19-1999, f. 9-15-99, cert. ef. 9-20-99; SOSCF 17-2001, f. 6-29-01, cert. ef. 7-1-01; SOSCF 6-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 20-2006(Temp), f. & cert. ef. 10-13-06 thru 4-10-07; CWP 5-2007, f. 3-30-07, cert. ef. 4-1-07

413-090-0200

Exceptions and Variances

(1) Exceptions and variances consist of:

(a) Costs that are not in these rules (OAR 413-090-0100 to 413-090-0220); or

(b) Costs that exceed \$500 per month.

(2) Requests for exceptions and variances must be made in writing by the caseworker to the District Manager or designee. Requests must state the reason or reasons that the specific requirements of these rules cannot be met or met only in modified form, and state the requested additional rates or amount of time.

(3) Requests for exceptions and variances must be approved by the District Manager or designee.

(4) The granting of an exception shall not constitute a precedent for any other substitute caregiver, child, or young adult.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 19-1999, f. 9-15-99, cert. ef. 9-20-99; SOSCF 6-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 20-2006(Temp), f. & cert. ef. 10-13-06 thru 4-10-07; CWP 5-2007, f. 3-30-07, cert. ef. 4-1-07

413-090-0210

Termination of Special Rate

The Special Rate or Personal Care must be terminated when the child or young adult no longer meets the Special Rate eligibility requirements.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 19-1999, f. 9-15-99, cert. ef. 9-20-99; CWP 20-2006(Temp), f. & cert. ef. 10-13-06 thru 4-10-07; CWP 5-2007, f. 3-30-07, cert. ef. 4-1-07

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 4-2007

Filed with Sec. of State: 3-30-2007

Certified to be Effective: 4-1-07

Notice Publication Date: 2-1-07

Rules Adopted: 461-135-0491, 461-135-0492, 461-135-0493, 461-135-0494, 461-135-0495, 461-135-0496, 461-135-0497

Rules Amended: 461-001-0000, 461-001-0030, 461-025-0310, 461-105-0010, 461-105-0060, 461-105-0130, 461-105-0150, 461-105-0160, 461-110-0630, 461-115-0030, 461-120-0210, 461-125-0255, 461-125-0370, 461-135-0070, 461-135-0730, 461-135-0750, 461-140-0040, 461-140-0120, 461-140-0242, 461-140-0296, 461-145-0005, 461-145-0008, 461-145-0010, 461-145-0020, 461-145-0022, 461-145-0030, 461-145-0050, 461-145-0060, 461-145-0100, 461-145-0120, 461-145-0130, 461-145-0140, 461-145-0250, 461-145-0380, 461-145-0420, 461-145-0433, 461-145-0455, 461-145-0490, 461-145-0510, 461-145-0540, 461-145-0600, 461-145-0920, 461-145-0930, 461-155-0225, 461-155-0250, 461-155-0290, 461-155-0291, 461-155-0295, 461-155-0530, 461-155-0670, 461-160-0580, 461-160-0610, 461-160-0620, 461-165-0120, 461-170-0020, 461-170-0035, 461-175-0050, 461-175-0206, 461-175-0270, 461-180-0010, 461-180-0020, 461-180-0044, 461-190-0195, 461-195-0541
Rules Repealed: 461-005-0735, 461-120-0230, 461-120-0235, 461-145-0055

Rules Ren. & Amend: 461-145-0070 to 461-145-0086

Subject: OAR 461-001-0000 is being amended to define terms used in these rule. OAR 461-140-0040 about when income is considered available to clients, OAR 461-145-0120 about the definition of earned income, and OAR 461-145-0130 about the treatment of earned income are being amended to change their language about how the department treats cafeteria plan benefits and flexible spending accounts in the eligibility process for food stamps, public assistance, and medical assistance. As amended, the rules will state that income in flexible spending accounts is considered available and counted in the eligibility process for all programs and that in the Food Stamp program, some other cafeteria plan benefits are also counted (if the employee may take the benefits as cash even if not taken as cash). OAR 461-145-0130 is also being amended to correct the treatment of different types of JOBS Plus income in the Food Stamp program. This rule is also being amended to state that in the Food Stamp program, earned in-kind income is excluded unless it is an expenditure by a business entity that benefits a principal, consistent with OAR 461-145-0088.

OAR 461-001-0030 which defines terms that apply to OSIP (Oregon Supplemental Income Program) and OSIPM (OSIP Medical) long-term care and waived clients is being amended to state that an individual in an acute care hospital may meet the definition of continuous period of care. This rule is also being amended to state

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that an individual meets the continuous period of care definition if the care is provided until death.

ORAR 461-005-0735 about the process for the determination of disability is being repealed and ORAR 461-125-0370 is being amended to more clearly reflect the language contained in 42 CFR § 435.541(f) about the current process for determination of disability. ORAR 461-125-0370 is also being amended to include in its definition of disability the definition contained in 20 CFR § 404.1505.

ORAR 461-025-0310 about hearing requests is being amended to change its language about how time periods are calculated and to incorporate hearing rights being removed from ORAR 461-105-0010. As amended, ORAR 461-025-0310 will cross-reference the time period calculation in ORAR 461-025-0300. ORAR 461-105-0010 about the rights of clients is being amended to cross-reference rules that state the clients right to a hearing and their right to a timely decision about eligibility instead of restating those rights.

ORAR 461-105-0060, 461-105-0150, and 461-105-0160 about public records requests, fees for public records, and client access to records are being amended to be consistent with Department-wide rules that will be adopted on this topic in Chapter 407 of the Oregon Administrative Rules. ORAR 461-105-0150 is also being amended to update its requirements about mailing requests and payments.

ORAR 461-105-0130 is being amended to expand the requirement for a written authorization from a client's attorney to include any client health or treatment information. The rule currently imposes this requirement only for substance abuse treatment, mental health treatment, or HIV information.

ORAR 461-110-0630, which identifies the individuals whose basic and special needs are used in determining eligibility and benefit level in the food stamp, public assistance, and medical assistance programs, is being amended to remain consistent with the social security number requirements in ORAR 461-120-0210 which is being amended. ORAR 461-110-0630 is also being amended to clarify that individuals who do not meet the citizenship documentation requirements of ORAR 461-115-0705 are still included in the need group for Medical Assistance Assumed (MAA) and Medical Assistance to Families (MAF). ORAR 461-120-0230 and 461-120-0235 are being repealed and ORAR 461-120-0210 is being amended so that a single rule will describe the situations in which clients of public assistance, medical assistance, and food stamp programs are required to provide the Department with a valid Social Security number. ORAR 461-120-0210 is also being amended to change the requirements and exemptions that are currently in the rules.

ORAR 461-115-0030 about dates of request is being amended to address dates of request for current recipients in the General Assistance Medical (GAM), Medical Assistance Assumed (MAA), Medical Assistance to Families (MAF), the Oregon Health Plan (OHP), Oregon Supplemental Income Program Medical (OSIPM), Refugee Medical (REFM) and Substitute Adoptive Care (SAC) programs. Additionally, the rule is being amended to align REFM with the GAM, MAA, MAF, OSIPM and SAC programs regarding the dates of request.

ORAR 461-125-0255 is being amended to specify that when an absent parent joins a household receiving TANF benefits, or another change occurs that could change the basis of deprivation, the filing group remains eligible during a 45-day period following the timely report of the change during which it may establish TANF eligibility based on incapacity or unemployment. Under the current rule, this time period is only 30 days.

ORAR 461-135-0070 about specific requirements in the Medical Assistance Assumed (MAA), Medical Assistance to Families (MAF) and Temporary Assistance to Needy Families (TANF) programs is being amended to address situations where a caretaker relative may be eligible for MAA or MAF when there is no eligible dependent child. Additionally, this rule is being amended to clarify that a caretaker relative of a dependent child may be eligible for MAA or MAF when the dependent child is not eligible for MAA or

MAF because the child has not met the citizenship documentation requirements of ORAR 461-115-0705.

ORAR 461-135-0491, 461-135-0492, 461-135-0493, 461-135-0494, 461-135-0495, 461-135-0496, and 461-135-0497 are being adopted to allow the Department Food Stamp program to issue temporary emergency food stamp assistance during natural disasters. The Department must adhere to federal guidance before implementing the Disaster Food Stamp Program. The rules are included in the State Disaster Plan that is submitted to the Food and Nutrition Service (FNS) on an annual basis. These rules cover the application process, interviews, verification, eligibility and benefit amount, treatment of households already certified and receiving food stamps, recertifications, promptness of benefits, hearings, and transition from emergency benefits to regular benefits.

ORAR 461-135-0730 about specific requirements for the QMB (qualified medicare beneficiaries) program is being amended to clarify that an individual may not receive QMB-DW (Qualified Medicare Beneficiaries — Disabled Worker; payment of the Medicare Part A premium for people under age 65 who have lost eligibility for Social Security disability benefits because they have become substantially gainfully employed) if the individual is eligible for any other medical programs. This rule is also being amended to update language and add cross references.

ORAR 461-135-0750 about eligibility for the OSIPM program (Oregon Supplemental Income Program Medical) for individuals in long term care or waived services and ORAR 461-165-0120 about payment for a client in an acute care hospital are being amended to allow the use of the institutionalized income standard of 300 percent of SSI for clients who move from acute care to long term care. ORAR 461-135-0750 is also being amended to comply with 42 CFR 435.622 which requires the Department to apply these income standards only to individuals that are institutionalized for a period of not less than 30 consecutive days. ORAR 461-135-0750 is also being amended to clarify that the eligibility standards for medically fragile children for the CIIS (Children's Intensive In-Home Services) behavioral program are service eligibility standards.

ORAR 461-140-0120 about the availability and treatment of lump-sum income, ORAR 461-145-0490 about the treatment of Social Security benefits, and ORAR 461-145-0510 about the treatment of SSI payments are being amended to reflect the requirements of Social Security Administration (SSA) Program Operations Manual (POM) SI01130.600 that apply to eligibility for Oregon Supplemental Income Program (OSIP) and Oregon Supplemental Income Program Medical (OSIPM). The POM requires that retroactive Social Security Benefit (SSB) and SSI payments be excluded as a resource for nine calendar months following the month in which the payments are received. The current rules have a six-month exclusion for retroactive SSI payments and there is no exclusion for retroactive SSB payments.

ORAR 461-140-0242 about disqualifying transfers of assets in the GA (General Assistance, currently closed), GAM (General Assistance Medical, currently closed), OSIP (Oregon Supplemental Income Program), and OSIPM (Oregon Supplemental Income Program Medical, providing medical coverage to the elderly and individuals with disabilities) programs is being amended to restore language to the rule that was inadvertently dropped in the July 1, 2006 amendment. This language was restored by temporary rule effective January 1, 2007 and now the rule is being amended to make the change permanent. The language that is being restored applies to transfers after July 1, 2006 and requires that in order for a transfer of assets from a client to a spouse or child with a disability to not be considered a disqualifying transfer, the transfer must be made for the sole benefit of that child or spouse. This rule is also being amended to make permanent language that was added by temporary rule effective January 1, 2007 to specify that a transfer of assets to a trust under ORAR 461-145-0540(10) is not disqualifying only if the trust is established for the sole benefit of an individual with a disability and the transfer is made while the individual is under the age of 65. This rule

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is also being clarified to specify that transfers to trusts meeting the criteria of OAR 461-145-0540(9)(a) are a disqualifying transfer only as long as the client is age 65 or older. This rule is also being amended to clarify when a transfer of assets is disqualifying if a client has had care provided to them in the past.

OAR 461-140-0296 about the length of disqualification due to an asset transfer in the GA (General Assistance, currently closed), GAM (General Assistance Medical, currently closed), OSIP (Oregon Supplemental Income Program), and OSIPM (Oregon Supplemental Income Program Medical, providing medical coverage to the elderly and individuals with disabilities) programs is being amended to remove a complicated calculation for the disqualification period related to annuities purchased after July 1, 2006 that pay out beyond the annuitant's lifetime. This rule is also being amended for transfer of asset disqualification penalties for transfers by current recipients that occurred on July 1, 2006 or later to clarify that penalty periods cannot overlap and must be served sequentially. This rule is also being amended for disqualifications from any time period to describe how to calculate the disqualification period when both spouses of a couple must serve a penalty for the same disqualifying transfer.

OAR 461-145-0005 about Agent Orange disability benefits, 461-145-0008 about the Alaska Permanent Fund Dividend, and 461-145-0010 about the treatment of income-producing animals are being amended to add cross-references to other rule for non-substantive language changes.

OAR 461-145-0020 and 461-145-0380 are being amended to indicate that if a client uses funds from specific retirement plans authorized under the Internal Revenue Service Code of 1986 to purchase an annuity, the annuity is treated as a retirement plan under these rules in the determination of eligibility for public assistance, medical assistance, and food stamp benefits. Previously, the rules did not specify that this provision related to retirement plans only applies to client purchases of annuities, so it could have also been interpreted to apply to community spouse purchases of annuities.

OAR 461-145-0022, which concerns the treatment of annuities for eligibility in the Oregon Supplemental Income Program Medical (OSIPM), is being amended to indicate that if a client uses funds from specific retirement plans authorized under the Internal Revenue Service Code of 1986 to purchase an annuity, the annuity is not treated as an annuity but is instead treated as a retirement plan under OAR 461-145-0380. Previously, the rule did not specify that this only applies to client purchases of annuities from retirements plans, so it could have also been interpreted to apply to community spouse purchases of annuities.

OAR 461-145-0030 about the treatment of bank accounts in the eligibility process for food stamps, medical assistance, and public assistance is being amended to state what is considered a bank account and when funds in a bank account are counted in the eligibility process, including the treatment of interest and dividends earned on these funds.

OAR 461-145-0050 about the treatment of burial spaces and burial merchandise is being amended in the Employment Related Day Care (ERDC), Food Stamp (FS), Medical Assistance Assumed (MAA), Medical Assistance to Families (MAF), Oregon Health Plan (OHP), Medical Coverage for Children in Substitute or Adoptive Care (SAC), Refugee Assistance (REF) and Temporary Assistance to Needy Families (TANF) programs to reduce the amount of burial merchandise excluded in the eligibility decision to only that merchandise designated for a person in the financial group. Previously, burial merchandise designated for persons outside the financial group (adult children, siblings, parents and the spouses of these persons) were also excluded from the eligibility decision. In addition, the rule is being rewritten and reorganized for clarity.

OAR 461-145-0055 about the treatment of capital assets is being repealed. Its text is being moved and amended as part of OAR 461-

145-0600 to cover capital assets, work-related equipment, and inventory and inventory in a single rule.

OAR 461-145-0060 is being amended to clarify the definition of cash, clarify the relationship of this rule to other rules on this topic, and differentiate between the treatment of cash and checks in the eligibility process for food stamps, medical assistance, and public assistance.

OAR 461-145-0070 is being renumbered to 461-145-0086 and amended to clarify that a contribution does not literally need to be in cash for programs that consider contributions in the eligibility process for food stamps, public assistance, and medical assistance. This rule is also being amended to clarify what is covered by the rules and its relationship to rules on related topics. This rule is being renumbered to maintain alphabetical order in division 461-145.

OAR 461-145-0100 about the treatment of income received from disaster relief in the eligibility process for food stamps, medical assistance, and public assistance is being amended to specify the various types of disaster relief and the scope of the exclusions.

OAR 461-145-0140 about the treatment of earned income tax credits (EITC) is being amended for the OSIP (Oregon Supplemental Income Program), OSIPM (Oregon Supplemental Income Program Medical, providing medical coverage to the elderly and individuals with disabilities), and QMB (Qualified Medicare Beneficiaries) programs to exclude both monthly advance payments and yearly refunds from being counted in the Medicaid eligibility determination.

OAR 461-145-0250 about the treatment of income producing property in the eligibility process for food stamps, public assistance, and medical assistance is being amended for clients in the GA (General Assistance, currently closed), GAM (General Assistance Medical, currently closed), OSIP (Oregon Supplemental Income Program), OSIPM (Oregon Supplemental Income Program Medical, providing medical coverage to the elderly and individuals with disabilities), and QMB (Qualified Medicare Beneficiaries) programs to clarify when the property qualifies to be considered part of a trade or business. For the properties qualifying as a trade or business, the rule is being amended to no longer require a minimum amount of countable income in order for the equity value of the property to be excluded for eligibility purposes. A property that does not qualify as a trade or business, such as the client's previous home that has been rented out because the client no longer lives there, still must generate annual countable income of at least 6% of its equity value in order to have up to \$6,000 equity value excluded. This rule is also being amended to be consistent with OAR 461-145-0600 about work-related capital assets, equipment, and inventory.

OAR 461-145-0420 is being amended to change how to determine the fair market value of real property in the eligibility process for medical assistance, public assistance, and food stamps. The amendment would allow the Department to determine the fair market value by any reasonable methodology. The current rule determines the fair market value by the lesser of the following amounts: the highest value identified by the county assessor on the most recent property tax statement; or the value established by an appraisal as the current amount the real property would sell for on the open market.

OAR 461-145-0433 about the treatment of recreational vehicles in the eligibility process for public assistance, medical assistance, and food stamps is being amended to update and correct cross-references to other rules.

OAR 461-145-0455 about the treatment of resettlement and placement grants in the eligibility process for public assistance, medical assistance, and food stamps is being amended to update and correct cross-references to other rules. This rule is also being amended to indicate the situations in which the exclusion provided under the rule would expire.

OAR 461-145-0540 about the treatment of a trusts in the eligibility process for medical assistance, public assistance, and food stamps is being amended to change the distributions allowed with an "Income Cap Trust" (that makes clients who receive long-term care

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services and have income in excess of the income limit, income-eligible) prior to the balance being paid for the client's long-term care costs for clients in the OSIPM program (Oregon Supplemental Income Program Medical, providing medical coverage to the elderly and individuals with disabilities). A distribution for property taxes will no longer be allowed because clients can get property tax payments from the Department to prevent foreclosure under another rule or they can apply for tax deferral. Distributions used to establish an irrevocable burial plan will be limited to a maximum of \$5,000, whereas the current rule has no limit. A distribution to maintain the client's home will only be allowed if the client is eligible for the cost under other Department rules. Also, distributions will be limited to only those items listed in the rule, rather than allowing those distributions but not limiting the distributions to only those specified by the rule. This rule is also being to make permanent temporary rule changes effective January 1, 2007 that clients in the OSIPM and QMB (Qualified Medicare Beneficiary) programs who obtain pooled trusts meeting the criteria of the rule will not have the trust counted as a resource in the Medicaid eligibility decision and that a client who obtains a pooled trust, signed on or after July 1, 2006, when he or she is age 65 or older may have a disqualifying transfer of assets penalty to serve.

OAR 461-145-0600 about the treatment of work-related equipment and inventory is being amended to include capitol assets (previously addressed in OAR 461-145-0055). This rule is also being amended to clarify how capitol assets, work-related equipment, and inventory are treated in the eligibility process for public assistance, medical assistance, and food stamps, and to include cross-references to other rules. This amendment indicates that capital assets in this rule do not include work-related equipment and inventory. Additionally, this rule is being amended to change the treatment of work-related inventory for self-employed clients participating in the microenterprise component of the JOBS program. The wholesale value of inventory is being changed to reflect the value of the inventory remaining at the end of a semi-annual period.

OAR 461-145-0920 about costs that are excluded to determine countable self-employment income in the eligibility process for food stamps, public assistance, and medical assistance is being amended to clarify the costs which may be excluded from gross sales and receipts. This rule is also being amended to state that reimbursements for a provider's own children are not excluded.

OAR 461-145-0930 about the determination of countable self-employment income in the eligibility process for food stamps, public assistance, and medical assistance is being amended so that the rule is not only about exclusions but also covers the determination of countable income and deductions. This rule is also being amended to clarify excluded costs for self-employment income.

OAR 461-155-0225 about income standards for the Oregon Health Plan (OHP) is being amended to state that the \$10,000 income limit for a financial group that contains a principal of a business entity applies to income assigned to the budget month.

OAR 461-155-0250 about income and payment standards for the Oregon Supplemental Income Program (OSIP, serving the elderly and people with disabilities) and Oregon Supplemental Income Program Medical (OSIPM) programs is being amended to change its standards for OSIP-EPD and OSIPM-EPD (Employed Persons with Disabilities) to the 2007 Federal Poverty Level instead of the 2006 Federal Poverty Level. These amendments will make permanent temporary rule changes adopted March 1, 2007.

OAR 461-155-0290, 461-155-0291, and 461-155-0295 about the income standards for the QMB-BAS, QMB-DW, and QMB-SMB programs (Qualified Medicare Beneficiaries – Basic, Disabled Worker, Special Medicare Beneficiaries) are being amended to base their income standards on the 2007 Federal Poverty Level. Currently, these rules are based on the 2006 Federal Poverty Level. These

amendments will make permanent temporary rule changes adopted March 1, 2007.

OAR 461-155-0530 about the payment of guide dog or special assistance animal food costs for some clients in the Oregon Supplemental Income Program (OSIP, serving the elderly and people with disabilities) and Oregon Supplemental Income Program Medical (OSIPM) programs is being amended to state a requirement to qualify for the allowance that a special assistance animal must be trained to meet the client's specific medical needs or perform specific physical tasks that the client is unable to do.

OAR 461-155-0670 about the approval of special diet allowances related to the Extended Medical (EXT), General Assistance (GA, currently closed), General Assistance Medical (GAM, currently closed), Medical Assistance Assumed (MAA), Medical Assistance to Families (MAF), Refugee Assistance (REF), Refugee Assistance Medical (REFM), Medical Coverage for Children in Substitute or Adoptive Care (SAC), Temporary Assistance to Needy Families (TANF), Oregon Supplemental Income Program (OSIP, serving the elderly and people with disabilities) and Oregon Supplemental Income Program Medical (OSIPM) programs is being amended to state that a nutritionist must verify that the special diet costs more than a regular diet in order for an allowance to be approved.

OAR 461-160-0580 is being amended to update its cross-references. OAR 461-160-0620 — about income deductions and client liability for long-term care and waived services for clients of the OSIP (Oregon Supplemental Income Program) and OSIPM (OSIP Medical) programs — is being amended to correct the calculation used to determine the dependent care allowance in cases involving single clients. This rule is also being amended to remove policy that is covered in 461-160-0610.

OAR 461-160-0610 about clients in long-term care or receiving waived services is being amended to clarify that an individual in an acute care hospital is exempt from the payment for client liability required by this rule. This rule is also being amended to clarify who is required to make a client liability payment.

OAR 461-170-0020 about changes that must be reported to the Department by clients in the Food Stamp, Medical Assistance Assumed (MAA), Medical Assistance to Families (MAF), SAC (Medical Coverage for Children in Substitute or Adoptive Care), and TANF programs is being amended to state that client must report, within 10 days of occurrence, when the pregnancy ends for a member of the filing group in the MAA, MAF, SAC, and TANF programs.

OAR 461-170-0035 about requirements for clients in the Oregon Health Plan (OHP) program to report changes to the Department is being amended to state that a requirement to report, within 10 days of occurrence, when a pregnancy ends for a member of the benefit group.

OAR 461-175-0050 and 461-175-0206 are being amended to add five days for participants in the DOJ address confidentiality program beyond the current ten-day notice periods prior to the closure, reduction, or suspension of benefits in some situations. OAR 461-175-0050 is also being amended to cross-reference related rules, clarify terms, and clarify how the notice periods are counted.

OAR 461-175-0270 about decision notice provided to clients using Averaging with Periodic Review (APR), the monthly reporting system (MRS), the simplified reporting system (SRS), and the transitional benefit alternative (TBA) is being amended to align the Oregon Supplemental Income Program (OSIP, serving the elderly and people with disabilities), Oregon Supplemental Income Program Medical (OSIPM), and Qualified Medical Beneficiaries (QMB) programs with the other Department Medicaid programs. This amendment requires that a notice be sent when a client sends in a change report which results in a reduction of benefits. This rule is also being amended to cross-reference other rules that describe the terms used.

OAR 461-180-0010 about the effective date for adding a new person to an open case and OAR 461-180-0020 about the effective date for changes in income or income deductions are being amended to

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align policy between the two rules. These amendments clarify the effective date for a reported change that will increase food stamp program benefits when a person has joined the household and clarify that the change must occur prior to the effective date of the change for food stamps. These rule are also being amended to add cross-references and use more precise language.

OAR 461-180-0044 concerning the Oregon Supplemental Income Program—Medical (OSIPM— providing medical coverage to the elderly and individuals with disabilities) is being amended to make permanent the corrected cross-reference to another rule that was filed as a temporary change effective January 1, 2007.

OAR 461-190-0195 about the Degree Completion Initiative (DCI) in the TANF program is being amended to remove obsolete language describing the selection process used when DCI was implemented in 2005. This obsolete language is replaced with language describing the current selection process. This rule is also being amended to align this rule with federal law requiring attendance to be provided no less than every two weeks.

OAR 461-195-0541 about liability for overpayments and trafficking for public assistance, medical assistance, and food stamps is being amended to specify which parents, caretaker relatives, and spouses of such parents and caretaker relatives are subject to repayment of overpayments.

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

Rules Coordinator: Annette Tesch—(503) 945-6067

461-001-0000

Definitions for Chapter 461

Defined terms are often italicized throughout this chapter of rules. If a defined term is accompanied by a cross-reference to a rule defining the term, subsequent usages of that term in the same rule refer to the same definition cross-referenced earlier in the rule. In this chapter of rules, unless the context indicates otherwise:

(1) A reference to Division, Adult and Family Services Division (or AFS), Senior and Disabled Services Division (or SDS), or any other agency formerly part of the Department of Human Services shall be taken to mean the Department of Human Services (DHS), except that the rule in which reference occurs only regulates programs covered by chapter 461 of the Oregon Administrative Rules.

(2) A reference to an Administrator of an agency mentioned in section (1) shall be taken to mean the Director of DHS.

(3) “Address Confidentiality Program” (ACP) means a program of the Oregon Department of Justice, which provides a substitute mailing address and mail forwarding service for ACP participants who are victims of domestic violence, sexual assault, or stalking.

(4) “Adjusted income” means the amount determined by subtracting income deductions from *countable income* (see OAR 461-140-0010). Specific rules on the deductions are found in division 461-160.

(5) “Adoption assistance” means financial assistance provided to families adopting children with special needs. Adoption assistance may be state or federally funded. Federal adoption assistance is authorized by the Adoption Assistance and Child Welfare Act of 1980 (Pub. L. No. 96-272, 94 Stat. 500 (1980)). State adoption assistance is authorized by ORS 418.330 to 418.335.

(6) “Assets” mean income and resources.

(7) “Basic decision notice” means a *decision notice* mailed no later than the date of action given in the notice.

(8) “Budgeting” means the process of calculating the benefit level.

(9) “Budget month” means the calendar month from which nonfinancial and financial information is used to *determine eligibility* and benefit level for the payment month.

(10) “Cafeteria plan” means a written benefit plan offered by an employer in which:

(a) All participants are employees; and

(b) Participants can choose, cafeteria-style, from a menu of two or more cash or qualified benefits. In this context, qualified benefits are benefits other than cash that the Internal Revenue Services does not consider part of an employee’s gross income. Qualified benefits include, but are not limited to:

(A) Accident and health plans (including medical plans, vision plans, dental plans, accident and disability insurance);

(B) Group term life insurance plans (up to \$50,000);

(C) Dependent care assistance plans; and

(D) Certain stock bonus plans under section 401(k)(2) of the Internal Revenue Code (but not 401(k)(1) plans).

(11) “Capital asset” means property that contributes toward earning self-employment income, including self-employment income from a microenterprise, either directly or indirectly. A capital asset generally has a useful life of over one year and a value, alone or in combination, of \$100 or more.

(12) “Caretaker” means an individual who is responsible for the care, control, and supervision of a child. The status of caretaker ends once the individual no longer exercises care, control, and supervision of the child for 30 days.

(13) “Caretaker relative” means a *caretaker* who meets the requirements of one of the following subsections:

(a) Is one of the following relatives of the dependent child:

(A) Any blood relative, including those of half-blood, and including first cousins, nephews, or nieces, and individuals of preceding generations as denoted by prefixes of grand, great, or great-great.

(B) Stepfather, stepmother, stepbrother, and stepsister.

(C) An individual who legally adopts the child and any individual related to the individual adopting the child, either naturally or through adoption.

(b) Is or was a spouse of an individual listed in subsection (a) of this section.

(c) Met the definition of *caretaker relative* under subsection (a) or (b) of this section before the child was adopted (notwithstanding the child’s subsequent adoption).

(14) “Certification period” means the period for which a client is certified eligible for a program.

(15) “Child” includes natural, step, and adoptive children. The term child does not include an unborn.

(a) In the ERDC program, a child need not have a biological or legal relationship to the caretaker but must be in the care and custody of the caretaker, must meet the citizenship or alien status requirements of OAR 461-120-0110, and must be:

(A) Under the age of 18; or

(B) Under the age of 19 and in secondary school or vocational training at least half time.

(b) In the GA, GAM, and OSIP programs, a child is an individual under the age of 18.

(c) In the OHP program, child means an individual, including a minor parent, under the age of 19.

(d) In the OSIPM and QMB programs, child means an unmarried individual living with a parent who is:

(A) Under the age of 18; or

(B) Under the age of 22 and attending full time secondary, post secondary or vocational-technical training designed to prepare the individual for employment.

(16) “Community based care” is any of the following:

(a) Adult foster care — Room and board and 24 hour care and services for the elderly or for disabled people 18 years of age or older. The care is contracted to be provided in a home for five or fewer clients.

(b) Assisted living facility — A program approach, within a physical structure, which provides or coordinates a range of services, available on a 24-hour basis, for support of resident independence in a residential setting.

(c) In-home Services — People living in their home receiving services determined necessary by the Department.

(d) Residential care facility — A facility that provides residential care in one or more buildings on contiguous property for six or more individuals who have physical disabilities or are socially dependent.

(e) Specialized living facility — Identifiable services designed to meet the needs of individuals in specific target groups which exist as the result of a problem, condition or dysfunction resulting from a physical disability or a behavioral disorder and require more than basic services of other established programs.

(f) Independent choices - In-home Services recipients in demonstration sites who receive a cash benefit to coordinate in-home services under a section 1115 (42 U.S.C. 1315) demonstration waiver.

(17) “Continuing benefit decision notice” means a decision notice that informs the client of the right to continued benefits and is mailed in time to be received by the date benefits are, or would be, received.

(18) “Countable” means that an available asset (either income or a resource) is not excluded and may be considered by some programs to determine eligibility.

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(19) "Custodial parents" mean parents who have physical custody of a child. Custodial parents may be receiving benefits as dependent children or as caretaker relatives for their own children.

(20) "Decision notice" means a written notice of a decision by the Department regarding an individual's eligibility for benefits in a program.

(21) "Department" means the Department of Human Services (DHS).

(22) "Dependent child", in the EXT, MAA, MAF, REFM, and TANF programs, means the following:

(a) An individual who is not a caretaker relative of a child in the household, is unmarried or married but separated, and is under the age of 18, or 18 years of age and a full time student in secondary school or the equivalent level of vocational or technical training; or

(b) A minor parent whose parents have chosen to apply for benefits for the minor parent. This does not apply to a minor parent who is married and living with his or her spouse.

(23) "Domestic violence" means the occurrence of one or more of the following acts between family members, intimate partners, or household members:

(a) Attempting to cause or intentionally, knowingly or recklessly causing physical injury or emotional, mental or verbal abuse.

(b) Intentionally, knowingly or recklessly placing another in fear of imminent serious physical injury.

(c) Committing sexual abuse in any degree as defined in ORS 163.415, 163.425 and 163.427.

(d) Using coercive or controlling behavior.

(24) "Domestic violence shelters" are public or private nonprofit residential facilities providing services to victims of domestic violence. If the facility serves other people, a portion must be used solely for victims of domestic violence.

(25) "Eligibility" means the decision as to whether an individual qualifies, under financial and nonfinancial requirements, to receive program benefits.

(26) "Equity value" means fair market value minus encumbrances.

(27) "Fair market value" means the amount an item is worth on the open market.

(28) "Financial institution" means a bank, credit union, savings and loan association, investment trust, or other organization held out to the public as a place receiving funds for deposit, savings, checking, or investment.

(29) "HPN" means a health plan new/noncategorical client eligible under OHP-OPU.

(30) "Income-producing property" means any real or personal property that generates income for the financial group. Examples of income-producing property are:

(a) Livestock, poultry, and other animals.

(b) Farmland, rental homes (including a room or other space in the home or on the property of a member of the financial group), vacation homes, condominiums.

(31) "Initial month" of eligibility means any of the following:

(a) In all programs, the first month a *benefit group* (see OAR 461-110-0750) is eligible for a program benefit in Oregon after a period during which the group is not eligible.

(b) In all programs except the FS program, the first month a *benefit group* is eligible for a program benefit after there has been a break in the program benefit of at least one full calendar month. If benefits are suspended for one month, that is not considered a break.

(c) In the FS program:

(A) The first month for which the *benefit group* is certified following any period during which they were not certified to participate, except for migrant and seasonal farm workers (see OAR 461-001-0015).

(B) For *migrant and seasonal farmworkers*, the first month for which the benefit group is certified following any period of one month or more during which they were not certified to participate.

(d) In the OHP program, the first month of a redetermination or recertification period.

(32) "In-kind income" means income in a form other than money (such as food, clothing, cars, furniture, and payments made to a third party).

(33) "Legally married" means a marriage uniting a man and a woman according to the provisions of either:

(a) The statutes of the state where the marriage occurred;

(b) The common law of the state in which the man and woman previously resided while meeting the requirements for common law marriage in that state; or

(c) The laws of a country in which the man and woman previously resided while meeting the requirements for legal or cultural marriage in that country.

(34) "Life estate" means the right to property limited to the lifetime of the individual holding it or the lifetime of some other individual. In general, a life estate enables the owner of the life estate to possess, use and obtain profits from property during the lifetime of a designated individual while actual ownership of the property is held by another individual. A life estate is created when an individual owns property and then transfers their ownership to another while retaining, for the rest of their life, certain rights to that property. In addition, a life estate is established when a member of the *financial group* (see OAR 461-110-0530) purchases a life estate interest in the home of another individual.

(35) "Lodger" means a member of the *household group* (see OAR 461-110-0210) who:

(a) Is not a member of the filing group; and

(b) Pays the filing group for room and board.

(36) "Long-term care" means the system through which the Department provides a broad range of social and health services to eligible adults who are aged, blind, or have disabilities for extended periods of time. This includes nursing homes and state hospitals (Eastern Oregon and Oregon State Hospitals).

(37) "Lump-sum income" means income received too infrequently or irregularly to be reasonably anticipated, or received as a one-time payment. Lump-sum income includes:

(a) Retroactive benefits covering more than one month, whether received in a single payment or several payments.

(b) Income from inheritance, gifts, winnings and personal injury claims.

(38) "Marriage" means the union of a man and a woman who are *legally married*.

(39) "Microenterprise" means a sole proprietorship, partnership, or family business with fewer than five employees and capital needs no greater than \$35,000.

(40) "Minor parent", in the ERDC, EXT, MAA, MAF, and TANF programs, means a parent under the age of 18.

(41) "Nonstandard living arrangement" is defined as follows:

(a) In the GA, GAM, OSIP, OSIPM, and QMB programs, a client is considered to be in a *nonstandard living arrangement* when the client is applying for or receiving services in any of the following locations:

(A) A nursing facility.

(B) An intermediate care facility for the mentally retarded (ICF/MR).

(C) A psychiatric institution, if the individual is not yet 21 years of age or has reached the age of 65.

(D) A community-based setting covered by a waiver under Title XIX of the Social Security Act.

(b) In all programs except GA, GAM, OSIP, OSIPM, and QMB, a nonstandard living arrangement means each of the following locations:

(A) Foster care.

(B) Residential Care Facilities.

(C) Drug or Alcohol Residential Treatment Facilities.

(D) Homeless or Domestic Violence Shelters.

(E) Lodging house if paying for room and board.

(F) Correctional facilities.

(G) Medical institutions.

(42) "Ongoing month" means one of the following:

(a) For all programs except FS and OHP, any *month following* the initial month of eligibility, if there is no break in the program benefit of one or more calendar months.

(b) For the FS and OHP programs, any month in the certification period following the initial month of eligibility.

(43) "Parent" means the biological or legal (step or adoptive) mother or father of an individual or unborn child.

(a) If the mother lives with a male and either she or the male claims that he is the father of the child or unborn, and no one else claims to be the father, he is treated as the father even if paternity has not been legally established.

(b) A stepparent relationship exists if:

(A) The individual is *legally married* to the child's biological or adoptive parent; and

(B) The *marriage* has not been terminated by legal separation, divorce or death.

(c) A legal adoption erases all prior legal and blood relationships and establishes the adoptive parent as the legal parent. However, the biological parent is also considered a parent if both of the following are true:

(A) The child lives with the biological parent; and

(B) The legal parent (the adoptive parent) has given up care, control and supervision of the child.

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(44) "Payment month" means, for all programs except EA, the calendar month for which benefits are issued.

(45) "Payment period" means, for EA, the 30-day period starting with the date the first payment is issued and ending on the 30th day after the date the payment is issued.

(46) "Periodic income" means income received on a regular basis less often than monthly.

(47) "Primary person" for all programs except FS, means the filing group member who is responsible for providing information necessary to determine eligibility and calculate benefits. The primary person for individual programs is as follows:

(a) For EXT, MAA, MAF, and TANF, the parent or caretaker relative.

(b) For ERDC, the caretaker.

(c) For FS, see OAR 461-001-0015.

(d) For GA, GAM, OSIP, OSIPM, and QMB, the client or their spouse.

(e) For OHP, REF, and REFM, the applicant, caretaker, caretaker relative or parent.

(48) "Real property" means land, buildings, and whatever is erected on or affixed to the land and taxed as real property.

(49) "Reimbursement" means money or in-kind compensation provided specifically for an identified expense.

(50) "Safe homes" mean private homes that provide a few nights lodging to victims of domestic violence. The homes must be recognized as such by the local domestic violence agency, such as crisis hot lines and shelters.

(51) "Shelter costs" mean, in all programs except the Food Stamp program, housing costs (rent or mortgage payments, property taxes) and utility costs, not including cable TV or non-basic telephone charges. In the Food Stamp program, see OAR 461-160-0420.

(52) "Shelter-in-kind" means an agency or person outside the *household group* (see OAR 461-110-0210) provides the shelter of the financial group (see OAR 461-110-0530), or makes a payment to a third party for some or all of the shelter costs of the *financial group*.

(a) For all programs except OSIP, OSIPM, and QMB, shelter-in-kind does not include temporary shelter provided by a domestic violence shelter, homeless shelter, or residential alcohol and drug treatment facilities.

(b) For OSIP, OSIPM, and QMB, shelter-in-kind also includes situations where the client has no *shelter costs*.

(53) "Sibling" means the brother or sister of an individual. "Blood-related" means they share at least one biological or adoptive parent. "Step" means they are not related by blood, but are related by the *marriage* of their parents.

(54) "Spousal support" means income paid (voluntarily, per court order or per administrative order) by a separated or divorced spouse to a member of the *financial group* (see OAR 461-110-0530).

(55) "Spouse" means an individual who is *legally married* to another individual. In the ERDC and FS programs, spouse includes an individual who is not *legally married* to another, but is presenting themselves to the community as the husband or wife by:

(a) Representing themselves as husband and wife to relatives, friends, neighbors or tradespeople; and

(b) Sharing living expenses or household duties.

(56) "Stable income" means income that is the same amount each time it is received.

(57) "Standard living arrangement" means a location that does not qualify as a *nonstandard living arrangement*.

(58) "Teen parent" means, for TANF and JOBS, a parent under the age of 20 who has not completed a high school diploma or GED.

(59) "Timely continuing benefit *decision notice*" means a decision notice that informs the client of the right to continued benefits and is mailed no later than the time requirements in OAR 461-175-0050.

(60) "Trust funds" mean money, securities, or similar property held by a person or institution for the benefit of another person.

(61) "USDA meal reimbursements" mean cash reimbursements made by the Oregon Department of Education for family day-care providers who serve snacks and meals to children in their care.

(62) "Variable income" means earned or unearned income that is not always received in the same amount each month.

Stat. Auth.: ORS 411.060, 411.816 & 418.100

Stats. Implemented: ORS 411.060, 411.816 & 418.100

Hist.: AFS 28-1978, f. & ef. 7-13-78; AFS 54-1984, f. 12-28-84, ef. 1-1-85; AFS 21-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07

461-001-0030

Definitions; OSIP, OSIPM Long-Term Care or Waivered

These terms apply to rules in Chapter 461 about OSIP and OSIPM long-term care and waived clients:

(1) Community spouse: An individual who is legally married to an institutionalized spouse and is not in a medical institution or nursing facility.

(2) Continuous period of care: Reside for a period of at least 30 consecutive days or until death in a long-term care facility, waiverable care setting, or an acute care hospital. There must be sufficient evidence to show there is a reasonable expectation that the client will remain in care for at least 30 consecutive days. For the purposes of this policy, an interruption in care (for example, leaving and then returning to a nursing home, or switching from one type of care to another) that lasts less than 30 days is not considered a break in the 30 consecutive days of care. A new period of care begins if care is interrupted for 30 or more days.

(3) Eligible dependent:

(a) For cases with a community spouse, eligible dependents are minor (under the age of 21) or dependent children, dependent parents, or dependent siblings of the institutionalized or community spouse who are residing with the community spouse and are claimed as tax dependents by either spouse.

(b) For cases without a community spouse, eligible dependents are minor (under the age of 21) or dependent children living in the client's household group.

(4) Institutionalized spouse: An individual who is in long-term care or receiving waiverable home or community-based services for a continuous period and is married to a community spouse.

(5) Waivered services are services needed to keep an individual out of a long-term care facility. Waivered services are:

(a) In-home services.

(b) Services in a residential care facility.

(c) Services for an individual in an assisted living facility.

(d) Adult foster care services.

(e) Home adaptations to accommodate a client's physical condition.

(f) Home-delivered meals provided in conjunction with in-home services.

(g) Specialized Living Facilities.

(h) Adult Day Care.

(i) Community transition services.

(6) Waivered client: A client receiving Title XIX waived services for a continuous period.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060, 411.700

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 5-2002, f. & cert. ef. 4-1-02; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 4-2005, f. & cert. ef. 4-1-05; Renumbered from 461-160-0560, SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07

461-025-0310

Hearing Requests

(1) A claimant (defined at OAR 461-025-0305) has the right to a contested case hearing in the following situations upon the timely completion of a request for hearing:

(a) The Department has not acted on a request or application for public assistance within 45 days of the application.

(b) The Department has not acted timely on an application as follows:

(A) An application for food stamps — within 30 days of the filing date.

(B) An application for a JOBS support service payment — within the time frames established in OAR 461-115-0190(3).

(c) The Department acts to deny, reduce, close, or suspend food stamp benefits, a grant of public assistance, a grant of aid, a support service payment authorized in the JOBS program by OAR 461-190-0211, medical assistance, or child care benefits authorized under Division 160 or 165 of this chapter of rules in the ERDC or TANF child care programs. When used in this subsection, grant of public assistance and grant of aid mean the grant of cash assistance calculated according to the client's need.

(d) The Department claims that an earlier public assistance payment was an overpayment, or that an earlier issuance of food stamps was an overissuance.

(e) The claimant claims that the Department previously underissued public assistance or food stamps and the Department denies the claim.

(f) The household disputes its current level of food stamp benefits.

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(g) The filing group is aggrieved by any action of the Department that affects the participation of the filing group in the Food Stamp program.

(h) The claimant asks for a hearing to determine if the waiver of an Intentional Program Violation hearing was signed under duress.

(i) The Department establishes or changes the client's premium for the Oregon Health Plan.

(j) In the Assessment program, the Department denies payment for a basic living expense (see OAR 461-135-0475).

(k) The right to a hearing is provided for the TA-DVS program (see OAR 461-135-1235).

(l) A service re-assessment of a client conducted in accordance with OAR division 411-015 has resulted in a reduction or termination of Nursing Home services, Home and Community Based Waivered Services (defined at OAR 411-015-0005), Spousal Pay services (see OAR 411-030-0080), or Independent Choices services (see OAR division 411-036).

(m) The claimant's benefits are changed to vendor, protective, or two-party payments.

(n) The right to a hearing is otherwise provided by statute or rule.

(2) A client is not entitled to a hearing on the question of the contents of a case plan (defined in OAR 461-190-0151) unless the right to hearing is specifically authorized by the Department's rules. For a dispute about an activity in the JOBS program, the client is entitled to use the Department's conciliation process (see OAR 461-190-0231).

(3) There is no right to a hearing to dispute a program requirement established by law. Examples are the closure of a program or a change to a payment standard.

(4) A request for hearing is complete:

(a) In public assistance programs, when the Department's Administrative Hearing Request form (**form DHS 443**) is completed and signed by the claimant or the claimant's representative and is received by the Department.

(b) In the Food Stamp program when:

(A) The Department receives the claimant's oral or written statement that he or she wishes to appeal a decision affecting the claimant's food stamp benefits to a higher authority; or

(B) The Department's Administrative Hearing Request form (**form DHS 443**) is completed and signed by the claimant or the claimant's representative and is received by the Department.

(c) In the case of a provider of child care, when a written request for hearing from the provider is received by the Department.

(5) In the event a request for hearing is not timely, the Department will determine whether the failure to timely file a request for hearing was beyond the reasonable control of the party and enter an order accordingly. The Department may refer an untimely request to the Office of Administrative Hearings for a hearing on the question of timeliness.

(6) In the event the claimant has no right to a contested case hearing on an issue, the Department may enter an order accordingly. The Department may refer a hearing request to the Office of Administrative Hearings for a hearing on the question of whether the claimant has the right to a contested case hearing.

(7) To be timely, a completed hearing request must be received by the Department not later than:

(a) The 45th day following the date of the decision notice in public assistance and medical programs.

(b) The 90th day following the date of the decision notice in the Food Stamp program, except:

(A) A filing group may submit a hearing request at any time within a certification period to dispute its current level of benefits.

(B) A filing group may submit a hearing request within 90 days of the denial of a request for restoration of benefits if less than one year has expired since the loss of benefits.

(c) The 30th day following the date of notice from the Oregon Department of Revenue in cases covered by ORS 293.250.

(d) In a case described in subsection (1)(h) of this rule, the request must be made within 90 days of the date the waiver was signed.

(8) In determining timeliness under section (7) of this rule, delay caused by circumstances beyond the control of the claimant is not counted.

(9) In computing the time periods provided by this rule, see OAR 461-025-0300(1).

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

Stat. Auth.: ORS 411.060, 411.816 & 418.100

Stats. Implemented: ORS 411.060, 411.095, 411.816, 414.055, 418.100, 418.125

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 4-1995, f. & ef. 2-1-95; AFS 26-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 3-2000, f. 1-31-2000, cert. ef. 2-1-00; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 23-2002(Temp), f. 12-31-02, cert. ef. 1-1-03 thru 6-30-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 21-2004, f. & cert. ef. 10-1-04; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07

461-105-0010

Rights of Clients

Clients of the Department in programs regulated by Chapter 461 of these rules have the following rights and the right to be informed of them:

(1) The right to information about the programs administered by the Department.

(2) The right to confidentiality for individually identifiable information to the extent provided under federal and state law, including the administrative rules of the Department.

(3) The right to refuse social services unless:

(a) The service is court-ordered;

(b) The service is related to a case plan as defined in OAR 461-001-0020 or 461-001-0025; or

(c) Treatment is required under OAR 461-135-0085.

(4) The right, upon expressing dissatisfaction with an action of the Department, to obtain the Department's standard form for requesting a hearing.

(5) The right to request a hearing to the extent provided in OAR 461-025-0310 and 461-025-0315.

(6) The right to apply for any program administered by the Department.

(7) The right to have a decision on eligibility made by the Department within the timelines set forth in OAR 461-115-0190 and 461-115-0210.

(8) The right to apply for and receive benefits and services from the Department and its contractors, grantees, agents, and providers of services who receive payments from the Department which are funded in whole or in part with federal funds without discrimination on the basis of race, color, national origin, religion, gender, disability, or political beliefs.

(9) The right to courteous, fair and dignified treatment by Department personnel.

Stat. Auth.: ORS 411.060, 411.816 & 418.100

Stats. Implemented: ORS 411.060, 411.816 & 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 11-1999, f. & cert. ef. 10-1-99; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07

461-105-0060

Release of Information to the Client

For any program covered by chapter 461 of the Oregon Administrative Rules:

(1) The Department must make the information in a case record of a client available to the following people within the limits described in this rule:

(a) Anyone in the filing group.

(b) Anyone authorized by the primary person or by a person in the filing group.

(2) The primary person and filing group members may have access only to client information that is related to the time during which they had that position in the case. The person can appoint an authorized representative whose access to client information covers only that same period.

(3) The "minimum necessary" standard as described in OAR 410-014-0040 is extended to limit the sharing of individually identifying information by the Department about one member of a filing group with either another member of the filing group or anyone authorized by another member of the filing group.

(4) Except for HIV information, case record information may be requested by the client and released to the client by telephone. The client must satisfy the branch as to their identity.

(5) Except as provided in this rule and in OAR 410-014-0030(6), information obtained from a third party that is part of the case record of the client is available to the client.

(6) The Department may withhold from a client information obtained from a confidential informant, including the identity of the informant, if all of the following are true:

(a) The information was submitted to the Department in confidence.

(b) The information was not required by law to be submitted.

(c) The information can reasonably be considered confidential.

(d) The Department has obliged itself not to disclose the information.

(e) The information is not part of the case record.

(f) The public interest would suffer if the information were disclosed.

(7) Subject to OAR 407-003-0010:

(a) A client, an *authorized representative* (as defined at OAR 461-115-0090, 461-115-0140, and 461-115-0145), or a personal representative (as defined at OAR 410-014-0000(32)), including an attorney who represents the client on a matter before the Department) may request a copy of

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information from the client file at no cost once every 12 months. If the client, *authorized representative*, or personal representative requests another copy of the same information already provided more frequently than once every 12 months, the branch office may impose a reasonable, cost-based fee.

(b) If an authorized third party who is not an authorized representative or personal representative requests client records, fees may be assessed for accessing stored records, extracting filed matter, duplication of records, or other costs necessary to releasing requested information.

(c) A branch office may establish additional, reasonable fees to cover extraordinary costs of duplicating records, making extensive searches, or preparing written summaries of records.

(d) At the option of the branch office, fee assessment may be waived.

(8) An individual designated by the manager must be present while the client or the authorized third party has access to the case record. No one except a Department employee is allowed to remove any material from the case record. Subject to payment of any cost-based fee assessed by a branch office consistent with OAR 407-003-0010 and this rule, the branch office will provide the person examining the case record with a copy of any portion of the case record that they are entitled to examine.

Stat. Auth.: ORS 411.060, 411.300, 411.816, 418.100

Stats. Implemented: ORS 410.150, 411.060, 411.117, 411.300, 411.320, 411.335, 411.816, 411.837, 418.100, 418.130

Hist.: AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07

461-105-0130

Disclosure of Client Information

For any program covered by chapter 461 of the Oregon Administrative Rules:

(1) The Department may disclose the minimum necessary client information without client authorization for purposes directly connected with:

(a) Administering the public assistance and food stamp laws, except for social security numbers, health, treatment, and domestic violence information.

(b) Any investigation, prosecution, or criminal or civil proceeding conducted in connection with administering the programs covered by chapter 461 of the Oregon Administrative Rules.

(c) Any legally authorized audit or review by a governmental entity conducted in connection with administering the programs covered by chapter 461 of the Oregon Administrative Rules.

(2) Client information, other than health or treatment information, may be exchanged with other governmental or private, non-profit agencies to only the extent necessary to assist applicants or recipients of public assistance or food stamps to access and receive other governmental or private, non-profit services that will benefit or serve the applicant or recipient. Reasonable efforts must be made to obtain applicant or recipient authorization in advance.

(3) For all programs except FS, client information may be disclosed without the client's authorization for purposes directly connected with foster care and adoption assistance programs under Title IV-E of the Social Security Act.

(4) Notwithstanding any rule in this division, client information — other than health or treatment information — may be disclosed to an Oregon attorney who represents that client if both of the following requirements are met:

(a) The attorney states that he or she currently is representing the client.

(b) The attorney states that the client has authorized disclosure of the client information to the attorney.

Stat. Auth.: ORS 411.060, 411.300, 411.816, 418.100

Stats. Implemented: ORS 410.150, 411.060, 411.117, 411.300, 411.320, 411.335, 411.816, 411.837, 418.100, 418.130

Hist.: AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 32-1996(Temp), f. & cert. ef. 9-23-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07

461-105-0150

Requests for Written Public Records

(1) A request for written public records from the Office of Self-Sufficiency Programs must be in writing and must specifically identify the record being requested, the number of copies requested, and the name and address of the individual or entity making the request.

(2) The topic of fees for public records is covered in OAR 407-003-0010 and 461-105-0060.

Stat. Auth.: ORS 192.430, 411.060, 411.816, 418.100

Stats. Implemented: ORS 192.430, 411.060, 411.816, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 1-1993, f. & cert. ef. 2-1-93; AFS 24-2001, f. & cert. ef. 11-1-01; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07

461-105-0160

Fees for Public Records

See OAR 407-003-0010 and 461-105-0060.

Stat. Auth.: ORS 192.430, 409.050, 411.060, 411.816, 418.100

Stats. Implemented: ORS 192.430, 192.440, 409.010, 411.060, 411.816, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 24-2001, f. & cert. ef. 11-1-01; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07

461-110-0630

Need Group

(1) The need group consists of the individuals whose basic and special needs are used in determining eligibility and benefit level.

(2) In the EA, REF, and REFM programs, the need group consists of the members of the financial group (see OAR 461-110-0530) who meet all nonfinancial eligibility requirements, except that members disqualified for an intentional program violation are not in the need group.

(3) In the ERDC, OSIP, OSIPM, QMB, and SAC programs, the need group consists of each member of the financial group.

(4) In the EXT program, the need group consists of each member of the financial group except an individual excluded from the need group for not complying with social security number requirements under OAR 461-120-0210.

(5) In the FS program, the need group consists of the members of the financial group who meet all nonfinancial eligibility requirements, except the following people are not in the need group:

(a) A member disqualified for an intentional program violation.

(b) A fleeing felon under OAR 461-135-0560.

(c) An individual violating a condition of state or federal parole, probation, or post-prison supervision under OAR 461-135-0560.

(6) In the GA and GAM programs, the need group consists of each member of the financial group except that the following individuals may not be in the need group:

(a) A fleeing felon under OAR 461-135-0560.

(b) An individual in violation of a condition of state or federal parole, probation, or post-prison supervision under OAR 461-135-0560.

(c) An individual not complying with social security number requirements under OAR 461-120-0210.

(7) In the MAA and TANF programs, the need group is formed as follows:

(a) Except as provided in subsection (b) of this section, the need group consists of the members of the financial group who meet all nonfinancial eligibility requirements other than the citizenship and alien status requirements of OAR 461-120-0110 or the citizenship documentation requirements of OAR 461-115-0705.

(b) The need group cannot include:

(A) A parent who is in foster care and for whom foster care payments are being made.

(B) An unborn child.

(C) In the TANF program:

(i) An individual who cannot be in the need group because of a disqualification penalty.

(ii) A fleeing felon under OAR 461-135-0560.

(iii) An individual violating a condition of state or federal parole, probation, or post-prison supervision under OAR 461-135-0560.

(8) In the MAF program, the need group consists of the members of the financial group who meet all nonfinancial eligibility requirements other than the citizen and alien status requirements of OAR 461-120-0110 or the citizenship documentation requirements of OAR 461-115-0705, except for the following individuals:

(a) A parent who is in foster care and for whom foster care payments are being made.

(b) The father of an unborn child who has no eligible dependent children.

(9) In the OHP program:

(a) An unborn child of a pregnant female is included in the need group.

(b) In the OHP-CHP program, the need group consists of each member of the financial group.

(c) Except in the OHP-CHP program, the need group consists of each member of the financial group except an individual excluded from the need group for not complying with social security number requirements under OAR 461-120-0210.

Stat. Auth.: ORS 411.060, 411.816 & 418.100

Stats. Implemented: ORS 411.060, 411.816 & 418.100

ADMINISTRATIVE RULES

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 6-1991(Temp), f. & cert. ef. 2-8-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 7-2006(Temp), f. 3-31-06, cert. ef. 4-1-06 thru 9-28-06; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07

461-115-0030

Date of Request

(1) For all programs covered by Chapter 461 of the Oregon Administrative Rules, the client or someone authorized to act on behalf of the client must contact the Department or use another appropriate method to request benefits (see OAR 461-115-0150). The request may be oral or in writing. The request starts the application process.

(2) The *date of request* is one of the following:

(a) In the EA, ERDC-BAS, GA, OSIP, REF, and TANF programs and for support service payments in the JOBS program authorized by OAR 461-190-0211, the date of request is the day the request for benefits is received by the Department.

(b) In the ERDC-SBG program, the date of request is the date the Department sends the client a notice of the right to apply, along with an application.

(c) In the FS program, this section does not apply. See OAR 461-115-0040.

(d) In the GAM, MAA, MAF, OHP, OSIPM, REFM, and SAC programs, the date of request is determined as follows:

(A) For a new applicant.

(i) The day the medical care began, if the actual request is made no later than the next working day. If the request is received later than the next working day, the date of request is the day the request is received by a Department representative, except as described in subparagraph (ii) of this paragraph.

(ii) In the OHP program, if the completed application is not received by the Department within 30 days of the date established in subparagraph (i) of this paragraph, the date of request is the date the written application is received by the Department.

(B) For a current recipient, the date of request is one of the following:

(i) The date the client reports a change requiring a redetermination of eligibility.

(ii) The date the Department initiates a review, except that the automatic mailing of an application does not constitute a Department-initiated review.

(iii) The date the client establishes a date of request by contacting the Department orally or in writing or by submitting an application.

Stat. Auth.: ORS 409.050, 411.060, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.816, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; AFS 5-2000, f. 2-29-00, cert. ef. 3-1-00; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 21-2004, f. & cert. ef. 10-1-04; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07

461-120-0210

Requirement to Provide or Apply for SSN

(1) In the CAWEM, ERDC, OHP-CHP, REF, and REFM programs, a member of a *need group* (see OAR 461-110-0630) or a *benefit group* (see OAR 461-110-0750) is not required to provide or apply for a social security number (SSN). In these programs, the Department may request that a member of the filing or need group provide an SSN on a voluntary basis.

(2) In the EA and TA-DVS programs, an individual must provide his or her SSN if the individual can.

(3) Except as provided in section (5) of this rule, in the OSIP, OSIPM, and QMB programs, to be included in the benefit group, an individual must:

(a) Provide a valid SSN for the individual; or

(b) Apply for a number if the individual does not have a valid one and provide the SSN when it is received.

(4) Except as provided in sections (5) to (7) of this rule, in all programs not covered by sections (1) to (3) of this rule, to be included in the need group, an individual must:

(a) Provide a valid SSN for the individual; or

(b) Apply for a number if the individual does not have one and provide the SSN when it is received.

(5) In the BCCM, EXT, FS, GA, GAM, MAA, MAF, OHP, OSIP, OSIPM, QMB, and SAC programs, an individual is not required to apply for or provide an SSN if the individual is:

(a) A member of religious sect or division of a religious sect that has continuously existed since December 31, 1950; and

(b) Adheres to its tenets or teachings that prohibit applying for or using an SSN.

(6) The requirement to apply for or provide the SSN is delayed as follows:

(a) In the BCCM, EXT, MAA, MAF, OHP, and SAC programs, a newborn who is assumed eligible based on the eligibility of the mother of the newborn may receive benefits until one year of age without meeting the SSN requirements of section (4) of this rule.

(b) In the Food Stamp program:

(A) Applicants eligible for expedited services may receive their first full month's allotment without meeting the SSN requirement but must meet the requirement before receiving a second full month's allotment.

(B) Before applying for or providing an SSN, a newborn may be added to an existing benefit group (see OAR 461-110-0750) for six months following the date the baby is born or until the group's next recertification, whichever is later.

(7) In the Food Stamp program:

(a) An individual who refuses or fails without good cause to provide or apply for an SSN when required by this rule is ineligible to participate. This period of ineligibility continues until the individual provides the SSN to the Department.

(b) An individual may participate in FS for one month in addition to the month of application, if the individual can show good cause why the application for an SSN has not been completed. To continue to participate, the individual must continue to show good cause each month until the application for an SSN is complete with Social Security Administration.

(c) An individual meets the good cause requirement in subsections (a) and (b) of this section if the individual provides evidence or collateral information that the individual applied for or made every effort to supply the Social Security Administration with the necessary information to complete the application process. Delays due to illness not associated with a disability (see OAR 461-001-0015), lack of transportation, or temporary absence do not qualify as good cause under this rule.

Stat. Auth.: ORS 411.060, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.816, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07

461-125-0255

Change in Basis of Deprivation; TANF

In the TANF program, when an absent parent joins a household receiving TANF benefits, or another change occurs that could change the basis of deprivation, the filing group (see OAR 461-110-0330) remains eligible during a 45-day period following the timely report of the change, during which the filing group may establish TANF eligibility based on incapacity or unemployment.

Stat. Auth.: ORS 411.060, 418.100

Stats. Implemented: ORS 411.060, 418.070, 418.100, 418.180, 418.185

Hist.: AFS 28-1992, f. & cert. ef. 10-1-92; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 12-2001, f. 6-29-01, cert. ef. 7-1-01; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07

461-125-0370

Disability as the Basis of Need; OSIP and OSIPM

(1) In the OSIP and OSIPM programs (except OSIP-EPD and OSIPM-EPD), an individual meets the eligibility requirement to have a disability if the requirements of one of the following subsections are met:

(a) The individual is receiving Social Security Disability Income (SSDI) or Supplemental Security Income (SSI) based on disability. Eligibility continues as long as the individual remains eligible for SSDI or SSI.

(b) The individual was eligible for and received Aid to the Disabled benefits in Oregon in December 1973. These grandfathered cases continue to be eligible as long as they are continuously disabled as defined by Oregon requirements that were in effect in 1973.

(c) The Department has determined the individual meets the listing of impairments found in 20 C.F.R. Part 404, Subpart P, Appendix 1; meets the medical vocational guidelines found in 20 C.F.R. Part 404, Subpart P,

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Appendix 2 for SSI; or meets the definition of disability in 20 C.F.R. §§ 404.1505 or 416.905.

(d) The Social Security Administration (SSA) has determined the individual meets the listing of impairments found in 20 C.F.R. Part 404, Subpart P, Appendix 1; meets the medical vocational guidelines found in 20 C.F.R. Part 404, Subpart P, Appendix 2; or meets the definition of disability in 20 C.F.R. §§ 404.1505 or 416.905.

(2) If the Department finds the individual eligible for OSIPM in the absence of a disability determination by SSA, the individual remains eligible, provided that the individual continues to meet the disability criteria for eligibility for OSIPM, until SSA denies the disability claim in a final administrative decision.

(3) For OSIP and OSIPM, a disability determination made by SSA that is unfavorable to an individual is binding on the Department unless the requirements of at least one of the following subsections are met (see 42 C.F.R. § 435.541(c)(1) and (c)(4)):

(a) SSA made the determination for a reason other than disability.

(b) The individual alleges a disabling condition different from, or in addition to, that considered by SSA in making its determination.

(c) More than 12 months after the most recent SSA determination denying disability, the individual alleges that his or her condition has changed or deteriorated since that SSA determination, and the individual has not made application to SSA based on these allegations.

(d) The individual alleges less than 12 months after the most recent SSA determination denying disability that the condition which SSA evaluated has changed or deteriorated since that SSA determination; and one or both of the following apply:

(A) The individual has requested reconsideration or reopening of the most recent SSA determination denying disability and SSA has declined to consider the new allegations.

(B) It is clear that the individual no longer meets SSI eligibility requirements unrelated to disability status but may satisfy comparable Medicaid eligibility requirements.

(4) If a binding SSA disability determination is not in place, the determination of disability to qualify for OSIPM is made by the Presumptive Medicaid Disability Determination Team, composed of a medical or psychological consultant and another individual who is qualified to interpret and evaluate medical reports, other evidence relating to the individual's physical or mental impairments, and (as necessary) to determine the capacities of the individual to perform substantial gainful activity, as specified in 20 C.F.R. Part 416, Subpart J (see 42 C.F.R. § 435.541(f)(2)).

(5) The Presumptive Medicaid Disability Determination Team obtains and reviews medical reports and other non-medical evidence pertaining to the individual and the claimed disability. The medical report and non-medical evidence must include diagnosis and other information in accordance with the requirements for evidence applicable to disability determinations under the SSI program specified in 20 CFR Part 416, Subpart I. The Presumptive Medicaid Disability Determination Team then makes a decision about medical eligibility and whether and when a redetermination shall be made (see 42 C.F.R. § 435.541(f)(1) and (3)).

(6) In the OSIP-EPD and OSIPM-EPD programs, an individual is disabled or has a disability if the individual has a physical or mental impairment, or a combination of these impairments, that meets the definition of disability used by SSA when determining eligibility for SSI or SSDI under 20 C.F.R. Part 404. The determination is made as follows:

(a) A determination by SSA that the individual is disabled or has a disability is accepted by the Department.

(b) If the individual was determined to have a disability by SSA and lost their SSDI eligibility due to their own income, the SSA determination remains effective for one year from the date that the individual loses eligibility for SSDI.

(c) If there is no currently effective SSA determination finding the individual has a disability, the case is referred to the Department's central office for a disability determination using the standards of 20 C.F.R. Parts 404 and 416 and considering all relevant medical and vocational information.

(d) For OSIPM-EPD, an individual is engaging in substantial gainful activity (SGA) if the earnings of the individual are at or above the EPD Income Standard.

(e) For OSIPM-EPD, any work activity engaged in during the OSIPM-EPD application process or certification period is not evaluated as past relevant work (PRW).

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

Stat. Auth.: ORS 411.060, 411.070, 414.042

Stats. Implemented: ORS 411.060, 411.070, 414.042

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1991, f. & cert. ef. 10-1-91; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99;

AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; SSP 9-2003(Temp), f. & cert. ef. 4-11-03 thru 6-30-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07

461-135-0070

Specific Requirements; MAA, MAF and TANF

(1) To be eligible for the MAA, MAF, or TANF programs, a client must be one of the following:

(a) A dependent child (see OAR 461-001-0000). However, dependent children for whom foster care payments are made for more than 30 days are not eligible while the payments are being made for them.

(b) A caretaker relative (see OAR 461-001-0000) of an eligible dependent child. However, caretaker relatives to whom foster care payments are made for more than 30 days are not eligible while the payments are being made for them.

(c) A caretaker relative of a dependent child, when the dependent child is ineligible for MAA, MAF, or TANF because of one of the following reasons:

(A) The child is receiving SSI.

(B) The child is in foster care, but is expected to return home within 30 days.

(C) The child is disqualified from TANF for failure to comply with requirements of the JOBS program (see the rules in division 130 of this chapter of rules) or requirements related to mental health or drug and alcohol (see OAR 461-135-0085), except that a caretaker relative is not eligible for TANF if the case is in a level three disqualification (see OAR 461-130-0330(1) and 461-135-0085).

(D) The child is ineligible for MAA or MAF because citizenship has not been documented (see OAR 461-115-0705).

(d) An essential person. An essential person is a member of the household group (see OAR 461-110-0210) who ---

(A) Is not required to be in the filing group;

(B) Provides a service necessary to the health or protection of a member of the benefit group (see OAR 461-110-0750) who has a mental or physical disability; and

(C) Is less expensive to include in the benefit group than the cost of purchasing this service from another source.

(e) A parent of an unborn, as follows:

(A) For TANF and MAA, any parent whose only child is an unborn child once the mother's pregnancy has reached the calendar month before the month in which the due date falls.

(B) For the TANF and MAA programs, the father of an unborn child, if there is another dependent child in the filing group.

(C) For MAF, a mother whose only child is an unborn once the mother's pregnancy has reached the calendar month immediately before the month in which the due date falls.

(2) A client is eligible for MAA or MAF if the client is:

(a) Eligible for MAA or MAF under OAR 461-135-0010; or

(b) A minor parent (see OAR 461-001-0000) ineligible for TANF only because:

(A) The minor refuses to live with a parent or legal guardian as required by OAR 461-135-0080; or

(B) The income of the minor exceeds the income standards because the Department required the minor to return to live with a parent, if the minor parent meets the conditions in OAR 461-135-0080(2).

(3) Clients are eligible for MAF even while ineligible for TANF if they are ineligible for TANF only because they are:

(a) Families who would be eligible for the TANF program if they were allowed the following deductions from income:

(A) The earned income deductions authorized by OAR 461-160-0190.

(B) The unearned income support deduction authorized by OAR 461-160-0200.

(b) Self-employed families who would be eligible for TANF if the cost of producing the self-employment income were subtracted from their gross sales or receipts in accordance with OAR 461-145-0920.

(c) Families that include an ineligible non-citizen or the father of an unborn who would be eligible for TANF if the ineligible non-citizen's or father's income is counted in accordance with OAR 461-160-0120.

(d) Individuals who would be eligible for TANF if the assets of the following household members were not counted:

(A) An unmarried parent of a dependent child or unborn in the eligibility group.

(B) A child in common of parents in the eligibility group.

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(C) The spouse and children of a caretaker relative in the need group (see OAR 461-110-0630).

(e) The spouse of a caretaker relative, but only if the spouse is the parent of a dependent child.

(4) A family is ineligible for TANF if the family meets the requirements of all of the following subsections:

(a) The family lives in Klamath County.

(b) The family meets any of the following conditions:

(A) The family has a single custodial parent who is a member of the Klamath Tribes, or the single custodial parent is not a Klamath Tribes member and at least 50 percent of the dependent children are Klamath Tribes members;

(B) The family has two custodial parents who are members of the Klamath Tribes, or only one of the two custodial parents is a Klamath Tribes member and at least 50 percent of the dependent children are Klamath Tribes members; or

(C) The family has a caretaker relative who is not the custodial parent and at least 50 percent of the dependent children are Klamath Tribes members.

(c) The family is eligible for the Klamath Tribes TANF program or would be eligible for the Klamath Tribes TANF program if not for the failure of the family to cooperate with program requirements.

(5) If a parent or caretaker relative is a member of the Siletz Tribe (Confederated Tribes of Siletz Indians of Oregon) and the family lives in Benton, Clackamas, Lane, Lincoln, Linn, Marion, Multnomah, Polk, Tillamook, Washington or Yamhill county, the entire filing group is ineligible for TANF. The only exception is when the Siletz Tribes determines the group ineligible for its TANF program, based on eligibility factors other than failure to cooperate with Siletz TANF program requirements.

(6) If a parent or caretaker relative covered by section (4) or (5) of this rule fails to follow through with a Department referral to the Klamath or Siletz Tribal TANF program, the entire filing group is ineligible for TANF.

Stat. Auth.: ORS 411.060, 414.047 & 418.100

Stats. Implemented: ORS 411.060, 414.047 & 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 9-1991, f. 3-29-91, cert. ef. 4-1-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 26-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 25-1997(Temp), f. 12-31-97, cert. ef. 1-1-98 thru 4-30-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 26-1998(Temp), f. 12-30-98, cert. ef. 1-1-99 thru 3-31-99; AFS 2-1999, f. 3-26-99, cert. ef. 4-1-99; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07

461-135-0491

Disaster Food Stamp Program (DFSP)

(1) OAR 461-135-0491 to 461-135-0497 apply only to the Disaster Food Stamp Program and only to a disaster benefit period and location authorized by the Food and Nutrition Service.

(2) The regular Food Stamp program continues to operate during a disaster benefit period and continues to process applications and make eligibility determinations in the normal manner.

(3) The following definitions apply to OAR 461-135-0491 to 461-135-0497:

(a) "DFSP" refers to the Disaster Food Stamp Program.

(b) "FNS" refers to the Food and Nutrition Services, United States Department of Agriculture.

Stat. Auth.: ORS 411.816

Stats. Implemented: ORS 411.816

Hist.: SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07

461-135-0492

Application, Interviews, and Verification for DFSP

(1) To file an application for DFSP, a household must submit a completed application (DHS 349).

(a) The household must submit this application at a certification site in person or through an *authorized representative* (as described at OAR 461-115-0090 and 461-115-0140).

(b) The application must be filed before the expiration of the period during which FNS has authorized the Department to process and approve applications for DFSP.

(c) The application must be signed by a responsible member of the household or by an authorized representative designated by the household.

(2) As part of the process for determining eligibility, the household or its authorized representative must be interviewed and must provide limited verification as described in section (3) of this rule.

(a) The Department must advise the household orally and in writing about the disposition of its application, its rights and responsibilities, when its emergency certification period ends, and about the regular Food Stamp Program.

(b) The Department must advise the household of the civil and criminal penalties for violations of the Food Stamp Act, and of the fact that the household may be subject to a post-disaster review.

(c) The Department must inform each DFSP-eligible household about the proper use of food stamp benefits.

(3) As part of the process for determining eligibility, the household or its authorized representative must provide verification for the following:

(a) The identity of the applicant;

(b) The location of the residence of the applicant in the disaster area;

(c) The residence of the applicant in the disaster area at the time of the disaster; and

(d) An estimate of total take-home pay, cash resources, and allowable disaster-related expenses. (see OAR 461-135-0493(2)).

Stat. Auth.: ORS 411.816

Stats. Implemented: ORS 411.816

Hist.: SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07

461-135-0493

Eligibility and Benefit Amount for DFSP

(1) To be eligible for emergency food stamp assistance during a disaster, a household must meet all the following criteria:

(a) At the time the disaster struck, the household must have resided within the geographical area authorized by FNS for disaster procedures. The household may be certified for emergency food stamp assistance even if at the time of application it is occupying temporary accommodations outside the disaster area. However, the representative of the household must be present at the disaster certification site to be certified for disaster food stamp assistance.

(b) The household must purchase food during the disaster period authorized by FNS. A household residing in a temporary shelter but not expected to remain in the shelter for the entire benefit period is eligible for Disaster Food Stamp Program (DFSP) benefits.

(c) The household must have experienced at least one of the following adverse effects due to the disaster:

(A) Loss or inaccessibility of income involving a reduction or termination of income or a significant delay in receipt of income. This effect could occur if the disaster has caused a place of employment to close or reduce its work days, if pay checks or other payments are lost or destroyed, or if there is a significant delay in the issuance of pay checks or other payments. This effect could also occur if the work location is inaccessible due to the disaster.

(B) Inaccessibility of liquid resources. The household is unable to reach its cash resources and is not expected to be able to access its liquid resources for most of the disaster benefit period authorized by FNS. This inaccessibility may occur because the financial institutions where the household has its resources are closed due to the disaster.

(C) Loss of food.

(D) Real property damage. Damage to or destruction of the home or self-employment business of the household.

(2) To be eligible for emergency food stamp assistance during a disaster, the take-home pay of the household for the disaster benefits period authorized by FNS, plus its cash resources (cash on hand and accessible funds in checking and savings accounts), less disaster-related expenses, must be less than or equal to the DFSP income standard for the size of the household.

(a) For DFSP, take-home pay includes all of the following to the extent accessible during the benefit period:

(A) The wages a household actually receives after taxes and other payroll withholdings are taken out.

(B) The assistance payment or other unearned income a household received.

(C) Self-employment income earned after taxes for personal income and social security as well as costs of producing the self-employment income are subtracted. Allowable costs of producing the self-employment income are described in OAR 461-145-0920, 461-145-0930, and 461-145-0931.

(b) For DFSP, disaster-related expenses include expenses the household has paid or is expected to pay for one of the following expenses during the disaster benefit period authorized by FNS if full reimbursement is not expected during this disaster benefit period. If the household has received or reasonably anticipates receiving a reimbursement for part or all of the expense during the disaster benefit period, only the net expense to the household is deductible. No expenses are considered other than the following:

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(A) Expenses to repair damages to the home or other property of the household essential to the employment or self-employment of a household member;

(B) Expenses for temporary shelter if the home of the household is not livable or if the household cannot reach its home;

(C) Expenses for moving out of an area evacuated due to the disaster;

(D) Expenses related to protecting property from disaster damage, including payment for storage of the items;

(E) Medical expenses for disaster-related injury to a person who was a household member at the time of the disaster (including funeral and burial expenses in the event of death);

(F) Food destroyed in the disaster; and

(G) Dependent care expenses incurred during the disaster.

(3) If the disaster benefit period is one month:

(a) Income over that full month period and all accessible resources are counted;

(b) Disaster-related expenses (described in subsection (2)(b) of this rule) paid, or expected to be paid over that full month period, are deducted; and

(c) The maximum income limit is for a one-month period.

(4) If the disaster benefit period is for one-half month:

(a) Income over the half-month period and all accessible resources are counted;

(b) Disaster-related expenses (described in subsection (2)(b) of this rule) paid, or expected to be paid over this period, are deducted; and

(c) The disaster eligibility limit is one-half of the monthly food stamp maximum limit.

(5) The full amount of accessible cash resources must be counted, regardless of the length of the disaster benefit period.

(6) No disaster food stamp benefits are authorized after the expiration of the period for which the Department is authorized by FNS to process and approve applications for this emergency food stamp assistance.

(7) A household determined eligible must receive benefits no later than three days after the date of application. If the third day falls on a weekend or holiday, benefits must be issued on either:

(a) The second day; or

(b) The first day if the second day is also a weekend or holiday.

Stat. Auth.: ORS 411.816

Stats. Implemented: ORS 411.816

Hist.: SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07

461-135-0494

DFSP Treatment of Households Already Certified and Receiving Food Stamps

(1) Households certified for food stamps may also be eligible for emergency food stamp assistance from the DFSP.

(2) Unless the food of the household has been damaged by the disaster and the household must replace the food, ongoing FS benefits are deducted from the disaster benefits either at the time benefit levels are determined or through the overpayment process.

Stat. Auth.: ORS 411.816

Stats. Implemented: ORS 411.816

Hist.: SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07

461-135-0495

Recertifications for DFSP

(1) A certified household that has already received emergency benefits may apply for recertification and receive additional Food Stamp benefits for an additional benefit period if:

(a) The household still meets the disaster eligibility criteria; and

(b) FNS extends the authorization period beyond the end of the original disaster benefit period and authorizes the Department to permit certified households who have already received emergency benefits to apply for recertification.

(2) A household applying for recertification must again submit an application (DHS 349) and be interviewed.

Stat. Auth.: ORS 411.816

Stats. Implemented: ORS 411.816

Hist.: SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07

461-135-0496

Hearings for DFSP

(1) A household denied emergency food stamp benefits is entitled to an expedited hearing as provided under OAR 461-025-0315.

(2) A household requesting a hearing must be offered an immediate supervisory review of its case.

(3) The supervisory review does not replace the expedited hearing. If the situation is resolved by the supervisory review:

(a) The request for a hearing may be withdrawn if the client withdraws the hearing in writing; or

(b) The Department may request a final order that documents the agreed resolution under OAR 137-003-0510(4) and 137-003-0665(5).

Stat. Auth.: ORS 411.816

Stats. Implemented: ORS 411.816

Hist.: SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07

461-135-0497

Household Liability in the DFSP

(1) Households are held liable for any overissuances or overpayments discovered in the course of post-disaster audit activities.

(2) The Department establishes claims and applies penalties in accordance with OAR 461-195-0501 to 461-195-0621 against any household that received more DFSP benefits than it was entitled to receive.

Stat. Auth.: ORS 411.816

Stats. Implemented: ORS 411.816

Hist.: SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07

461-135-0730

Specific Requirements; QMB

(1) The following requirements apply to QMB-BAS:

(a) To qualify for QMB-BAS, an individual must be receiving Medicare hospital insurance under Part A. This includes individuals who must pay a monthly premium to receive coverage.

(b) Clients who qualify for QMB-BAS are not eligible to receive the full range of the Department's medical services. QMB-BAS benefits are limited to payments toward Medicare cost-sharing expenses. These expenses are:

(A) Medicare Part A and Part B premiums; and

(B) Medicare Part A and Part B deductibles and coinsurance up to the Department's fee schedule.

(2) The following requirements apply to QMB-DW:

(a) To qualify for the QMB-DW program, an individual must be eligible for Part A of Medicare as a qualified worker with a disability under Section 1818A of the Social Security Act (42 USC 1395i-2a). These are individuals under age 65 who have lost eligibility for Social Security disability benefits because they have become substantially gainfully employed, but can continue to receive Part A of Medicare by paying a premium.

(b) QMB-DW clients are eligible only for payment of their premiums for Part A of Medicare. They may not have eligibility for any other medical assistance program and be eligible for QMB-DW.

(3) The following requirements apply to QMB-SMB:

(a) To qualify for QMB-SMB, an individual must be receiving Medicare hospital insurance under Part A. This includes individuals who must pay a monthly premium to receive coverage.

(b) Clients who qualify for QMB-SMB are not eligible to receive the full range of the Department's medical services. QMB-SMB benefits are limited to payment of Medicare Part B premiums.

(c) Clients who are institutionalized (reside in a nursing facility, an intermediate care facility for the mentally retarded (ICF/MR), or a hospital) are not eligible for QMB-SMB if they have income equal to or greater than 120% of the Federal Poverty Level (FPL).

(d) A need group (see OAR 461-110-0630) with income equal to or greater than 120% of the FPL (see OAR 461-155-0295) may receive QMB-SMB benefits on or after December 1, 2005, except as provided in subsection (3)(e) of this rule.

(e) The QMB-SMB program is subject to an enrollment cap based on the federal allocation. If the enrollment in this program (of clients with income greater than 120% of the FPL) exceeds the federal allocation for that group, the program may be closed.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 35-1992, f. 12-31-92, cert. ef. 1-1-93; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 19-2002(Temp), f. 12-10-02, cert. ef. 1-1-03 thru 5-31-03; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 9-2004(Temp), f. & cert. ef. 4-1-04 thru 6-30-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 3-2006(Temp), f. & cert. ef. 2-6-06 thru 6-30-06; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07

461-135-0750

Eligibility for People in Long-Term Care or Waivered Services; OSIPM

(1) A client who meets the requirements of section (2) of this rule is eligible for services in any of the following locations:

(a) A nursing facility.

(b) An intermediate care facility for the mentally retarded (ICF/MR).

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(c) A psychiatric institution, if the individual is not yet 21 years of age or has reached the age of 65.

(d) A community-based setting covered by a waiver under Title XIX of the Social Security Act.

(e) An acute care hospital.

(2) An individual who resides in a location listed in section (1) of this rule for a continuous period of care (see OAR 461-001-0030) is eligible for OSIPM if the individual:

(a) Meets the eligibility requirements for the OSIPM program except that income is above the program standards;

(b) Has income at or below 300 percent of the full SSI standard; has established a qualifying trust as specified in OAR 461-145-0540(9)(c); or is eligible for the OSIPM-EPD program; and

(c) Meets one of the following eligibility standards:

(A) The criteria in OAR 411-015-0100.

(B) The level-of-need criteria for an ICF/MR.

(C) The service eligibility standards for medically fragile children in OAR 411-350-0010.

(D) The service eligibility standards for the CIIS (Children's Intensive In-Home Services) behavioral program in OAR 411-300-0100 to 411-300-0220.

Stat. Auth.: ORS 411.060, 411.070 & 414.042

Stats. Implemented: ORS 411.060, 411.070 & 414.042

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 11-2001, f. 6-29-01, cert. ef. 7-1-01; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07

461-140-0040

Determining Availability of Income

(1) This rule describes the date income is considered available, what amount of income is considered available and situations in which income is considered unavailable.

(2) Income is considered available the date it is received or the date a member of the financial group (see OAR 461-110-0530) has a legal right to the payment and the legal ability to make it available, whichever is earlier, except as follows:

(a) Income usually paid monthly or on some other regular payment schedule is considered available on the regular payment date if the date of payment is changed because of a holiday or weekend.

(b) Earned income withheld or diverted at the request of an employee is considered available on the date the wages would have been paid without the withholding or diversion.

(c) An advance or draw of earned income is considered available on the date it is received.

(d) Income that is averaged, annualized, converted, or prorated is considered available throughout the period for which the calculation applies.

(e) A payment due to a member of the financial group, but paid to a third party for a household expense, is considered available when the third party receives the payment.

(3) The following income is considered available even if not received:

(a) Deemed income.

(b) In the ERDC, GA, GAM, MAA, MAF, OHP, OSIP, OSIPM, QMB, and TANF programs, the portion of a payment from an assistance program, such as public assistance, unemployment compensation, or social security, withheld to repay an overpayment.

(c) In the FS program, the portion of a payment from the TANF program counted as disqualifying income under OAR 461-145-0105.

(4) The amount of income considered available is the gross before deductions, such as garnishments, taxes, or other payroll deductions including flexible spending accounts.

(5) The following income is not considered available:

(a) Wages withheld by an employer in violation of the law.

(b) Income received by another person who does not pay the client his or her share.

(c) Income received by a member of the financial group after he or she has left the household.

(d) Moneys withheld from or returned to the source of the income to repay an overpayment from that source unless the repayment is countable:

(A) In the FS program, under OAR 461-145-0105; or

(B) In the ERDC, GA, GAM, MAA, MAF, OHP, OSIP, OSIPM, and TANF programs, under subsection (3)(b) of this rule.

(e) For a client who is not self-employed, income required to be expended on an ongoing, monthly basis on an expense necessary to produce the income, such as supplies or rental of work space.

(f) In the FS program, income received by the financial group but intended and used for the care of someone not in the financial group as follows:

(A) If the income is intended both for someone in the financial group and someone not in the financial group, the portion of the income intended for the care of the individual not in the financial group is considered unavailable.

(B) If the portion intended for the care of the individual not in the financial group cannot readily be identified, the income is prorated evenly among the individuals for whom the income is intended. The prorated share intended for the care of the individual not in the financial group is then considered unavailable.

(g) In the FS, MAF, and OHP programs, income controlled by the client's abuser if the client is a victim of domestic violence (see OAR 461-001-0000), the client's abuser controls the income and will not make the money available to the filing group, and the abuser is not in the client's filing group.

(h) In the MAA and TANF programs, the client is a victim of domestic violence and the client's abuser controls the income and will not make the money available to the filing group.

(6) The availability of lump-sum income is covered in OAR 461-140-0120.

Stat. Auth.: ORS 409.050, 411.060, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.117, 411.816, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 9-1991, f. 3-29-91, cert. ef. 4-1-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 17-1992, f. & cert. ef. 7-1-92; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 1-2005(Temp), f. & cert. ef. 2-1-05 thru 6-30-05; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 5-2005(Temp), f. & cert. ef. 4-1-05 thru 6-30-05; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07

461-140-0120

Availability and Treatment of Lump-Sum Income

(1) *Lump-sum income* (see OAR 461-001-0000) is treated as follows if it is received by a member of a financial group (see OAR 461-110-0530).

(2) In the EA, FS, MAA, MAF, REF, REFM, SAC, and TANF programs:

(a) Lump-sum income is a resource.

(b) In the EA, MAA, MAF, REF, REFM, SAC, and TANF programs:

(A) Lump-sum income is considered available to the financial group when a member of the group receives the income and until the income becomes unavailable for a reason beyond the group's control.

(B) Lump-sum income is considered unavailable for a reason beyond the group's control if the member who received the lump-sum income:

(i) Leaves the financial group before spending any of the lump-sum income; or

(ii) Spends the lump-sum income on an emergency, such as a natural disaster or the serious injury or death of a household member.

(3) In the ERDC and EXT programs, lump-sum income is excluded.

(4) In the GA, GAM, OSIP (except OSIP-EPD), OSIPM (except OSIPM-EPD), and QMB programs, lump-sum income is treated as follows:

(a) Lump-sum income not excluded is unearned income in the month of receipt, and any amount remaining in future months is a resource, except that in the OSIP and OSIPM programs retroactive SSB and SSI payments are treated in accordance with OAR 461-145-0490 and 461-145-0510.

(b) The following lump-sum income is excluded:

(A) The first \$20 received in a month;

(B) The income the client turns over to the Department as reimbursement for previous assistance; and

(C) The income the client uses to pay for special need items approved by the Department. Special needs are explained at OAR 461-155-0500 and following.

(5) In the OHP program:

(a) If the lump-sum income is \$30 or less in a quarter, it is excluded for:

(A) Each financial group member who receives the lump-sum income; and

(B) Each financial group member the lump-sum income is intended for.

(b) If the lump-sum income exceeds \$30 in a quarter, it is counted as unearned income in the month received.

(6) In the OSIP-EPD and OSIPM-EPD programs, lump-sum income is counted as a resource.

Stat. Auth.: ORS 411.060, 411.816 & 418.100

Stats. Implemented: ORS 411.060, 411.816 & 418.100

ADMINISTRATIVE RULES

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 1-1991(Temp), f. & cert. ef. 1-2-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 5-1993, f. & cert. ef. 4-1-93; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07

461-140-0242

Disqualifying Transfer of Assets Including Home; GA, GAM, OSIP, OSIPM

For a client in a *nonstandard living arrangement* (see OAR 461-001-0000) in the GA, GAM, OSIP, and OSIPM programs:

(1) A transfer of an asset (including a home) by a client or the spouse of the client is a disqualifying transfer unless the requirements of at least one of the following subsections are met:

(a) The transfer was made exclusively for purposes other than establishing eligibility or maintaining benefits.

(b) The title to the asset was transferred to the person's spouse, the person's child who is blind or has a disability under the criteria of the Social Security Administration, or another for the sole benefit of the spouse or a child who is blind or has a disability under the criteria of the Social Security Administration, provided that the transfer is arranged in such a way that no individual or entity except this spouse or child can benefit from the asset transferred in any way, whether at the time of transfer or any time in the future. A direct transfer, transfer instrument, or trust that provides for funds or property to pass to a beneficiary who is not the spouse or child who is blind or has a disability under the criteria of the Social Security Administration is not considered to be established for the benefit of one of those individuals. In order for a transfer or a trust to be considered for the sole benefit of one of these individuals, the instrument or document must provide for the spending of the funds involved for the benefit of the individual based on the life expectancy of the individual.

(c) The transfer was made to a trust described in OAR 461-145-0540(9), except that a transfer to a trust under OAR 461-145-0540(9)(a) is disqualifying if the client is age 65 or older.

(d) The transfer was made to a trust described in OAR 461-145-0540(10) established solely for the benefit of an individual under 65 years of age who has a disability that meets the criteria of the Social Security Administration. This subsection applies to all transfers made on or after July 1, 2006.

(e) The transfer is a transfer described in OAR 461-160-0580(2).

(f) The resource is transferred by the community spouse after the Department has determined the community spouse's resource allowance in accordance with OAR 461-160-0580 and the resource has not been attributed to the institutionalized spouse. Notwithstanding this subsection, a transfer of a resource by a community spouse who is receiving or applying for benefits remains subject to all rules regarding the transfer of an asset by a client.

(2) A transfer of a home by a client or the spouse of the client is a disqualifying transfer unless the title was transferred to the client's:

(a) Child under age 21;

(b) Sibling who has equity interest in the home and was residing in the home for at least one year immediately before the client's admission to long-term care; or

(c) Son or daughter who resided with the client for at least two years immediately prior to the client's admission to long-term care and provided care that permitted the client to reside at home rather than in an institution or long-term care facility. A son or daughter provides the care required by this subsection by doing at least five of the following for the client on a regular basis, without receiving payment from the Department:

(A) Prepares meals.

(B) Shops for food and clothing.

(C) Helps maintain the home.

(D) Assists with financial affairs.

(E) Runs errands.

(F) Provides transportation.

(G) Provides personal services.

(H) Arranges for medical appointments.

(I) Assists with medication.

(3) Except as provided in section (2) of this rule, for an asset to be considered transferred for fair market value, the compensation received for the asset must be in a tangible form with intrinsic value. The Department

presumes that services provided for free at the time were intended to be provided without compensation, and that a transfer to an individual for services provided for free in the past is a disqualifying transfer of assets. This presumption is rebuttable with convincing evidence. This evidence must also show that there was an express agreement to provide services for compensation at the time the services were provided. Compensation for services is valued at the average market rate at the time the services were provided.

(4) If a transfer described in subsection (1)(a) of this rule is made for less than fair market value, there is a rebuttable presumption that the asset was transferred for the purpose of establishing or maintaining eligibility.

(5) To rebut the presumption in section (4) of this rule, the client must present evidence other than his or her own statement and must provide to the Department the information it requests for the purpose of evaluating the purpose of the transfer. To meet the burden, it is sufficient for the client to show one of the following:

(a) The decision to make the transfer was not within the client's control;

(b) At the time of transfer, the client could not reasonably have anticipated applying for medical assistance;

(c) Unexpected loss of resources or income occurred between the time of transfer and the application for medical assistance;

(d) Because of other, similarly convincing, circumstances, it appears more likely than not that the transfer was not made, in whole or in part, for the purpose of establishing or maintaining eligibility for benefits.

(6) The fact that a recipient was already eligible for benefits is not sufficient to rebut the presumption in section (4) of this rule because the asset may not always be excluded and if the client had received full compensation for the asset, the compensation received would have been used to determine future eligibility.

Stat. Auth.: ORS 411.060 & 411.710

Stat. Implemented: ORS 411.060 & 411.710

Hist.: AFS 18-1993(Temp), f. & cert. ef. 10-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 16-2006(Temp), f. 12-29-06, cert. ef. 1-1-07 thru 3-31-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07

461-140-0296

Length of Disqualification Due to An Asset Transfer; GA, GAM, OSIP, OSIPM

(1) This rule applies to clients in the GA, GAM, OSIP, and OSIPM programs who live in a *nonstandard living arrangement* (see OAR 461-001-0000).

(2) A financial group containing a member disqualified due to the transfer of an asset is disqualified from receiving benefits. The length of a disqualification period resulting from the transfer is the number of months equal to the uncompensated value (see OAR 461-140-0250) for the transfer divided by the following dollar amount:

(a) If the *initial month* (see OAR 461-001-0000) is on or after October 1, 1993 and prior to October 1, 1998 — \$2,595.

(b) If the initial month is on or after October 1, 1998 and prior to October 1, 2000 — \$3,320.

(c) If the initial month is on or after October 1, 2000 and prior to October 1, 2002 — \$3,750.

(d) If the initial month is on or after October 1, 2002 and prior to October 1, 2004 — \$4,300.

(e) If the initial month is on or after October 1, 2004 and prior to October 1, 2006 — \$4,700.

(f) If the initial month is on or after October 1, 2006 — \$5,360.

(3) For transfers by a client and the spouse of a client that occurred before July 1, 2006:

(a) Add together the uncompensated value of all transfers made in one calendar month, and treat this total as one transfer.

(b) If the uncompensated value of the transfer is less than the applicable dollar amount identified in subsections (2)(a) to (2)(f) of this rule, there is no disqualification.

(c) If there are multiple transfers in amounts equal to or greater than the applicable dollar amount identified in subsections (2)(a) to (2)(f) of this rule, each disqualification period is calculated separately.

(d) The number of months resulting from the calculation in section (2) of this rule is rounded down to the next whole number.

(e) Except as provided in subsection (3)(f) of this rule, the first month of the disqualification is the month the asset was transferred.

(f) If disqualification periods calculated in accordance with this rule overlap, the periods are applied sequentially so that no two penalty periods overlap.

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(g) If both spouses of a couple are in a nonstandard living arrangement and made the disqualifying transfer, part of the disqualification is apportioned to each of them, based on their percentage of ownership in the transferred asset. If one spouse is unable to serve the resulting disqualification period for any reason, the remaining disqualification applicable to both spouses must be served by the remaining spouse.

(4) For transfers by a client and the spouse of a client that occurred on or after July 1, 2006 and for income cap trusts under OAR 461-145-0540(9)(c) that accumulate funds in excess of the applicable dollar amount identified in subsections (2)(a) to (2)(f) of this rule:

(a) If there are multiple transfers by the client and the spouse of the client, including any transfer less than the applicable dollar amount identified in subsections (2)(a) to (2)(f) of this rule, the value of all transfers are added together before dividing by the applicable dollar amount identified in subsections (2)(a) to (2)(f) of this rule. For an income cap trust, the calculation in section (2) of this rule is performed as soon as, but not before, funds have accumulated to at least the applicable dollar amount identified in subsections (2)(a) to (2)(f) of this rule.

(b) The quotient resulting from the calculation in section (2) of this rule is not rounded. The whole number of the quotient is the number of full months the financial group is disqualified. The remaining decimal or fraction of the quotient is used to calculate an additional partial month disqualification. This remaining decimal or fraction is converted to an additional number of days by multiplying the decimal or fraction by the number of days in the month following the last full month of the disqualification period. If this calculation results in a fraction of a day, the fraction of a day is rounded down.

(c) The first month of the disqualification is the later of:

(A) The month following the month the asset was transferred, except that if disqualification periods calculated in accordance with this rule overlap, the periods are applied sequentially so that no two penalty periods overlap.

(B) The date of request (see OAR 461-115-0030) for medical benefits as long as the client submits an application, and would otherwise be eligible but for this disqualification period.

(d) If both spouses of a couple are in a nonstandard living arrangement and made the disqualifying transfer, part of the disqualification is apportioned to each of them, based on their percentage of ownership in the transferred asset. If one spouse is unable to serve the resulting disqualification period, the remaining disqualification applicable to both spouses must be served by the remaining spouse.

(5) If an asset is owned by more than one person, by joint tenancy, tenancy in common, or similar arrangement, the share of the asset owned by the client is considered transferred when any action is taken either by the client or any other person that reduces or eliminates the client's control or ownership in the client's share of the asset.

(6) For an annuity that is a disqualifying transfer under section (11) of OAR 461-145-0022, the disqualification period is calculated based on the uncompensated value as calculated under OAR 461-140-0250, unless the only requirement that is not met is that the annuity pays beyond the actuarial life expectancy of the annuitant. If the annuity pays beyond the actuarial life expectancy of the annuitant, the disqualification is calculated according to section (6) of this rule.

(7) If a client or the spouse of a client purchases an annuity on or before December 31, 2005 and the annuity pays benefits beyond the actuarial life expectancy of the annuitant, as determined by the Period Life Table of the Office of the Chief Actuary of the Social Security Administration, a disqualification period is assessed for the value of the annuity beyond the actuarial life expectancy of the annuitant.

(8) A single transfer of an asset may cause a disqualification for both a medical assistance program under this rule and the SSI cash grant. The period of the disqualification is likely to be longer for SSI than for the medical assistance program, so a person may be eligible again for the medical assistance program while still disqualified from receiving SSI. The provisions of this rule are applied without regard to the related disqualification for SSI.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 17-1998, f. & cert. ef. 10-1-98; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 26-2000, f. & cert. ef. 10-4-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07

461-145-0005

Agent Orange Disability Benefits

(1) For all programs except GA and GAM:

(a) Benefits from the Agent Orange Settlement Fund made by Aetna Life and Casualty for settling Agent Orange disability claims are excluded.

(b) Payments made under the Agent Orange Act of 1991, and issued by the U.S. Treasury through the Department of Veterans' Affairs, are counted as unearned income.

(2) For GA and GAM, all Agent Orange payments are counted as *lump-sum income* (see OAR 461-140-0120).

Stat. Auth.: ORS 411.060, 411.070, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.070, 411.700, 411.816, 418.100

Hist.: AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07

461-145-0008

Alaska Permanent Fund Dividend

(1) The Alaska Permanent Fund Dividend is issued annually to eligible Alaskan residents who apply for the payment. Out-of-state residents, except military personnel and students who claim Alaska as their residence, are not eligible unless they resided in Alaska and filed for the payment before leaving the state.

(2) Alaska Permanent Fund Dividend payments are counted as lump-sum income (see OAR 461-140-0120).

Stat. Auth.: ORS 411.060, 411.070, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.700, 411.816, 418.100

Hist.: AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07

461-145-0010

Animals

The treatment of an income-producing animal is covered by the income-producing property rule (see OAR 461-145-0250), except that an animal is excluded as a resource if raised as food for the filing group.

Stat. Auth.: ORS 411.060, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.700, 411.816, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07

461-145-0020

Annuities; Not OSIPM

(1) For the purposes of this rule:

(a) For a client, an annuity does not include benefits that are set up and accrued in a regularly funded retirement account while an individual is working, whether maintained in the original account or used to purchase an annuity, if the Internal Revenue Service recognizes the account as dedicated to retirement or pension purposes. (The treatment of pension and retirement plans is covered in OAR 461-145-0380)

(b) The definition of "child" in OAR 461-001-0000 does not apply.

(c) "Child" means a biological or adoptive child who is:

(A) Under age 21; or

(B) Any age and meets the Social Security Administration criteria for blindness or disability.

(d) "Commercial annuities" mean contracts or agreements (not related to employment) by which an individual receives annuitized payments on an investment for a lifetime or specified number of years.

(2) An annuity is counted as a resource if:

(a) The annuity does not make regular payments for a lifetime or specified number of years; or

(b) The annuity does not qualify for exclusion as a resource under subsection (4)(c) of this rule.

(3) If an annuity is a countable resource under this rule, the cash value is equal to the amount of money used to establish the annuity, plus any additional payments used to fund the annuity, plus any earnings, minus any regular payments already received, minus any early withdrawals, and minus any surrender fees.

(4) Commercial annuities and payments from such annuities are counted as follows:

(a) In all programs except OSIP, OSIPM, and QMB, annuity payments are counted as unearned income to the annuitant.

(b) In the OSIP and QMB programs:

(A) For a client in a nonstandard living arrangement (see OAR 461-001-0000), if a client or the spouse of a client purchases or transfers an annuity prior to January 1, 2006, the transaction may be subject to the rules on asset transfers at OAR 461-140-0210 and following. For an annuity that is not disqualifying or for a client in a standard living arrangement (see OAR 461-001-0000), the annuity payments are counted as unearned income to the annuitant.

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(B) If a client or the spouse of a client purchases an annuity on or after January 1, 2006, the annuity is counted as a resource unless it is excluded under paragraph (C) of this subsection.

(C) An annuity described in paragraph (B) of this subsection is excluded as a resource if the criteria in subparagraphs (i), (ii), and (iii) of this paragraph are met, except that if an unmarried client is the annuitant, the requirements of subparagraph (iv) of this paragraph must also be met and if a spouse of a client is the annuitant, the requirements of subparagraph (v) of this paragraph must also be met.

(i) The annuity is irrevocable.

(ii) The annuity pays principal and interest out in equal monthly installments within the actuarial life expectancy of the annuitant. For purposes of this subparagraph, the actuarial life expectancy is established by the Period Life Table of the Office of the Chief Actuary of the Social Security Administration.

(iii) The annuity is issued by a business that is licensed and approved to issue commercial annuities by the state in which the annuity is purchased.

(iv) If an unmarried client is the annuitant, the annuity must specify that upon the death of the client, the first remainder beneficiary is either of the following:

(I) The Department, for all funds remaining in the annuity up to the amount of medical benefits provided on behalf of the client.

(II) The child of the client, if the Department is the next remainder beneficiary (after this child), up to the amount of medical benefits provided on behalf of the client, in the event that the child does not survive the client.

(v) If a spouse of a client is the annuitant, the annuity must specify that, upon the death of the spouse of the client, the first remainder beneficiaries are either of the following:

(I) The client, in the event that the client survives the spouse; and the Department, in the event that the client does not survive the spouse, for all funds remaining in the annuity up to the amount of medical benefits provided on behalf of the client.

(II) A child of the spouse; and the client in the event that this child does not survive the spouse.

(D) If an annuity is excluded under paragraph (C) of this subsection, annuity payments are counted as unearned income to the annuitant.

(c) For OSIPM, see OAR 461-145-0022.

Stat. Auth.: ORS 411.060, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.816, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07

461-145-0022

Annuitants; OSIPM

In the OSIPM program:

(1) For the purposes of this rule:

(a) For a client, an annuity does not include benefits that are set up and accrued in a regularly funded retirement account while an individual is working, whether maintained in the original account or used to purchase an annuity, if the Internal Revenue Service recognizes the account as dedicated to retirement or pension purposes. (The treatment of pension and retirement plans is covered in OAR 461-145-0380.)

(b) The definition of "child" in OAR 461-001-0000 does not apply.

(c) "Child" means a biological or adoptive child who is:

(A) Under age 21; or

(B) Any age and meets the Social Security Administration criteria for blindness or disability.

(d) "Commercial annuity" means a contract or agreement (not related to employment) by which an individual receives annuitized payments on an investment for a lifetime or specified number of years.

(2) An annuity that does not make regular payments for a lifetime or specified number of years is a resource.

(3) When a client applies for medical benefits, both initially and at periodic redetermination (see OAR 461-115-0050 and 461-115-0430), the client must report any annuity owned by the client or a spouse of the client.

(4) By signing the application for assistance, a client and the spouse of a client agree that the Department, by virtue of providing medical assistance, becomes a remainder beneficiary as described in sections (8) and (10) of this rule, under any commercial annuity purchased on or after February 8, 2006, unless the annuity is included in the community spouse's resource allowance under OAR 461-160-0580(2)(c).

(5) If the Department is notified about a commercial annuity, the Department will notify the issuer of the annuity about the right of the

Department as a preferred remainder beneficiary, as described in sections (8) and (10) of this rule, in the amount of medical assistance provided to the client.

(6) For a client in a nonstandard living arrangement (see OAR 461-001-0000), if a client or the spouse of a client purchases or transfers a commercial annuity prior to January 1, 2006, the transaction may be subject to the rules on asset transfers at OAR 461-140-0210 and following. For an annuity that is not disqualifying, the annuity payments are counted as unearned income to the annuitant.

(7) Sections 8 and 9 of this rule apply to a commercial annuity if:

(a) The client is in a nonstandard living arrangement, and the client or the spouse of the client purchases an annuity from January 1, 2006 through June 30, 2006; or

(b) The client is in a standard living arrangement (see OAR 461-001-0000), and the client or the spouse of a client purchase an annuity on or after January 1, 2006.

(8) A commercial annuity covered by section (7) of this rule is counted as a resource unless the annuity is excluded by meeting the following requirements:

(a) If an unmarried client is an annuitant, the annuity must meet the requirements of subsection (8)(c) of this rule, and the annuity must specify that upon the death of the client, the first remainder beneficiary is either of the following:

(A) The Department, for all funds remaining in the annuity up to the amount of medical benefits provided on behalf of the client.

(B) The child of the client, if the Department is the next remainder beneficiary (after this child), up to the amount of medical benefits provided on behalf of the client, in the event that the child does not survive the client.

(b) If a spouse of a client is the annuitant, the annuity must meet the requirements of subsection (8)(c) of this rule, and the annuity must specify that, upon the death of the spouse of the client, the first remainder beneficiaries are either of the following:

(A) The client, in the event that the client survives the spouse; and the Department, in the event that the client does not survive the spouse, for all funds remaining in the annuity up to the amount of medical benefits provided on behalf of the client.

(B) A child of the spouse; and the client in the event that this child does not survive the spouse.

(c) An annuity covered by section (7) of this rule may not be excluded unless the annuity meets all of the following requirements:

(A) The annuity is irrevocable.

(B) The annuity pays principal and interest out in equal monthly installments within the actuarial life expectancy of the annuitant. For purposes of this paragraph, the actuarial life expectancy is established by the Period Life Table of the Office of the Chief Actuary of the Social Security Administration.

(C) The annuity is issued by a business that is licensed and approved to issue a commercial annuity by the state in which the annuity is purchased.

(9) If an annuity is excluded as a resource under section (8) of this rule, the annuity payments are counted as unearned income to the annuitant. If an annuity is a countable resource under section (8) of this rule, the cash value is equal to the amount of money used to establish the annuity, plus any additional payments used to fund the annuity, plus any earnings, minus any regular monthly payments already received, minus early withdrawals, and minus any surrender fees.

(10) This section lists the requirements for a commercial annuity purchased by the client or the spouse of the client on or after July 1, 2006, when a client is in a nonstandard living arrangement, and the annuity names the client or the community spouse as the annuitant. Annuities that meet all of the requirements of this section are counted as unearned income to the annuitant. The treatment of annuities that do not meet all requirements of this section is covered in sections (11) and (12) of this rule.

(a) The annuity must comply with one of the following paragraphs:

(A) The first remainder beneficiary is the spouse of the client, and in the event that the spouse transfers any of the remainder of the annuity for less than fair market value (see OAR 461-001-0000), the Department is the second remainder beneficiary for up to the total amount of medical benefits paid on behalf of the client.

(B) The first remainder beneficiary is the annuitant's child, and in the event that the child or a representative on behalf of the child transfers any of the remainder of the annuity for less than fair market value, the Department is the second remainder beneficiary for up to the total amount of medical benefits paid on behalf of the client.

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(C) The first remainder beneficiary is the Department for up to the total amount of medical benefits paid on behalf of the client.

(b) The annuity must be irrevocable and nonassignable.

(c) The annuity pays principal and interest out in equal monthly installments within the actuarial life expectancy of the annuitant. For purposes of this subsection, the actuarial life expectancy is established by the Period Life Table of the Office of the Chief Actuary of the Social Security Administration.

(d) The annuity is issued by a business that is licensed and approved to issue a commercial annuity by the state in which the annuity is purchased.

(11) If the client is the annuitant and a commercial annuity does not meet all of the requirements of section (10) of this rule, or the spouse of the client is the annuitant and a commercial annuity does not meet the requirements of subsection (10)(a) of this rule, there is a disqualifying transfer of assets under OAR 461-140-0210 and following. See OAR 461-140-0296(6) and (7) for calculation of the disqualification period.

(12) Regardless of whether a commercial annuity is a disqualifying transfer of assets, if the annuity does not meet all of the requirements of section (10) of this rule, the annuity is counted as a resource with cash value equal to the amount of money used to establish the annuity, plus any additional payments used to fund the annuity, plus any earnings, minus any regular monthly payments already received, minus early withdrawals, and minus any surrender fees.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07

461-145-0030

Bank Account

(1) As used in this rule, a bank account includes a money market account and an account in a *financial institution* (see OAR 461-001-0000), except that accounts in financial institutions for stocks, bonds, and certificates of deposit (CDs) are covered in OAR 461-145-0520.

(2) Money in a bank account available to one or more members of the financial group (see OAR 461-110-0530) is counted as a resource in accordance with OAR 461-140-0020, unless it is excluded under this rule or another rule in this chapter of rules.

(3) In each of the following situations, money in a bank account is excluded as a resource:

(a) An approved account if excluded under OAR 461-145-0025.

(b) A burial fund if excluded under OAR 461-145-0040.

(c) A designated bank account for an OSIP-IC and OSIPM-IC client if:

(A) The account is designated to receive program benefits by direct deposit through electronic funds transfer; and

(B) The benefit funds are not commingled with other assets of the client.

(d) Funds from excluded income if excluded as a resource under OAR 461-140-0070.

(e) An Individual Education Account if excluded under OAR 461-145-0265.

(f) Money for a plan for self-support if excluded under OAR 461-145-0405.

(g) Proceeds from the sale of a home if excluded as a resource under OAR 461-145-0460.

(4) Interest and dividends earned on funds in a bank account are counted as unearned income, unless the account is excluded as a resource under section (3) of this rule or under another rule in this chapter of rules.

Stat. Auth.: ORS 411.060, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.700, 411.816, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 11-2001, f. 6-29-01, cert. ef. 7-1-01; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07

461-145-0050

Burial Space and Merchandise

(1) Burial spaces include conventional grave sites, crypts, mausoleums, urns, and other repositories that are traditionally used for the remains of deceased persons. Burial spaces also include headstones and the opening and closing of the grave.

(a) In the ERDC, FS, MAA, MAF, OHP, REF, SAC, and TANF programs, the equity value (see OAR 461-001-0000) of one burial space is excluded as a resource for each member of the financial group (see OAR 461-110-0530).

(b) In the GA, GAM, OSIP, OSIPM, and QMB programs, the equity value of a burial space is excluded as a resource if owned by the client and

designated for the client, the spouse of the client, minor and adult children, siblings, parents, and the spouse of any of these people.

(2) Burial merchandise includes, but is not limited to, caskets, liners, burial vaults, markers, and foundations. The equity value of burial merchandise is excluded as a resource if owned by the client and designated for:

(a) In the ERDC, FS, MAA, MAF, OHP, REF, SAC, and TANF programs, a member of the financial group.

(b) In the GA, GAM, OSIP, OSIPM, and QMB programs, the client, the spouse of the client, minor and adult children, siblings, parents, and the spouse of any of these people.

Stat. Auth.: ORS 411.060, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.700, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 21-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07

461-145-0060

Cash

(1) In the month of receipt, cash is counted as income unless the cash qualifies as excluded income under another rule in Chapter 461.

(2) After the month of receipt, cash (including cash on hand, cash in a safety deposit box, and cash held by others) is counted as a resource, unless the cash qualifies as an excluded resource under another rule in Chapter 461.

(3) Foreign currency that can be converted to U.S. currency is treated in the same manner as cash under this rule. The value of foreign currency is its value in U.S. currency, determined by the current exchange rate.

(4) The treatment of a check is based on the source of the funds.

Stat. Auth.: ORS 411.060, 411.070, 411.816, 414.042, 418.100

Stats. Implemented: ORS 411.060, 411.070, 411.700, 411.816, 414.042, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07

461-145-0086

Contributions

(1) Contributions are monies, not considered gifts or winnings under OAR 461-145-0210, given voluntarily to a member of a financial group (see OAR 461-110-0530) by someone who is not in the group.

(2) In the FS program, contributions are counted as unearned income, except that contributions from charitable sources are excluded if all the following are true:

(a) The contribution is from a private, nonprofit charitable organization.

(b) The contribution is based on need.

(c) The contribution does not exceed \$300 per quarter.

(3) In the OHP program, charitable contributions raised by a community to assist with a client's medical expenses are excluded as income and as a resource.

(4) Except as provided in sections (2) and (3) of this rule, contributions are counted as unearned income.

(5) See OAR 461-145-0280 for the treatment of unearned in-kind income.

Stat. Auth.: ORS 411.060, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.700, 411.816, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 11-1999, f. & cert. ef. 10-1-99; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; Renumbered from 461-145-0070, SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07

461-145-0100

Disaster Relief

(1) As used in this rule:

(a) A major disaster is any natural catastrophe such as a hurricane or drought, or, regardless of cause, any fire, flood or explosion, which the President determines causes damage of sufficient severity and magnitude.

(b) An emergency is any occasion or instance for which the President determines that Federal assistance is needed to supplant State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe.

(c) Disaster Unemployment Assistance is emergency assistance authorized under P.L. 100-107 and received by individuals who are unemployed as a result of a major disaster. Individuals receiving Disaster Unemployment Assistance are not eligible for other unemployment compensation and cannot receive both at the same time. Payments are limited to 26 weeks.

(2) Except as otherwise stated in sections (4) to (8) of this rule and at OAR 461-140-0070, payments described in section (3) of this rule are not

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counted as income or resources when determining eligibility for or benefit levels.

(3) This rule applies to each of the following payments if precipitated by an emergency or major disaster:

(a) Payments received under the Disaster Relief Act of 1974 (P.L. 93-288, section 312(d)) as amended by the Disaster Relief and Emergency Assistance Amendments of 1988 (P.L. 100-707, Section 105(i)).

(b) Disaster assistance comparable to subsection (a) of this section provided by States, local governments, and disaster assistance organizations.

(c) Payments from the Federal Emergency Management Agency (FEMA).

(d) Individual and Family Grant Assistance program (IFG).

(e) Grants or loans by the Small Business Administration (SBA).

(f) Voluntary disaster assistance organizations, such as the Red Cross.

(g) Private insurance payments for losses due to a major disaster such as flood, wind, land movement.

(4) Government payments designated for the restoration of a home damaged in a disaster are excluded as income or resources in the month of receipt and as a resource in subsequent months, if the household is subject to a legal sanction if the funds are not used as intended.

(5) Each payment made to farmers under the Disaster Assistance Act of 1988 (P.L. 100-387) for crop losses or failure in a disaster is excluded.

(6) Income received from public and private organizations by individuals working in disaster relief efforts and funded under a National Emergency Grant by WIA title 1 (P.L. 105-220) is excluded. An individual is eligible under this funding source if he or she is a dislocated worker, a long-term unemployed individual, or is temporarily or permanently laid off as a consequence of the disaster. Eligibility under this funding source is limited to a period of up to six months per disaster.

(7) Disaster Unemployment Assistance is excluded as both income and a resource.

(8) Payments for flood mitigation received by a homeowner under the National Flood Insurance Act of 1968 as amended by P.L. 109-64, are not counted as income or resources.

Stat. Auth.: ORS 411.060, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.700, 411.816, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 13-1991, f. & cert. ef. 7-1-91; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07

461-145-0120

Earned Income; Defined

Earned income is income received in exchange for an individual's physical or mental labor. Earned income includes all of the following:

(1) Compensation for services performed, including wages, salaries, commissions, tips, sick leave, vacation pay, draws, or the sale of one's blood or plasma.

(2) Income from on-the-job-training, paid job experience, JOBS Plus work experience, or Welfare-to-Work work experience.

(3) In-kind income, when a client is an employee of the person providing the in-kind income and the income is in exchange for work performed by the client.

(4) For self-employment, gross receipts and sales, including mileage reimbursements, before costs.

(5) In:

(a) The FS program, cafeteria plan (see OAR 461-001-0000) benefits and funds placed in a flexible spending account.

(b) All programs except the FS program, cafeteria plan benefits that an employee takes as cash as well as funds placed in a flexible spending account.

(6) Income from work-study.

(7) Income from profit sharing that the client receives monthly or periodically.

(8) In the OHP program, an expenditure by a business entity that substantially benefits a principal (see OAR 461-145-0088).

Stat. Auth.: ORS 409.050, 411.060, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.816, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 11-1999, f. & cert. ef. 10-1-99; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07

461-145-0130

Earned Income; Treatment

(1) Earned income (see OAR 461-145-0120) is countable in determining eligibility for programs, subject to sections (2) to (8) of this rule.

(2) In the FS program, if a cafeteria plan (see OAR 461-001-0000) benefit that the employee cannot elect to receive as a cash payment is designated and used to pay for child care, medical care, or health insurance, the benefit is excluded unless it is reimbursed by the Department or allowed as an earned income deduction.

(3) JOBS Plus income is earned income and is treated as follows:

(a) In the TANF program:

(A) JOBS Plus income earned by an NCP-PLS client is counted in determining initial TANF eligibility.

(B) When determining the need for a TANF supplement for a TANF-PLS client, the income is treated as follows:

(i) It is excluded in determining the countable income limit and in calculating the benefit equivalency standards.

(ii) It is counted in calculating the wage supplement.

(C) JOBS Plus wages received after the client's last month of work under a JOBS Plus agreement are counted.

(b) In the FS program:

(A) JOBS Plus income earned by a TANF-PLS client:

(i) Is counted in determining initial FS eligibility.

(ii) Is excluded in determining ongoing eligibility.

(B) JOBS Plus wages received after the client's last month of work under a TANF-PLS JOBS Plus agreement are counted.

(c) For programs other than FS and TANF, TANF-PLS income is counted.

(d) For programs other than TANF, NCP-PLS income is counted as earned income.

(e) For all programs, client wages received under the Oregon Employment Department UI JOBS Plus or the Tribal TANF JOBS programs are counted as earned income.

(4) Welfare-to-Work work experience income is treated as follows:

(a) In the EXT, MAA, MAF, and TANF programs, the income is earned income, and the first \$260 is excluded each month.

(b) In the FS and OHP programs, the income is earned income.

(5) In the ERDC and OHP programs, earned income of a child is excluded.

(6) In the EXT, MAA, MAF, SAC, and TANF programs:

(a) Earned income of the following children is excluded:

(A) Dependent children under the age of 19 years, and minor parents under the age of 18 years, who are full-time students in grade 12 or below (or the equivalent level of vocational training, in GED courses), or in home schooling approved by the local school district.

(B) Dependent children under the age of 18 years who are attending school part-time (as defined by the institution) and are not employed full-time.

(C) Dependent children too young to be in school.

(b) Income remaining after the month of receipt is a resource.

(c) In-kind earned income is excluded (see OAR 461 145-0280 and 461-145-0470).

(7) In the FS program, the following types of income are excluded:

(a) The earned income of an individual under the age of 18 years who is under the parental control of another member of the household and is:

(A) Attending elementary or high school;

(B) Attending GED classes recognized by the local school district;

(C) Completing home-school elementary or high school classes recognized by the local school district; or

(D) Too young to attend elementary school.

(b) In-kind earned income, except as provided in section (8) of this rule.

(c) Deductions from base pay for future educational costs under Pub. L. No. 99-576, 100 Stat. 3248 (1986), for clients on active military duty.

(d) Income remaining after the month of receipt is a resource.

(8) In the FS and OHP programs, earned in-kind income (see OAR 461-145-0280) is excluded unless it is an expenditure by a business entity that benefits a principal (see OAR 461-145-0088).

Stat. Auth.: ORS 411.060, 411.816 & 418.100

Stats. Implemented: ORS 411.060, 411.700, 411.816, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 9-1990, f. & cert. ef. 3-2-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 17-1992, f. & cert. ef. 7-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 1-1993, f. & cert. ef. 2-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 19-1994, f. & cert. ef. 9-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 17-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 32-1996(Temp), f. & cert. ef. 9-23-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 11-1999, f. & cert. ef. 10-1-99; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 7-2000(Temp), f. 3-10-00, cert. ef. 3-10-00 thru 9-1-00; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 12-2001, f. 6-29-01, cert. ef. 7-1-01; AFS 17-2001(Temp), f. 8-31-01, cert. ef. 9-1-01 thru 9-30-01; AFS 22-2001, f. & cert. ef. 10-1-01; SSP 7-2003, f. & cert. ef.

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4-1-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07

461-145-0140

Earned Income Tax Credit (EITC)

(1) There are federal and state earned income tax credit (EITC) programs for low-income families. An EITC may be received in one of two ways:

- (a) As an advance in the employee's paycheck.
- (b) As one annual payment received at the time of the normal income tax returns.

(2) In all programs, the EITC is excluded.

Stat. Auth.: ORS 411.060, 411.700, 411.816, 418.100
Stats. Implemented: ORS 411.060, 411.700, 411.816, 418.100
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 6-1991(Temp), f. & cert. ef. 2-8-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07

461-145-0250

Income-Producing Property

(1) Income from income producing property (see OAR 461-001-0000) is counted as follows:

(a) If a member of the financial group (see OAR 461-110-0530) actively manages the property 20 hours or more per week, the income is treated in the same manner as self-employment income (see OAR 461-145-0910, 461-145-0920, and 461-145-0930).

(b) If a member of the financial group does not actively manage the property 20 hours or more per week, the income is counted as unearned income with exclusions allowed only in accordance with OAR 461-145-0920.

(2) The equity value (see OAR 461-001-0000) of income-producing property is treated as follows:

(a) In the EA, ERDC, and OHP programs, it is excluded.

(b) In the FS program, it is counted as a resource except to the extent described in each of the following situations:

(A) If the property produces an annual countable income similar to other properties in the community with comparable market value, the equity value of the property is excluded.

(B) The property is excluded under OAR 461-145-0600.

(C) The equity value of income-producing livestock, poultry, and other animals is excluded.

(D) If selling the resource would produce a net gain to the financial group of less than \$1,500, the equity value is excluded.

(c) In the GA, GAM, OSIP, OSIPM, and QMB programs, it is counted as a resource, except:

(A) If the property produces an annual countable income of at least six percent of its equity value, the value of the property is excluded up to a maximum of \$6,000.

(B) The total equity value is excluded (regardless of value or rate of return) if the requirements of all the following subparagraphs are met:

(i) The property is used in the trade or business of a member of the financial group, as evidenced by two or more of the following:

(I) The good faith intention of making a profit.

(II) Its use is part of a regular occupation for a member of the financial group.

(III) Holding out to others as being engaged in the selling of goods or services.

(IV) Continuity of operations, repetition of transactions, or regularity of activities.

(V) A business tax return, including forms such as Profit or Loss from Business or Profession (Schedule C), Computation of Social Security Self-Employment (Schedule SE), Farm Income and Expenses (Schedule F), Depreciation and Amortization (Form 4562), or U.S. Partnership Return of Income (Form 1065).

(ii) The property is in current use or, if not in use for reasons beyond the control of the financial group, there must be a reasonable expectation that the required use will resume.

(iii) The property is essential to the client's self-support.

(d) In the MAA, MAF, REF, REFM, SAC, and TANF programs, it is counted as a resource, except that in the MAA and TANF programs, it is excluded for a self-employed client participating in the microenterprise component of the JOBS program.

Stat. Auth.: ORS 411.060, 411.816, 418.100
Stats. Implemented: ORS 411.060, 411.700, 411.816, 418.100
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 19-1994, f. & cert. ef. 9-1-94; AFS 42-1996, f. 12-31-96, cert. ef. 1-

1-97; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07

461-145-0380

Pension and Retirement Plans

(1) Pension and retirement plans include the following:

(a) Benefits employees receive only when they retire. These benefits can be disbursed in lump-sum or monthly payments.

(b) Benefits that employees are allowed to withdraw when they leave a job before retirement.

(c) Annuities or trusts if purchased by a client with funds from any of the following retirement plans (authorized by section 408 of the Internal Revenue Code of 1986 at subsections (a), (b), (c), (k), (p) or (q), or at section 408A):

(A) Individual Retirement Annuity.

(B) Individual Retirement Account.

(C) Deemed Individual Retirement Account or Annuity under a qualified employer plan.

(D) Accounts established by employers and certain associations of employees.

(E) Simplified Employee Pension (SEP).

(F) Simple Retirement Account.

(2) Benefits the client receives from retirement funds are treated as follows:

(a) Monthly payments are counted as unearned income.

(b) All other payments are counted as periodic or lump-sum income (see OAR 461-140-0110 and 461-140-0120).

(3) Pension and retirement plans that allow clients to withdraw funds before retirement are treated as follows:

(a) In all programs except FS and OHP, the equity value (defined as OAR 461-001-0000) of the plan, minus any penalty for early withdrawal, is counted as a resource.

(b) In the Food Stamp program, any portion of an individual retirement account (IRA), or a KEOGH plan that is available before, upon, or following retirement, is counted as an available resource, less a penalty for early withdrawal. The value of any other plan is excluded as a resource.

(c) In the OHP program, the equity value of the plan is excluded as a resource.

Stat. Auth.: ORS 411.060, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.816, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 21-1995, f. 9-20-95, cert. ef. 10-1-95; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07

461-145-0420

Real Property

(1) For purposes of this rule, manufactured and mobile homes and floating homes and houseboats are treated in the same manner as real property.

(2) The applicant has the burden of proof of establishing the fair market value (see OAR 461-001-0000) of *real property* (see OAR 461-001-0000). Fair market value may be established by any methodology determined to accurately reflect the fair market value of the real property, including the provision of an appraisal or comparative market analysis performed by an impartial individual who is certified or licensed in the applicable jurisdiction.

(3) Real property that is not income-producing or the home of the financial group (see OAR 461-110-0530) is treated as follows:

(a) In the MAA, MAF, REF, REFM, SAC, and TANF programs, the equity value (see OAR 461-001-0000) of all real property that is not excluded under a TANF Interim Assistance agreement is counted as a resource.

(b) In the EA, ERDC, and OHP programs, real property is excluded.

(c) In the FS program, real property is treated as follows:

(A) The equity value of real property is excluded if the financial group is making a good-faith effort to sell the real property at a fair market price.

(B) The equity value of the real property is counted as a resource if the financial group refuses to make a good-faith effort to sell.

(C) The resource is excluded if selling the resource would produce a net gain to the financial group of less than \$1,500.

(D) In the GA, GAM, OSIP, OSIPM, and QMB programs:

(A) The equity value of real property that was the home of the financial group is excluded if the financial group is making a good-faith effort to sell the real property at a reasonable price, unless the equity value in the home makes the client ineligible under OAR 461-145-0220(2)(a).

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(B) The equity value of all other real property is excluded if the financial group is making a good-faith effort to sell the real property at a reasonable price. The equity value is counted after the real property is excluded for nine months unless the failure to sell it is for reasons beyond the reasonable control of the financial group.

(4) The treatment of real property that is income producing is covered in OAR 461-145-0250.

(5) The treatment of the home of the financial group is covered in OAR 461-145-0220.

Stat. Auth.: ORS 411.060, 411.816 & 418.100

Stats. Implemented: ORS 411.060, 411.816 & 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 11-2006(Temp), f. 6-30-06, cert. ef. 7-1-06 thru 9-30-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07

461-145-0433

Recreational Vehicles

(1) For purposes of this rule, a *recreational vehicle* includes both of the following subsections:

(a) A vehicle (a means for carrying or transporting something) if:

(A) The vehicle is used primarily for amusement and not for day-to-day transportation; and

(B) The vehicle cannot be licensed as a motor vehicle for use on a public highway (even if the vehicle is registered or licensed as a non-motor vehicle).

(b) An ATV, boat, camper, dune buggy, plane, snowmobile, and trailer, unless the item qualifies as a capital asset (see OAR 461-001-0000) or as work-related equipment (see OAR 461-145-0600).

(2) Except as provided in section (4) of this rule, for all programs except ERDC and OHP, the equity value (see OAR 461-001-0000) of a recreational vehicle is counted as a resource.

(3) In the ERDC and OHP programs, the value of a recreational vehicle is excluded.

(4) In the Food Stamp program only, the equity value of a *recreational vehicle* is excluded if selling the vehicle would produce a net gain to the financial group of less than \$1,500.

Stat. Auth.: ORS 411.060, 411.070, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.070, 411.700, 411.816, 418.100

Hist.: AFS 13-1991, f. & cert. ef. 7-1-91; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 21-1995, f. 9-20-95, cert. ef. 10-1-95; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07

461-145-0455

Resettlement and Placement (R&P) Grants

(1) A Resettlement and Placement (R&P) grant is a payment made by the United States Department of State through national refugee resettlement agencies to local resettlement agencies, refugee sponsors and refugees. The R&P grants are provided to the resettlement agencies to help with the costs of initial resettlement of refugees in the United States. The resettlement agencies provide a part of this grant to refugees, usually in their first month after arrival, for their initial resettlement needs, and not for ongoing living expenses.

(2) In the ERDC, REF, REFM, and TANF programs, R&P grants are excluded from consideration as income and resources for purposes of determining program eligibility or benefit levels, except as provided in OAR 461-140-0070.

(3) In the FS program, the first \$300 of the R&P grant is excluded from FS eligibility consideration as a cash contribution from a charitable organization (see OAR 461-145-0086). An amount exceeding \$300 paid directly to a FS household from an R&P grant is counted as unearned income.

(4) In the GA, MAA, MAF, OHP, OSIP, OSIPM, and QMB programs, an R&P grant determined to be available to the refugee case is considered unearned income.

Stat. Auth.: ORS 411.060, 411.116, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.070, 411.116, 411.816, 418.040, 418.100

Hist.: AFS 1-2001(Temp), f. & cert. ef. 1-30-01 thru 3-31-01; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07

461-145-0490

Social Security Benefits

Social Security benefits (SSB) are treated as follows:

(1) Monthly payments are counted as unearned income. Monthly installments are paid to clients with a disability based on drug addiction or alcoholism per P.L. 103-296.

(2) Except as provided in section (3) of this rule, all payments other than monthly payments are counted as periodic or lump-sum income (see OAR 461-140-0110 and 461-140-0120).

(3) In the OSIP (except OSIP-EPD) and OSIPM (except OSIPM-EPD) programs, retroactive payments are counted as unearned income in the month of receipt. Any remaining amount after the month of receipt is treated as an excluded resource for nine calendar months following the month in which the payment is received. After the nine-month period, any remaining amount is a countable resource. For the purposes of this section, a payment is retroactive if it is issued in any month after the calendar month for which it is intended.

(4) The representative payee fee is excluded for clients who must receive payments through a representative payee under P.L. 103-296.

Stat. Auth.: ORS 411.060, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.700, 411.816, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 39-1996(Temp), f. 11-27-96, cert. ef. 12-1-96; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07

461-145-0510

SSI

(1) In the ERDC, FS, GA, GAM, and OHP programs, if a client is required by law to receive an SSI benefit through a representative payee, the representative's fee is excluded.

(2) In the ERDC, GA, GAM, and OHP programs:

(a) A monthly SSI payment is counted as unearned income.

(b) *Lump-sum* SSI payments are counted according to OAR 461-140-0120.

(3) In the EXT, MAA, MAF, and TANF programs:

(a) SSI monthly and lump-sum payments are excluded if the recipient will be removed from the financial group (see OAR 461-110-0530) the month following receipt of the payment.

(b) An SSI lump-sum payment is excluded in the month received and the next month.

(4) In the FS program:

(a) A monthly SSI payment is counted as unearned income.

(b) A lump-sum SSI payment is excluded.

(5) In the OSIP (except OSIP-EPD) and OSIPM (except OSIPM-EPD) programs, a retroactive SSI payment is excluded for nine months after the month of receipt. After the nine-month period, any remaining amount is a *countable* (see OAR 461-001-0000) resource. For the purposes of this section, a payment is retroactive if it is issued in any month after the calendar month for which it is intended.

Stat. Auth.: ORS 411.060, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.700, 411.816, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 39-1996(Temp), f. 11-27-96, cert. ef. 12-1-96; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 19-2001, f. 8-31-01, cert. ef. 9-1-01; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07

461-145-0540

Trusts

(1) This section applies to all *trust funds* (see OAR 461-001-0000) in the FS, MAA, MAF, OHP, REF, SAC, and TANF programs. It also applies to GA, GAM, OSIP, OSIPM, and QMB for trust funds established before October 1, 1993:

(a) Trust funds are counted as a resource if the fund is legally available for use by a member of the *financial group* (see OAR 461-110-0530) for items covered by program benefits. In the OSIP, OSIPM, and QMB programs, the amount of the trust that is considered legally available is the maximum amount that could be distributed to the beneficiary under the terms of the trust, regardless of whether the trustee exercises his or her authority to actually make a distribution.

(b) Trust funds are excluded if the fund is not available for use by a member of the financial group. The financial group must try to remove legal restrictions on the trust, unless that would cause an expense to the group.

(c) The part of the fund available for use for medical expenses covered by the medical program for which the financial group is eligible is counted.

(2) In the ERDC program, all trust funds are excluded.

(3) In the OSIP, OSIPM, and QMB programs, trust funds established on or after October 1, 1993, are treated in accordance with sections (4) through (10) of this rule. In the GA and GAM programs, trust funds established on or after October 1, 1993, are treated in accordance with sections (4) through (8) of this rule.

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(4) A trust is considered established if the financial group used their resources to form all or part of the trust and if any of the following established a trust, other than by a will:

- (a) The client.
- (b) The client's spouse.

(c) Any other person, including a court or administrative body, with legal authority to act in place of or on behalf of the client or the client's spouse.

(d) Any other person, including a court or administrative body, acting at the direction or upon the request of the client or the client's spouse.

(5) If the trust contains resources or income of another person, only the share attributable to the client is considered available.

(6) Except as provided in section (9) of this rule, the following factors are ignored when determining how to treat a trust:

- (a) The purpose for which the trust was established.
- (b) Whether or not the trustees have or exercise any discretion under the trust.

(c) Any restrictions on when or if distributions may be made from the trust.

- (d) Any restrictions on the use of distributions from the trust.

- (7) If the trust is revocable, it is treated as follows:

(a) The total value of the trust is considered a resource available to the client.

(b) A payment made from the trust to or for the benefit of the client is considered unearned income.

(c) A payment from the trust other than to or for the benefit of the client is considered a transfer of assets covered by OAR 461-140-0210 and following.

- (8) If the trust is irrevocable, it is treated as follows:

(a) If, under any circumstances, the funds transferred into the trust are unavailable to the client and the trustee has no discretion to distribute the funds to or for the benefit of the client, the client is subject to a transfer-of-resources penalty as provided in OAR 461-140-0210 and following.

(b) If, under any circumstances, payments could be made to or on behalf of the client, the share of the trust from which the payment could be made is considered a resource. A payment from the trust other than one to or for the benefit of the client is considered a transfer of assets that may be covered by OAR 461-140-0210.

(c) If, under any circumstances, income is generated by the trust and could be paid to the client, the income is unearned income. Payments made for any reason other than to or for the benefit of the client are considered a transfer of assets subject to disqualification per OAR 461-140-0210.

(d) If any change in circumstance makes assets (income or resources) from the trust unavailable to the client, the change is a disqualifying transfer as of the date of the change.

(9) Notwithstanding the provisions in sections (1) and (3) to (8) of this rule, the following trusts are not considered in determining eligibility for OSIPM and QMB:

(a) A trust containing the assets of a client determined to have a disability that meets the SSI criteria that was created before the client reached age 65, if the trust was established by one of the following and the state will receive all funds remaining in the trust upon the death of the client, up to the amount of medical benefits provided on behalf of the client:

- (A) The client's parent.
- (B) The client's grandparent.
- (C) The client's legal guardian or conservator.
- (D) A court.

(b) A trust established between October 1, 1993 and March 31, 1995 for the benefit of the client and containing only the current and accumulated income of the client. The accumulated amount remaining in the trust must be paid directly to the state upon the death of the client up to the amount of medical benefits provided on behalf of the client. The trust is the total income in excess of the income standard for OSIPM. The remaining income not deposited into the trust is available for the following deductions in the order they appear prior to applying the patient liability:

- (A) Personal-needs allowance.
- (B) Community spouse monthly maintenance needs allowance.
- (C) Medicare and other private medical insurance premiums.
- (D) Other incurred medical.

(c) A trust established on or after April 1, 1995 for the benefit of the client whose income is above 300 percent of the full SSI standard and containing the current and accumulated income of the client. The accumulated amount remaining in the trust must be paid directly to the state upon the death of the client up to the amount of medical assistance provided on behalf of the client. The trust contains all of the client's income. The

income deposited into the trust is distributed monthly in the following order with excess amounts treated as income to the individual subject to the rules on transfer of assets in division 140 of this chapter of rules:

(A) Personal needs allowance and applicable room and board standard.

(B) Reasonable administrative costs of the trust, not to exceed a total of \$50 per month, including the following:

- (i) Trustee fees.

(ii) A reserve for administrative fees and costs of the trust, including bank service charges, copy charges, postage, accounting and tax preparation fees, future legal expenses, and income taxes attributable to trust income.

- (iii) Conservatorship and guardianship fees and costs.

(C) Community spouse and family monthly maintenance needs allowance.

- (D) Medicare and other private medical insurance premiums.

(E) Other incurred medical costs as allowed under OAR 461-160-0030 and 461-160-0055.

(F) Contributions to reserves or payments for child support, alimony, and income taxes.

(G) Monthly contributions to reserves or payments for the purchase of an irrevocable burial plan with a maximum value of \$5,000.

(H) Contributions to a reserve or payments for home maintenance if the client meets the criteria of OAR 461-155-0660 or 461-160-0630.

(I) Patient liability not to exceed the cost of waived services or nursing facility services.

(10) This section of the rule applies to a trust signed on or after July 1, 2006.

(a) Notwithstanding the provisions of sections (1) and (3) to (8) of this rule, a trust that meets the requirements of subsection (b) of this section is not considered in determining eligibility for OSIPM and QMB, except that if the client is age 65 or older when the trust is funded or a transfer is made to the trust, the transfer may constitute a disqualifying transfer of assets under OAR 461-140-0210 and following.

(b) This section of the rule applies to a trust that meets all of the following conditions:

- (A) The trust is established and managed by a non-profit association.

(B) A separate account is maintained for each beneficiary of the trust, but, for purposes of investment and management of funds, the trust pools these accounts.

(C) The trust is established by the client, client's parent, grandparent, or legal guardian or a court for clients who have disabilities.

(D) To the extent that amounts remaining in the beneficiary's account upon the death of the beneficiary are not retained by the trust, the trust pays to the State an amount equal to the total medical assistance paid on behalf of the beneficiary under the State plan for Medicaid.

(E) The trust contains the resources or income of a client who has a disability that meets the SSI criteria.

(11) In the GA, GAM, OSIP, OSIPM, and QMB programs, the provisions of this rule may be waived for an irrevocable trust if the Department determines that denial of benefits would create an undue hardship on the client if, among other things:

(a) The absence of the services requested may result in a life-threatening situation.

- (b) The client was a victim of fraud or misrepresentation.

Stat. Auth: ORS 411.060, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.700, 411.816, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 18-1993(Temp), f. & cert. ef. 10-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 21-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 18-2002(Temp), f. & cert. ef. 11-19-02 thru 5-18-03; SSP 11-2003, f. & cert. ef. 5-1-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 16-2006(Temp), f. 12-29-06, cert. ef. 1-1-07 thru 3-31-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07

461-145-0600

Work-Related Capital Assets, Equipment, and Inventory

- (1) As used in this rule:

(a) "Inventory" means goods that are in stock and available for sale to prospective customers.

(b) "Work-related equipment" means property essential to the employment or self-employment of a financial group member. Examples are a tradesman's tools, a farmer's machinery, and equipment used to maintain an income-producing vehicle.

ADMINISTRATIVE RULES

(2) A capital asset (see OAR 461-001-0000), other than work-related equipment and inventory, is treated as follows:

(a) In all programs except FS, MAA, and TANF, the equity value (see OAR 461-001-0000) of a capital asset is treated according to the rules for the asset.

(b) In the FS program, a capital asset used in a business is excluded as follows:

(A) Non-farm assets are excluded as long as the financial group (see OAR 461-110-0530) is actively engaged in self-employment activities.

(B) Farm assets are excluded until one year after the date the person quit self-employment as a farmer.

(c) In the MAA and TANF programs:

(A) For a self-employed client participating in the microenterprise component of the JOBS program, the value of a capital asset is excluded.

(B) For all other clients, the value of a capital asset is counted according to the rules in this division of rules.

(3) Work-related equipment is treated as follows:

(a) In the EA, ERDC, FS, and OHP programs, the equity value of work-related equipment is excluded.

(b) In the GA, OSIP, OSIPM, and QMB programs, the value of equipment needed by a client who has a disability or is blind to complete a plan for self-support (see OAR 461-135-0708) is excluded as long as the plan is in effect. For all other equipment, the equity value of the equipment is counted as a resource, except as provided at OAR 461-145-0250(3)(c).

(c) In the MAA and TANF programs:

(A) For a self-employed client participating in the microenterprise component of the JOBS program, the equity value of the equipment is excluded.

(B) For all other clients, the equity value of the equipment is treated as a resource.

(d) In the MAF, REF, and SAC programs, the equity value of the equipment is treated as a resource.

(4) Inventory is treated as follows:

(a) In the EA, ERDC, FS, and OHP programs, inventory is excluded as long as the client is engaged in self-employment activities.

(b) In the GA, OSIP, OSIPM, and QMB programs, the value of inventory needed by a client who has a disability or is blind to complete a plan for self-support is excluded, as long as the plan is in effect. For all other inventory, the equity value of the inventory is counted as a resource.

(c) In the MAA and TANF programs:

(A) For a self-employed client participating in the microenterprise component of the JOBS program, the wholesale value of inventory remaining at the end of the semi-annual period covered in each income statement (see OAR 461-190-0197), less encumbrances, is counted as a resource.

(B) For all other clients, the wholesale value of inventory remaining at the end of a month, less encumbrances, is counted as a resource.

(d) In the MAF, REF, and SAC programs, the wholesale value of inventory remaining at the end of the month, minus any encumbrances, is counted as a resource.

Stat. Auth.: ORS 411.060 & 418.100

Stats. Implemented: ORS 411.060, 411.117 & 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 21-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 9-1999, f. & cert. ef. 7-1-99; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07

461-145-0920

Self-Employment; Costs That Are Excluded To Determine Countable Income

(1) This rule explains how to determine which costs are excluded from gross self-employment income.

(2) Unless prohibited by section (3) of this rule, and subject to the provisions of sections (4) and (5) of this rule and OAR 461-145-0930, the necessary costs of producing self-employment income are excluded from gross sales and receipts, including but not limited to:

(a) Labor (wages paid to an employee or work contracted out).

(b) Materials used to make a product.

(c) In the Food Stamp program -- principal and interest paid to purchase income-producing property, such as real property, equipment or capital assets. In all other programs, interest paid to purchase income-producing property, such as equipment or capital assets.

(d) Insurance premiums, taxes, assessments, and utilities paid on income-producing property.

(e) Service, repair, and rental of business equipment (including motor vehicles) and property that is owned, leased or rented.

(f) Advertisement and business supplies.

(g) Licenses, permits, legal, or professional fees.

(h) Transportation costs at 20 cents per mile, if the cost is part of the business expense. Commuting expenses to and from the worksite are not part of the business expense.

(i) Charges for telephone service that are a necessary cost for self-employment.

(j) Meals and snacks provided by family day care providers for children in their care (except the provider's own children). The actual cost of the meals is used if the provider can document the cost. If the provider cannot document the actual cost, the USDA meal reimbursement rates are used.

(k) Materials purchased for resale, such as cosmetic products.

(l) For newspaper carriers, the cost of newspapers, bags, and rubber bands.

(3) The following costs are not excluded from gross sales and receipts:

(a) Business losses from previous months.

(b) Except in the Food Stamp program, payments on the principal of the purchase price of income-producing real estate and capital assets, equipment, machinery, and other durable goods.

(c) Federal, state and local income taxes, draws or salaries paid to any financial group member, money set aside for personal retirement, and other work-related personal expenses (such as transportation, personal business, and entertainment expenses).

(d) Depreciation. Depreciation is a prorated lessening of value assigned to a capital asset based on its useful life expectancy and initial cost.

(e) Costs related to traveling to another area to seek business when there is no reasonable possibility of deriving income from the trip.

(f) Interest or fees on personal credit cards.

(g) Personal telephone charges.

(h) Additionally, in the MAF and OHP programs, the costs of real property used as both a home and a business, unless the real property (including utilities) used for business is separate from the dwelling in which the financial group (see OAR 461-110-0530) lives.

(i) Shelter or utility costs associated with the client's home, except as authorized by section (4) of this rule.

(4) The exclusions for items used for both business and personal purposes, such as automobiles and a residence (including utilities), are limited by the following subsections:

(a) In the ERDC, GA, GAM, OSIP, OSIPM, and QMB programs, the portion of the expense that is for business use only is excluded.

(b) In the FS program, costs are excluded for a separate office or shop located on the property used as a home, if the costs are billed separately from the residence. Costs for other items used for both business and personal use are excluded.

(c) In the MAF and OHP programs, the costs of real property (including utilities) are prorated if a separate office or shop is located on the property used as a home. No expense is allowed if the office or shop is part of the dwelling in which the client lives. For other items, the portion of the expense that is for business use only is excluded.

(5) If no member of the financial group has been self-employed for a sufficiently long period to ascertain the costs of self-employment, the costs may be estimated.

(6) For a client participating in the microenterprise component of the JOBS program, costs are excluded according to this rule and general accounting principles, as applied by a certified public accountant, bookkeeping firm, or other entity approved by the Department.

Stat. Auth.: ORS 411.060, 411.816, 418.040, 418.100

Stats. Implemented: ORS 411.060, 411.816, 418.040, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 1-1993, f. & cert. ef. 2-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 4-1998, f. 2-25-98, cert. ef. 3-1-98; AFS 5-1998(Temp), f. & cert. ef. 3-11-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 24-1998(Temp), f. 11-30-98, cert. ef. 12-1-98 thru 3-31-99; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 2-1999, f. 3-26-99, cert. ef. 4-1-99; AFS 9-2001, f. & cert. ef. 6-1-01; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 1-2005(Temp), f. & cert. ef. 2-1-05 thru 6-30-05; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07

461-145-0930

Self-Employment; Determination of Countable Income

(1) The Department initially determines gross sales and receipts (before excluding or deducting any costs). This rule explains how different programs exclude and deduct costs from self-employment gross sales and receipts.

(2) In the ERDC program, if a client claims an excludable cost permitted under OAR 461-145-0920, at least 50 percent of gross self-employ-

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ment income is excluded. The maximum exclusion is the total excludable cost under OAR 461-145-0920.

(3) In the Food Stamp program, if there are any costs permitted under OAR 461-145-0920, there is a deduction of 50 percent of gross self-employment income.

(4) In the GA, MAF, OSIP, OSIPM, and QMB programs, all costs permitted under OAR 461-145-0920 are excluded.

(5) In the MAA and TANF programs:

(a) For a client participating in the microenterprise component of the JOBS program, costs are excluded according to OAR 461-145-0920 and general accounting principles, as applied by a certified public accountant, bookkeeping firm, or other entity approved by the Department.

(b) For all other clients, no costs are subtracted (excluded).

(6) In the OHP program, at least 50 percent of gross self-employment income is excluded. The maximum exclusion is the gross self-employment income for the month that the exclusion is taken.

(7) In the REF program, no costs are excluded.

Stat. Auth.: ORS 411.060, 411.816, 418.040, 418.100

Stats. Implemented: ORS 411.060, 411.816, 418.040, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 4-1998, f. 2-25-98, cert. ef. 3-1-98; AFS 5-1998(Temp), f. & cert. ef. 3-11-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 24-1998(Temp), f. 11-30-98, cert. ef. 12-1-98 thru 3-31-99; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 2-1999, f. 3-26-99, cert. ef. 4-1-99; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07

461-155-0225

Income Standard; OHP

(1) If a *financial group* (see OAR 461-110-0530) contains a person with significant authority in a business entity — a “principal” as defined in OAR 461-145-0088 — the group is ineligible for the OHP program if the gross income assigned to the budget month of the business entity exceeds \$10,000. If the need group (see OAR 461-110-0630) is not ineligible under this section, its eligibility is evaluated under section (2) of this rule.

(2) The countable income standards for OHP are as follows:

(a) The countable income standard for OHP-OPC and OHP-OPU is 100 percent of the federal poverty level, as listed in OAR 461-155-0180(2), based on the size of the need group.

(b) The countable income standard for OHP-OP6 is 133 percent of the federal poverty level, as listed in OAR 461-155-0180(3), based on the size of the need group.

(c) The countable income standard for OHP-OPP and OHP-CHP is 185 percent of the federal poverty level, as listed in OAR 461-155-0180(5), based on the size of the *need group*.

Stat. Auth.: ORS 409.050 & 411.060

Stats. Implemented: ORS 411.060 & 411.070

Hist.: AFS 2-1994, f. & cert. ef. 2-1-94; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 16-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 5-1997, f. 4-30-97, cert. ef. 5-1-97; AFS 4-1998, f. 2-25-98, cert. ef. 3-1-98; AFS 5-1998(Temp), f. & cert. ef. 3-11-98 thru 5-31-98; AFS 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 10-1998, f. 6-29-98, cert. ef. 7-1-98; 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; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 2-2003(Temp), f. & cert. ef. 2-7-03 thru 6-30-03; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 2-2004(Temp), f. & cert. ef. 2-13-04 thru 3-31-04; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 2-2005, f. & cert. ef. 2-18-05; SSP 1-2006, f. & cert. ef. 1-24-06; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07

461-155-0250

Income and Payment Standard; OSIP, OSIPM

(1) For an OSIP (except OSIP-EPD) or OSIPM (except OSIPM-EPD) client in long-term care or in a waived *nonstandard living arrangement* (see OAR 461-001-0000), the countable income limit standard is 300 percent of the full SSI standard for a single individual. Other OSIP and OSIPM clients do not have a countable income limit.

(2) The non-SSI OSIP and OSIPM (except OSIP-EPD and OSIPM-EPD) adjusted income standard takes into consideration the need for shelter (housing and utilities), food, and other items. The standard is itemized as follows: [Table not included. See ED. NOTE.]

(3) The standard in this section is used as the adjusted income limit for non-SSI OSIP and OSIPM clients. The OSIP-AB and OSIPM-AB adjusted income standard includes a transportation allowance. See OAR 461-155-0020 for the adjusted number in the household. The total standard is: [Table not included. See ED. NOTE.]

(4) To be eligible for OSIP (except OSIP-EPD or OSIP-IC), a person must be receiving SSI or be eligible for an ongoing special need. The payment standard for SSI/OSIP clients living in the community is the SIP (supplemental income payment) amount. The SIP is a need amount added to any

other special or service needs to determine the actual payment. In some cases, the need amount is zero.

(a) For clients whose unearned income minus any SSI or Veterans Nonservice-Connected Disability Benefits is less than \$20: [Table not included. See ED. NOTE.]

(b) For clients whose unearned income minus any SSI or Veterans Nonservice-Connected Disability Benefits is \$20 or more: [Table not included. See ED. NOTE.]

(c) The SSI/OSIP-AB standard includes a transportation allowance. The standard for two assumes one individual is blind and the other is not. If both are blind, \$20 is added to the SIP amount.

(d) For spouses who each receive SSI and live in an AFC, ALF or RCF, an amount is added to each person's SIP payment that equals the difference between the individual's income (including SSI and other income) and the OSIP standard for a one-person need group.

(e) For spouses who receive SSI as a couple and are not included in subsection (d) of this section, the two-person need group is used to determine their SIP amount. This amount is used even if one (or both) of the clients is receiving services and has a need group of one according to OAR 461-110-0630.

(5) For OSIP and OSIPM clients in long-term care, the following amounts are allowed for clothing and personal incidentals:

(a) For clients who receive a VA pension based on unreimbursed medical expenses (UME), \$90 is allowed.

(b) For all other clients, \$30 is allowed.

(6) In the OSIP-EPD and OSIPM-EPD programs, the adjusted earned income limit is 250 percent of the 2007 federal poverty level for a family of one. This 250 percent limit equals \$2,128 per month or \$25,536 per year.

(7) In the OSIP-EPD and OSIPM-EPD programs, \$1,000 in earnings is needed to meet the requirement in OAR 461-001-0035 for “sufficient earnings” in the definition of “attached to the workforce.”

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

Stat. Auth.: ORS 411.060, 411.070

Stats. Implemented: ORS 411.060, 411.070

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 25-1991, f. 12-30-91, cert. ef. 1-1-92; AFS 35-1992, f. 12-31-92, cert. ef. 1-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 3-1999, f. 3-31-99, cert. ef. 4-1-99; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 10-2003(Temp) f. & cert. ef. 5-1-03 thru 9-30-03; SSP 26-2003, f. & cert. ef. 10-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 4-2006, f. & cert. ef. 3-1-06; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 2-2007(Temp), f. & cert. ef. 3-1-07 thru 3-31-07; SSP 3-2007(Temp), f. 3-9-07 thru 6-30-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07

461-155-0290

Income Standard; QMB-BAS

The adjusted income standard for the QMB-BAS program is 100 percent of the 2007 federal poverty level. [Table not included. See ED. NOTE.]

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

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060 & 411.070

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 9-1991, f. 3-29-91, cert. ef. 4-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 5-1993, f. & cert. ef. 4-1-93; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 16-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 5-1997, f. 4-30-97, cert. ef. 5-1-97; AFS 6-1998(Temp), f. 3-30-98, cert. ef. 4-1-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 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 7-2003, f. & cert. ef. 4-1-03; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 4-2006, f. & cert. ef. 3-1-06; SSP 2-2007(Temp), f. & cert. ef. 3-1-07 thru 3-31-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07

461-155-0291

Income Standard; QMB-DW

The adjusted income standard for the QMB-DW program is 200 percent of the 2007 federal poverty level (see OAR 461-155-0290). [Table not included. See ED. NOTE.]

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

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060 & 411.070

Hist.: AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 9-1991, f. 3-29-91, cert. ef. 4-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 5-1993, f. & cert. ef. 4-1-93; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 16-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 5-1997, f. 4-30-97, cert. ef. 5-1-97; AFS 6-1998(Temp), f. 3-30-98, cert. ef. 4-1-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 3-1999, f. 3-31-99, cert. ef. 4-1-99;

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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 7-2003, f. & cert. ef. 4-1-03; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 4-2006, f. & cert. ef. 3-1-06; SSP 2-2007(Temp), f. & cert. ef. 3-1-07 thru 3-31-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07

461-155-0295

Income Standard; QMB-SMB

The adjusted income standard for QMB-SMB is 135 percent of the 2007 federal poverty level (see OAR 461-155-0290). [Table not included. See ED. NOTE.]

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

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060 & 411.070

Hist.: AFS 35-1992, f. 12-31-92, cert. ef. 1-1-93; AFS 5-1993, f. & cert. ef. 4-1-93; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 16-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 5-1997, f. 4-30-97, cert. ef. 5-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; 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; AFS 19-2002(Temp), f. 12-10-02, cert. ef. 1-1-03 thru 5-31-03; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 4-2006, f. & cert. ef. 3-1-06; SSP 2-2007(Temp), f. & cert. ef. 3-1-07 thru 3-31-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07

461-155-0530

Special Need; Food for Guide Dogs and Special Assistance Animals

(1) For OSIP and OSIPM clients who are receiving SSI or waived services, a food allowance is allowed for guide dogs and special assistance animals that are individually trained to:

(a) Meet the client's specific medical needs by performing tasks, such as alerting and protecting a client who is having a seizure; or

(b) Perform specific physical tasks that the client is unable to do, such as picking up items that are dropped, turning on light switches, and pulling a wheelchair.

(2) The maximum amount to be authorized for this special need is established yearly, based on average costs incurred by Schools for Guide Dogs.

(3) Authorization of this special need must be based on a proven medical need to sustain the client's independence.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07

461-155-0670

Special Need; Special Diet Allowance

(1) In the EXT, GA, GAM, MAA, MAF, OSIP, OSIPM, REF, REFM, SAC, and TANF programs, clients are not eligible for a special diet allowance if they are receiving any of the following:

(a) Room and board.

(b) Residential care facility (RCF) services or assisted living facility (ALF) care.

(c) Long-term care.

(d) Adult foster care (AFC) services.

(e) An allowance for restaurant meals.

(f) A commercial food preparation diet.

(2) EXT, GA, GAM, MAA, MAF, REF, REFM, SAC, and TANF clients, and OSIP and OSIPM clients receiving SSI or long-term care services in the community, are eligible for a special diet allowance if they meet the following requirements:

(a) They would be in an imminent life-threatening situation without the diet, as verified by medical documentation from a Department-approved medical authority (see OAR 461-125-0830); and

(b) A nutritionist verifies that the special diet needed exceeds the cost of a regular diet.

(3) The amount of a special diet allowance is calculated as follows:

(a) In the EXT, MAA, MAF, REF, REFM, SAC, and TANF programs, the difference between the actual cost of the special diet and a prorated share of the FS benefit for the appropriate number of clients in the benefit group (see OAR 461-110-0750).

(b) In the GA, GAM, OSIP, and OSIPM programs, the lesser of the following:

(A) The difference between the actual cost of the special diet and the amount provided in the basic standard for food (see OAR 461-155-0250).

(B) A maximum of \$300 per month, or an exceptional amount, authorized by the SPD Program Assistance Section, which will not exceed the cost of home IV therapy.

(4) Local management staff must approve the request for a special diet allowance.

(5) Each special diet allowance must be reviewed at six-month intervals.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07

461-160-0580

Excluded Resource; Community Spouse Provision (OSIP and OSIPM except OSIP-EPD and OSIPM-EPD)

(1) In the OSIP and OSIPM programs, this rule applies to an institutionalized spouse who has applied for benefits because he or she is or will be in a continuous period of care (see OAR 461-001-0030).

(2) Whether a couple lives together or not, the determination of whether the value of the couple's resources exceed the eligibility limit for the institutionalized spouse for OSIPM program is made as follows:

(a) The first step is the determination of what the couple's combined countable resources were at the beginning of the most recent continuous period of care. (The beginning of the continuous period of care is the first month of that continuous period.)

(A) Division 461-140 and 461-145 rules applicable to OSIP describe which of the couple's resources are countable resources, and are applicable to determine whether a community spouse's resources are countable, even if the rule only applies to OSIP clients.

(B) The countable resources of both spouses are combined.

(C) At this point in the computation, the couple's combined countable resources are considered available equally to both spouses.

(b) The second step is the calculation of one half of what the couple's combined countable resources were at the beginning of the continuous period of care. The community spouse's half of the couple's combined resources is treated as a constant amount when determining eligibility.

(c) The third step is the determination of the community spouse's resource allowance. The community spouse's resource allowance is the largest of the four following amounts:

(A) The community spouse's half of what the couple's combined countable resources were at the beginning of the continuous period of care, but not more than \$101,640.

(B) \$20,328 (the state community-spouse resource allowance).

(C) A court-ordered community spouse resource allowance. In this rule (OAR 461-160-0580(2)(c)(C) and (2)(f)(C)), the term court-ordered community spouse resource allowance means a court-ordered community spouse resource allowance that, in relation to the income generated, would raise the community spouse's income to a court-approved monthly maintenance needs allowance. In cases where the client became an institutionalized spouse on or after February 8, 2006, this resource allowance must use all of the client's available income and the community spouse's income to meet the community spouse's monthly maintenance needs allowance before any resources are used to generate interest income to meet the allowance.

(D) After considering the income of the community spouse and the income available from the institutionalized spouse, an amount which, if invested, would raise the community spouse's income to the monthly maintenance needs allowance. The amount described in this paragraph (D) is considered only if the amount described in subparagraph (i) of this paragraph is larger than the amount described in subparagraph (ii); it is the difference between the following:

(i) The monthly income allowance computed in accordance with OAR 461-160-0620.

(ii) The difference between:

(I) The sum of gross countable income of the community spouse and the institutionalized spouse; and

(II) The applicable need standard under OAR 461-160-0620(3)(c).

(d) The fourth step is the determination of what the couple's current combined countable resources are when a resource assessment is requested or the institutionalized spouse applies for OSIPM. The procedure in subsection (2)(a) (first step) of this rule is used.

(e) The fifth step is the subtraction of the community spouse's resource allowance from the couple's current combined countable resources. The resources remaining are considered available to the institutionalized spouse.

(f) The sixth step is a comparison of the value of the remaining resources to the OSIP resource standard for one person (under OAR 461-160-0015(4)(a)). If the value of the remaining resources is at or below the standard, the institutionalized spouse meets this eligibility requirement. If the value of the remaining resources is above the standard, the institution-

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alized spouse cannot be eligible until the value of the couple's combined countable resources is reduced to the largest of the four following amounts:

(A) The community spouse's half of what the couple's combined countable resources were at the beginning of the continuous period of care (but not more than \$101,640) plus the OSIP resource standard for one person.

(B) \$20,328 (the state community-spouse resource allowance), plus the OSIP resource standard for one person.

(C) A court-ordered community spouse resource allowance plus the OSIP resource standard for one person. (See paragraph (2)(c)(C) of this rule for a description of the court-ordered community spouse resource allowance.)

(D) The OSIP resource standard for one person plus the amount described in the remainder of this paragraph. After considering the income of the community spouse and the income available from the institutionalized spouse, add an amount which, if invested, would raise the community spouse's income to the monthly maintenance needs allowance. Add this amount only if the amount described in subparagraph (i) of this paragraph is larger than the amount described in subparagraph (ii); it is the difference between the following:

(i) The monthly income allowance computed in accordance with OAR 461-160-0620.

(ii) The difference between:

(I) The sum of gross countable income of the community spouse and the institutionalized spouse; and

(II) The applicable need standard under OAR 461-160-0620(3)(c).

(3) Once eligibility has been established, resources equal to the community spouse's resource allowance (under subsection (2)(c) of this rule) must be transferred to the community spouse if those resources are not already in that spouse's name. The institutionalized spouse must indicate his or her intent to transfer the resources and must complete the transfer to the community spouse within 90 days. This period may be extended for good cause. These resources are excluded during this period. After this period, resources owned by the institutionalized spouse but not transferred out of that spouse's name will be countable and used to determine ongoing eligibility.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060 & 411.770

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 3-1991(Temp), f. & cert. ef. 1-17-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 5-1993, f. & cert. ef. 4-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 11-1999, f. & cert. ef. 10-1-99; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 5-2006(Temp), f. & cert. ef. 3-6-06 thru 8-31-06; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07

461-160-0610

Client Liability for Clients in Long-term Care or Receiving Waivered Services; OSIP (except OSIP-EPD), OSIPM (except OSIPM-EPD)

(1) Clients in the OSIP (except OSIP-EPD) and OSIPM (except OSIPM-EPD) programs who live in or enter a long-term care setting or who receive Title XIX waived services must, in order to remain eligible, make the payment required by this rule, except as provided in sections (2) to (5) of this rule. These clients must apply their adjusted income to the cost of their care or service. This amount is their client liability. If their adjusted income exceeds their cost of care or service, they must pay the full cost of care but have no additional liability.

(2) Clients who receive SSI, or are deemed to receive SSI under section 1619(b) of the Social Security Act (42 U.S.C. § 1382h(b)), are eligible for OSIP and OSIPM without having to make a payment.

(3) The IC service payment of clients in the OSIP-IC and OSIPM-IC programs is reduced by the amount of their liability.

(4) The following clients are exempt from payments required by this rule if they receive waived services (see OAR 461-001-0030):

(a) A disabled adult child under OAR 461-135-0830.

(b) A disabled widow or widower under OAR 461-135-0811.

(c) A widow or widower under OAR 461-135-0820.

(d) A Pickle amendment client under OAR 461-135-0780.

(5) A client residing in an acute care hospital is exempt from payments required by this rule while residing in the acute care hospital. If a

service benefit was received prior to admission to the acute care hospital, payment must be made for that service.

Stat. Auth.: ORS 411.060, 411.070, 414.042

Stats. Implemented: ORS 411.060, 411.070, 414.042

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 8-2005(Temp), f. & cert. ef. 7-1-05 thru 10-1-05; SSP 9-2005(Temp), f. & cert. ef. 7-6-05 thru 10-1-05; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07

461-160-0620

Income Deductions and Client Liability; Long-Term Care or Waivered Services

(1) Deductions from income in the OSIP and OSIPM programs are made for a client specified in section (3) of this rule as explained in subsections (3)(a) through (3)(h) of this rule.

(2) Except as provided otherwise in OAR 461-160-0610, the liability of the client is determined according to subsection (3)(i) of this rule.

(3) Deductions are made in the order below for a client who resides in or is entering a long-term care facility or receives Title XIX waived services.

(a) One standard earned income deduction of \$65 is made from the earned income in the OSIP-AD, OSIP-OAA, OSIPM-AD, and OSIPM-OAA programs. The deduction is \$85 in the OSIP-AB and OSIPM-AB programs.

(b) In the OSIP and OSIPM programs, the deductions under the plan for self-support is made as allowed by OAR 461-145-0405.

(c) One of the following need standards is deducted:

(A) A \$30 personal needs allowance for a client receiving long-term care services.

(B) A \$90 personal needs allowance for a client receiving long-term care services who is eligible for VA benefits based on unreimbursed medical expenses. The \$90 allowance is allowed only when the VA benefit has been reduced to \$90.

(C) The OSIP maintenance standard for a client who receives waived services.

(d) A community spouse monthly income allowance is deducted from the income of the institutionalized spouse if the income is made available to (or for the benefit of) the community spouse. If neither spouse is eligible for SSI and both receive waived services through the home- and community-based services program in the same residence or facility, and if the countable income of either spouse is less than the one-person OSIPM payment standard, an allowance is calculated separately using calculation methods 1 and 2 below. The result that is better for the couple is the allowance. For all other couples, the amount calculated using method 2 is the allowance.

(A) Calculation method 1: The allowance is the difference between the one-person payment standard of the OSIPM program (see OAR 461-155-0250) and the countable income of the spouse with the lesser countable income.

(B) Calculation method 2:

(i) Step 1 — Determine the maintenance needs allowance. \$1,650 is added to the amount over \$495 that is needed to pay monthly shelter expenses for the principal residence of the couple. This sum or \$2,541, whichever is less, is the maintenance needs allowance. For the purpose of this calculation, shelter expenses are the rent or home mortgage payment (principal and interest), taxes, insurance, required maintenance charges for a condominium or cooperative, and the full standard utility allowance for the Food Stamp program (see OAR 461-160-0420).

(ii) Step 2 — Compare maintenance needs allowance with community spouse's gross income. The gross income of the community spouse is subtracted from the maintenance needs allowance determined in step 1. The difference is the income allowance unless the allowance described in step 3 is greater.

(iii) Step 3 — If a spousal support order or exceptional circumstances resulting in significant financial distress require a greater income allowance than that calculated in step 2, the greater amount is the allowance.

(e) A dependent income allowance is deducted as follows:

(A) For a case with a community spouse, a deduction is permitted only if the monthly income of the eligible dependent is below \$1,650. To determine the income allowance of each eligible dependent:

(i) The monthly income of the eligible dependent is deducted from \$1,650.

(ii) One-third of the amount remaining after the subtraction in paragraph (A) of this subsection is the income allowance of the eligible dependent.

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(B) For a case with no community spouse:

(i) The allowance is the TANF adjusted income standard for the client and eligible dependents.

(ii) The TANF standard is not reduced by the income of the dependent.

(f) Costs for maintaining a home are deducted if the client meets the criteria in OAR 461-160-0630.

(g) In the OSIPM program, medical deductions allowed by OAR 461-160-0030 and 461-160-0055 are made for costs not covered under the state plan. This includes the public and private health insurance premiums of the community spouse and the client's dependent.

(h) After taking all the deductions allowed by this rule, the remaining balance is the adjusted income.

(i) The client liability is determined as follows:

(A) For a client receiving waived services (except a client identified in OAR 461-160-0610(4)), the liability is the actual cost of the waived service or the adjusted income of the client, whichever is less. This amount must be paid to the Department each month as a condition of being eligible for waived services. In OSIPM-IC, the liability is subtracted from the gross monthly benefit.

(B) For a client who resides in a nursing facility, a state psychiatric hospital, an Intermediate Care Facility for the Mentally Retarded, or a non-waivered mental health facility, there is a liability as described at OAR 461-160-0610.

(4) The deduction used to determine adjusted income for a GA and GAM client receiving long-term care services or waived services is as follows:

(a) One standard earned income deduction of \$65 is made from the earned income for a client who is not blind; or

(b) One standard earned income deduction of \$85 is made from the earned income for a client who is blind.

Stat. Auth.: ORS 411.060 & 411.070

Stats. Implemented: ORS 411.060 & 411.070

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 17-1992, f. & cert. ef. 7-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 5-1993, f. & cert. ef. 4-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 15-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 5-1997, f. 4-30-97, cert. ef. 5-1-97; AFS 6-1998(Temp), f. 3-30-98, cert. ef. 4-1-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 3-1999, f. 3-31-99, cert. ef. 4-1-99; AFS 6-1999, f. & cert. ef. 4-22-99; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 11-2001, f. 6-29-01, cert. ef. 7-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 8-2005(Temp), f. & cert. ef. 7-1-05 thru 10-1-05; SSP 9-2005(Temp), f. & cert. ef. 7-6-05 thru 10-1-05; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07

461-165-0120

Benefits for a Client in an Acute Care Hospital

(1) In the EXT, MAA, MAF, OHP, REF, REFM, SAC, and TANF programs, regular monthly benefits continue when a client enters an acute care hospital. The monthly benefits remain unchanged until the client returns home or enters some other living arrangement. An authorized representative designated by the client or the branch may be used if necessary.

(2) In the ERDC, GA, GAM, OSIP, OSIPM, and QMB programs, regular monthly benefits continue if a client will be in the acute care hospital for less than 30 days. If the client will be in the acute care hospital for 30 days or more or until death, the client's needs are determined as if the client were in a nursing facility.

(3) In the FS program, regular monthly benefits continue if the client will be in his or her own home 50 percent of the time or more. If the client will be in an institution for more than 50 percent of a calendar month, the client is not eligible for FS.

Stat. Auth.: ORS 411.060, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.816, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07

461-170-0020

Changes That Must be Reported; FS, MAA, MAF, SAC, TANF

(1) Clients in the FS, MAA, MAF, SAC, and TANF programs are required to report all applicable changes described in this rule.

(2) Clients must report each of the following changes within ten days of occurrence, unless the client is required to report the change by section

(7) or (8) of this rule or is exempted from the reporting requirement by section (9) of this rule:

(a) A change in employment, including getting, changing, quitting, or losing a job.

(b) A change in source of income.

(c) A change in earned income of more than \$100 a month, except a change due to an annual adjustment in the Oregon minimum wage.

(d) A change in unearned income of more than \$50, except a change in a public assistance grant.

(3) Clients must report each of the following changes within ten days of occurrence, unless the client is required to report the change by section (8) of this rule or is exempted from the reporting requirement by section (9) of this rule:

(a) The acquisition or change in ownership of non-excluded vehicles.

(b) The sale or receipt of resources that cause total resources to exceed program resource limits.

(4) In the MAA, MAF, SAC, and TANF programs, clients must report a member of the filing group becoming pregnant and when the pregnancy ends.

(a) The report of pregnancy must be received by the Department no later than the tenth day after the client becomes aware of the pregnancy.

(b) The report of pregnancy ending must be received by the Department no later than the tenth day after the client becomes aware of the pregnancy ending.

(5) In the MAA, MAF, SAC, and TANF programs, clients must report each of the following changes within ten days of occurrence:

(a) A change in the members of the household group (see OAR 461-110-0210) and any resulting change in income.

(b) A change in residence.

(c) A change in who pays the shelter costs if the costs were or will be paid by a non-custodial parent.

(6) In the FS program, clients must report each of the following changes within ten days of occurrence, unless the client is required to report the change by section (8) of this rule or is exempted from the reporting requirement by section (9) of this rule:

(a) A change in residence and the shelter costs in the new residence.

(b) A change in members of the filing group (see OAR 461-110-0370) and any resulting change in income.

(c) A change in the legal obligation to pay child support.

(7) Clients in the monthly reporting system (MRS) must report changes in income as required by the rules applicable to the Monthly Change Report.

(8) In the FS program, clients in the simplified reporting system (SRS) must report:

(a) By the tenth day of the month following the month of occurrence, when any of the following paragraphs applies:

(A) Monthly income exceeds the countable income limit in the FS program.

(B) Monthly income exceeds 185 percent of the federal poverty level. The requirement of this paragraph only applies to households in which all members are elderly or have a disability (see OAR 461-001-0015), there is no earned income, and income at certification exceeded the countable income limit.

(C) Their mailing address changes.

(b) On the interim change report, all other changes not covered by subsection (8)(a) of this rule.

(9) In the FS program, clients participating in the transitional benefit alternative (TBA) are not required to report changes.

Stat. Auth.: ORS 411.060, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.105, 411.816, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1992, f. & cert. ef. 5-1-92; AFS 17-1992, f. & cert. ef. 7-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 19-1994, f. & cert. ef. 9-1-94; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 25-1998, f. 12-18-98, cert. ef. 1-1-99; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 11-1999, f. & cert. ef. 10-1-99; AFS 24-2002(Temp), f. 12-31-02, cert. ef. 1-1-03 thru 6-30-03; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 13-2003, f. 6-12-03, cert. ef. 6-16-03; SSP 20-2003, f. & cert. ef. 8-15-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 16-2005, f. & cert. ef. 12-1-05; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07

461-170-0035

Reporting Changes; OHP

In the OHP program, clients are required to report, within 10 days of occurrence:

(1) A change in:

(a) Address.

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- (b) Name.
- (c) Other health care coverage.

(2) The pregnancy of a member of the benefit group (see OAR 461-110-0750) and when the pregnancy ends.

(a) The report of pregnancy must be received by the Department not later than the tenth day after the client becomes aware of the pregnancy.

(b) The report of pregnancy ending must be received by the Department not later than the tenth day after the client becomes aware of the pregnancy ending.

- (3) A birth to a member of the benefit group.

(4) The availability of employer-sponsored health insurance for a member of the benefit group.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060, 411.105

Hist.: AFS 15-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07

461-175-0050

Notice Period

The notice period is used to determine the effective date for taking action when a decision notice (see OAR 461-001-0000) is sent to the filing group:

(1) For a basic decision notice (see OAR 461-001-0000), the notice period is the month in which the notice is mailed.

(2) For a continuing benefit decision notice (see OAR 461-001-0000), the notice period is the budget month from which information is used to initiate the decision notice.

(3) For a timely continuing benefit decision notice (see OAR 461-001-0000), the notice period is the month in which the mailing requirement ends. Except as provided in OAR 461-175-0206, this mailing requirement is 15 calendar days for clients in the Address Confidentiality Program (see OAR 461-001-0000) and 10 calendar days for all other clients.

(4) In computing the time periods provided by this division of rules, the method set out at OAR 137-003-0520(10) is followed.

Stat. Auth.: ORS 411.060, 411.730, 411.816, 418.100

Stats Implemented: ORS 411.060, 411.730, 411.816, 418.100

Hist.: AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07

461-175-0206

Notice Situation; Benefit Standard Changes; Not FS

(1) If the basis for a decision to reduce, suspend, or close a grant of public assistance is a change to a benefit standard, a timely continuing benefit decision notice is sent at least 30 calendar days before the effective date of the action, or if the Department has fewer than 60 days before the effective date to implement a change to a benefit standard:

(a) At least 15 working days before the effective date of the action for clients in the Address Confidentiality Program (see OAR 461-001-0000).

(b) At least 10 working days before the effective date of the action for clients not in the Address Confidentiality Program.

(2) For purposes of this rule, the term "change to a benefit standard" means a change to the applicable inflation-adjusted contribution, income, or payment standard. It does not include the annual adjustment to a standard based on a federal or state inflation rate.

- (3) This rule does not apply in the Food Stamp program.

Stat. Auth.: ORS 411.060, 418.100

Stats. Implemented: ORS 192.856, 411.060, 411.095, 418.100

Hist.: SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07

461-175-0270

Notice Situation; APR, MRS, SRS or TBA

(1) When a benefit group (see OAR 461-110-0750) is entered into the MRS (see OAR 461-170-0100), the Department sends a basic decision notice (see OAR 461-001-0000) for the GA, GAM, OSIP, OSIPM, and QMB programs and a continuing benefit decision notice (see OAR 461-001-0000) for all other programs.

(2) When a benefit group is entered into the SRS (see OAR 461-170-0101) or TBA (see OAR 461-135-0506), and when it starts using the APR (see OAR 461-170-0150), the Department sends a continuing benefit decision notice.

(3) When the Department takes action on information reported on the monthly change report, interim change report, or periodic review, the Department sends a continuing benefit decision notice for clients in the ERDC, FS, MAA, MAF, OSIP, OSIPM, QMB, REF, REFM, and TANF programs. Except in the ERDC and FS programs, the notice includes:

(a) The amount of income used to determine the benefits or ineligibility; and

- (b) The amount of each deduction; or

- (c) The reported nonfinancial changes that affect eligibility.

(4) For all changes not reported on the monthly change report, interim change report or periodic review, the Department sends a timely continuing benefit decision notice.

(5) For a benefit group in the MRS, when ending TANF benefits because of information acquired through the information match with the Child Support program, the Department sends a continuing benefit decision notice.

(6) When the Department removes a client from the MRS, SRS or TBA, the Department provides a continuing benefit decision notice if the change occurs at a time other than at the start of a certification period (see OAR 461-001-0000).

Stat. Auth.: ORS 411.060, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.816, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; SSP 13-2003, f. 6-12-03, cert. ef. 6-16-03; SSP 20-2003, f. & cert. ef. 8-15-03; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07

461-180-0010

Effective Dates; Adding a New Person to an Open Case

(1) In the following programs, the effective date for adding a person (other than an assumed eligible newborn) to the benefit group (see OAR 461-110-0750) is one of the following:

(a) In the GA, OSIP, REF, and TANF programs, it is the date on which all eligibility requirements are met and verified. If benefits have been issued for the month and adding the new person would reduce benefits, the person is added the first of the month following the month in which the notice period ends (see OAR 461-175-0050).

(b) In the TANF program, for adding a child to be covered by a provider-direct child care payment, it is the first of the month in which the child is added to the benefit group.

(c) In the EXT, GAM, MAA, MAF, OHP, OSIPM, REFM, and SAC programs, it is whichever occurs first:

(A) The date the client requests benefits, if he or she was eligible as of that date.

(B) The date all eligibility requirements are met.

(d) In the Food Stamp program:

(A) If adding the person increases benefits, it is the first of the month after the filing group (see OAR 461-110-0370) reports the person has joined the household group (see OAR 461-110-0210). If verification is requested, the effective date for the change is:

(i) The first of the month following the date the change was reported if verification is received by the Department no later than the due date for the verification.

(ii) The first of the month following the date the verification is received by the Department, if received after the verification due date.

(B) If adding the person reduces benefits, it is the first of the month following the month in which the notice period ends (see OAR 461-175-0050).

(e) In the QMB-BAS and QMB-DW programs, it is the first of the month after the new person has been determined to meet all QMB eligibility criteria and the Department receives the required verification.

(f) In the QMB-SMB program, it is the first of the month in which the new person has been determined to meet all QMB-SMB eligibility criteria and the Department receives the required verification.

(2) In the following programs, the effective date for adding an assumed eligible newborn to the benefit group is one of the following:

(a) In the TANF program, it is:

(A) The date of birth, if all eligibility requirements are met and verified within 45 days after the birth; or

(B) The date all eligibility factors are met and verified, if the verification is completed more than 45 days after the date of birth.

(b) In the EXT, GAM, MAA, MAF, OHP, OSIPM, REFM, and SAC programs, it is the date of birth if all the following paragraphs are true. If any of the following paragraphs is not true, the newborn is added to the benefit group in accordance with section (1) of this rule.

(A) A request for benefits is made within one year of the birth. For purposes of this paragraph, a telephone call from the attending physician, another licensed practitioner, a hospital, or the family is considered a request for benefits.

(B) The newborn has continuously lived with the mother since the date of birth.

(C) The mother was receiving EXT, GAM, MAA, MAF, OHP, OSIPM, or SAC on the date of birth, even if she is not currently eligible for benefits.

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(3) In the ERDC program, the effective date for adding a person to the need group (see OAR 461-110-0630) or benefit group is as follows:

(a) If adding the person to the need group will decrease the copay, the effective date is the first of the month after the client reports the person has joined the household.

(b) If adding the person to the need group increases the copay--for instance, because the person receives income--the effective date is the first of the month following the end of the decision notice period (see OAR 461-175-0050).

(c) The effective date for adding a child to the benefit group--that is, covering the cost of the child's care--is the earliest of the following:

(A) For newborns, the date of birth, if all eligibility requirements are met and verified within 45 days after the birth.

(B) For all other children, the first of the month in which the change is reported, if all eligibility requirements are met and verified within 45 days.

(C) For newborns and other children, if eligibility cannot be verified within 45 days, the effective date is the first of the month in which all eligibility factors are met and verified.

Stat. Auth.: ORS 411.060, 411.816, 418.100
Stats. Implemented: ORS 411.060, 411.816, 418.100
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 19-1997, f. & cert. ef. 10-1-97; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07

461-180-0020

Effective Dates; Changes in Income or Deductions that Cause Increases

For all programs, except for cases using APR (see OAR 461-170-0150), this rule is used to determine the effective date when a change in income or income deductions causes an increase in benefits.

(1) For a change reported through the MRS (see OAR 461-170-0100), the effective date is the first of the payment month.

(2) For a change not reported through the MRS, the effective date is one of the following:

(a) In the EXT, GA, MAA, MAF, SAC, and TANF programs, the effective date for an anticipated change reported before the payment month is the first of the payment month in which it will occur. If the change is not reported until the month it occurs or later, the effective date is the first of the month following the month in which the change was reported.

(b) In the OSIP program, the effective date for an anticipated change is:

(A) The first of the month in which the change occurs if the change is reported by the 10th day of the month following the month the change occurred; or

(B) Ten days before the change is reported, if it is reported after the 10th day of the month following the month the change occurred.

(c) In the FS program:

(A) The effective date when verification is not requested is the first of the month following the date the change was reported.

(B) The effective date if verification is requested is:

(i) The first of the month following the date the change was reported if verification is received no later than the due date for the verification.

(ii) The first of the month following the date the verification is received by the Department, if received after the verification due date.

(C) The effective date cannot be before the first of the month following the date the change occurred.

Stat. Auth.: ORS 411.060, 411.816 & 418.100
Stats. Implemented: ORS 411.060, 411.816 & 418.100
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07

461-180-0044

Effective Dates; Income Cap Trust

The effective date for an income cap trust that makes a client income-eligible for long term care or waived services under OAR 461-135-0750 and 461-145-0540(9)(c) is the first day of the month in which the trust document is signed.

Stat. Auth.: ORS 411.060
Stats. Implemented: ORS 411.060
Hist.: SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 16-2006(Temp), f. 12-29-06, cert. ef. 1-1-07 thru 3-31-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07

461-190-0195

Degree Completion Initiative Component

(1) The Degree Completion Initiative (DCI) assists TANF parents who are undergraduates to complete their education at a two- or four-year educational institution. DCI is a work-attached component (see OAR 461-001-0025) of the JOBS program for certain TANF clients. A participant in the DCI component (participant) receives TANF cash assistance as well as support services provided through the JOBS program. JOBS support services does not pay for the cost of tuition, fees, books, or supplies associated with enrollment by a participant at an educational institution.

(2) The following definitions apply to DCI:

(a) "DCI" refers to Degree Completion Initiative.

(b) "Educational institution" refers to any post-secondary educational institution approved or accredited by the Northwest Commission on Colleges and Universities, by its regional equivalent, or by the appropriate official, department, or agency of the state or nation in which the institution is located and which is:

(A) A two- or four-year college or university; or

(B) A community college.

(c) "Participant" refers to a participant in the DCI component of the JOBS program.

(3) The number of participants at any time may not exceed one hundred households receiving TANF.

(4) Applying for DCI; Waiting List

(a) A parent who is applying for or receiving TANF may apply for DCI by completing and signing the DCI application and submitting it to the Department. The application and other documentation required by this rule must be submitted to Department of Human Services JOBS Unit (DCI), 2nd Floor, 500 Summer Street NE E48, Salem, Oregon 97301.

(b) The Department will follow the following procedure for DCI applications received by the Department:

(A) Applications will be processed in the order in which the Department receives them.

(i) When the 100 DCI slots have not been filled, the Department will notify applicants when they have been approved.

(ii) When the 100 DCI slots have been filled and there is a waiting list, the Department will notify the next applicant on the waiting list when an opening becomes available.

(B) The priority population for the first 100 DCI slots will be applicants who are undergraduates and who require 12 months or less to complete a degree at an educational institution.

(C) If the department does not have 100 DCI slots filled, applications will be open to applicants who are undergraduates and who require between 13 and 24 months to complete a degree at an educational institution.

(c) The Department will inform each applicant for DCI who does not qualify or no longer qualifies for placement on the waiting list.

(5) Selection Requirements

(a) A DCI applicant must meet the financial and nonfinancial eligibility requirements for TANF.

(b) Subject to the priority established by paragraph (4)(b)(B) of this rule, a DCI applicant must demonstrate that they are an undergraduate who requires 24 months or less to complete a degree at an educational institution.

(c) A DCI applicant who is not applying for or receiving TANF at the time of selection may not participate in DCI or remain on the waiting list.

(d) A DCI applicant must include documentation that the DCI applicant has been accepted for full-time attendance into or is enrolled full-time at an educational institution. If the DCI applicant does not include such documentation with the DCI application, the applicant must submit documentation to the Department no later than 60 days from the date the application is submitted. An applicant who does not provide this documentation within 60 days is not eligible to participate in the DCI component. This deadline may be extended beyond 60 days in special circumstances beyond the control of the client.

(6) Requirements of Participants; Limitations:

(a) A participant must provide documentation to the Department quarterly, or following completion of each academic term at the educational institution, that the participant is making satisfactory academic progress, as defined by the educational institution, toward a degree.

(b) A participant who does not provide the documentation required by subsection (6)(a) of this rule, or who is not making satisfactory academic progress as defined by the educational institution, is not eligible to continue to participate.

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(c) A participant must attend classes full-time as defined by the educational institution, unless there is good cause (see OAR 461-130-0327) to limit attendance to less than full-time.

(d) Unless there is good cause (see OAR 461-130-0327) for not attending year round, a participant must either:

(A) Attend classes year round, including during the summer if classes are offered by the educational institution; or

(B) If not attending classes year round, participate in work experience related to the field of study of the participant when not attending classes.

(e) A participant must provide attendance information to the Department no less frequently than once every two weeks.

(f) Eligibility for DCI is limited to 12 months and may not be extended.

(g) Upon completing the last semester or term of the educational program of the participant, the participant must engage in work preparation activities, which may include resume preparation, employment research, interviews, work experience, and other activities related to job placement.

(h) The following requirements apply to a participant who is required to participate in the JOBS program:

(A) A mandatory participant who does not attend classes year round may be required to participate in other activities of the JOBS program.

(B) A mandatory participant found to be ineligible to participate in DCI must meet the participation requirements of the JOBS program.

(i) A participant may not simultaneously receive services from both the ERDC-SBG program and from the TANF or JOBS program.

(j) Except as provided in subsection (6)(k) of this rule, a participant must remain eligible for TANF; if the participant becomes ineligible for TANF, the participant is ineligible for DCI.

(k) If a participant becomes temporarily ineligible for TANF during a period of four or fewer months due to income from a paid work experience, the applicant may retain their DCI slot when school resumes if the participant meets all of the following requirements:

(A) The time of the participant in DCI will be no longer than 12 months.

(B) The participant regains TANF eligibility.

(C) DCI is still an appropriate activity for the participant.

Stat. Auth.: ORS 411.060, 418.100

Stats. Implemented: ORS 411.060, 418.100

Hist.: SSP 15-2005(Temp), f. 9-30-05, cert. ef. 10-1-05 thru 12-31-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07

461-195-0541

Liability for Overpayments and Trafficking

(1) For all programs except BCCM, EXT, FS, GAM, MAA, MAF, OHP, OSIPM, QMB, REFM, and SAC, the following individuals are liable for repayment of an overpayment:

(a) Each individual included in the benefit group (see OAR 461-110-0750) when the overpayment was incurred, except for individuals who did not reside with, and did not know they were included in, the benefit group.

(b) A caretaker relative (see OAR 461-001-0000) and his or her spouse (see OAR 461-001-0000) who were not part of, but resided with, the filing group when the overpayment was incurred.

(c) A parent (see OAR 461-001-0000) or caretaker relative of a child (see OAR 461-001-0000) in the benefit group and the spouse of the parent or caretaker relative if the parent, caretaker relative, or spouse was a member of or resided with the filing group when the overpayment was incurred.

(d) If an individual currently in a benefit group is liable for an overpayment, the entire benefit group is liable for the overpayment. In this case, the Department will not collect from the benefit group until it has unsuccessfully attempted to collect the overpayment from all other liable individuals.

(2) In the Food Stamp program, the following individuals are liable for repayment of an overpayment or a claim that results from trafficking (see OAR 461-195-0501(3)):

(a) The primary person (see OAR 461-001-0015) of any age, an ineligible student in the household, and all adults who were members of the filing group (see OAR 461-110-0370) when excess benefits were issued, except no member of a financial group (see OAR 461-110-0530) is liable for an overpayment caused by a change the group was not required to report.

(b) A sponsor of a non-citizen household member if the sponsor is at fault.

(c) A drug or alcohol treatment center or residential care facility that acted as the authorized representative of the client if this authorized representative gave incorrect or incomplete information or withheld information resulting in the overpayment.

(3) In the BCCM, EXT, GAM, MAA, MAF, OHP, OSIPM, QMB, REFM, and SAC programs, the following individuals are liable for repayment of an overpayment:

(a) The primary person, if that person is an adult, and all other adults in the filing group except the following:

(A) An adult not in the benefit group, except a parent (see OAR 461-001-0000) of a child (see OAR 461-001-0000) in the benefit group.

(B) An adult who was in the benefit group when the overpayment occurred but who did not live with the benefit group and was unknowingly in the benefit group.

(b) If an individual currently in a benefit group is liable for an overpayment, the entire benefit group is liable for the overpayment. In this case, the Department will not collect from the benefit group until it has unsuccessfully attempted to collect the overpayment from all other liable persons.

(4) In all programs, both the non-citizen and the sponsor of a non-citizen are liable for an overpayment incurred if the overpayment results from the failure of the sponsor to provide correct information (see OAR 461-145-0820 to 461-145-0840). If the sponsor had good cause for withholding the information, the non-citizen alone is liable for the overpayment.

Stat. Auth.: ORS 411.060, 418.100

Stats. Implemented: ORS 411.060, 418.100

Hist.: AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07

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

Adm. Order No.: SSP 5-2007(Temp)

Filed with Sec. of State: 3-30-2007

Certified to be Effective: 4-1-07 thru 6-30-07

Notice Publication Date:

Rules Amended: 461-155-0250

Rules Suspended: 461-155-0250(T)

Subject: OAR 461-155-0250 about income standards for the Oregon Supplemental Income Program (OSIP) and the Oregon Supplemental Income Program – Medical (OSIPM) is being amended to adjust the standards used to determine eligibility for individuals who live in the household of another. These amounts are based on the Social Security Federal Benefit Amounts. This temporary rule continues the changes made by temporary rule on March 9, 2007 that were not part of the permanent amendment to this rule adopted on April 1, 2007.

Rules Coordinator: Annette Tesch—(503) 945-6067

461-155-0250

Income and Payment Standard; OSIP, OSIPM

(1) For an OSIP (except OSIP-EPD) or OSIPM (except OSIPM-EPD) client in long-term care or in a waived *nonstandard living arrangement* (see OAR 461-001-0000), the countable income limit standard is 300 percent of the full SSI standard for a single individual. Other OSIP and OSIPM clients do not have a countable income limit.

(2) The non-SSI OSIP and OSIPM (except OSIP-EPD and OSIPM-EPD) adjusted income standard takes into consideration the need for shelter (housing and utilities), food, and other items. The standard is itemized as follows: Table not included. See ED. NOTE.]

(3) The standard in this section is used as the adjusted income limit for non-SSI OSIP and OSIPM clients. The OSIP-AB and OSIPM-AB adjusted income standard includes a transportation allowance. See OAR 461-155-0020 for the adjusted number in the household. The total standard is: Table not included. See ED. NOTE.]

(4) To be eligible for OSIP (except OSIP-EPD or OSIP-IC), a person must be receiving SSI or be eligible for an ongoing special need. The payment standard for SSI/OSIP clients living in the community is the SIP (supplemental income payment) amount. The SIP is a need amount added to any other special or service needs to determine the actual payment. In some cases, the need amount is zero.

(a) For clients whose unearned income minus any SSI or Veterans Nonservice-Connected Disability Benefits is less than \$20: Table not included. See ED. NOTE.]

(b) For clients whose unearned income minus any SSI or Veterans Nonservice-Connected Disability Benefits is \$20 or more: Table not included. See ED. NOTE.]

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(c) The SSI/OSIP-AB standard includes a transportation allowance. The standard for two assumes one individual is blind and the other is not. If both are blind, \$20 is added to the SIP amount.

(d) For spouses who each receive SSI and live in an AFC, ALF or RCF, an amount is added to each person's SIP payment that equals the difference between the individual's income (including SSI and other income) and the OSIP standard for a one-person need group.

(e) For spouses who receive SSI as a couple and are not included in subsection (d) of this section, the two-person need group is used to determine their SIP amount. This amount is used even if one (or both) of the clients is receiving services and has a need group of one according to OAR 461-110-0630.

(5) For OSIP and OSIPM clients in long-term care, the following amounts are allowed for clothing and personal incidentals:

(a) For clients who receive a VA pension based on unreimbursed medical expenses (UME), \$90 is allowed.

(b) For all other clients, \$30 is allowed.

(6) In the OSIP-EPD and OSIPM-EPD programs, the adjusted earned income limit is 250 percent of the 2007 federal poverty level for a family of one. This 250 percent limit equals \$2,128 per month or \$25,536 per year.

(7) In the OSIP-EPD and OSIPM-EPD programs, \$1,000 in earnings is needed to meet the requirement in OAR 461-001-0035 for "sufficient earnings" in the definition of "attached to the workforce."

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

Stat. Auth.: ORS 411.060, 411.070

Stats. Implemented: ORS 411.060, 411.070

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 25-1991, f. 12-30-91, cert. ef. 1-1-92; AFS 35-1992, f. 12-31-92, cert. ef. 1-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 3-1999, f. 3-31-99, cert. ef. 4-1-99; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 10-2003(Temp) f. & cert. ef. 5-1-03 thru 9-30-03; SSP 26-2003, f. & cert. ef. 10-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 4-2006, f. & cert. ef. 3-1-06; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 2-2007(Temp), f. & cert. ef. 3-1-07 thru 3-31-07; SSP 3-2007(Temp), f. 3-9-07 thru 6-30-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 5-2007(Temp), f. 3-30-07, cert. ef. 4-1-07 thru 6-30-07

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

Rule Caption: Displaced Homemaker rules; unfunded program.

Adm. Order No.: DMAP 1-2007

Filed with Sec. of State: 3-30-2007

Certified to be Effective: 3-30-07

Notice Publication Date: 3-1-07

Rules Repealed: 410-020-0000, 410-020-0010, 410-020-0020, 410-020-0030, 410-020-0040, 410-020-0050

Subject: The Department repealed OAR 410-020-0000, 410-020-0010, 410-020-0020, 410-020-0030, 410-020-0040, and 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—(503) 945-6927

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

Adm. Order No.: DMAP 2-2007

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

Certified to be Effective: 4-5-07

Notice Publication Date: 3-1-07

Rules Amended: 410-120-1295

Rules Repealed: 410-120-1295(T)

Subject: The General Rules Program administrative rules govern Office of Medical Assistance Programs' (OMAP) payment for services provided to clients. Having temporarily amended OAR 410-120-1295, effective January 1, 2007, DMAP permanently amended the rule to reference the reimbursement documents: FCHP Non-Con-

tracted 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.

Rules Coordinator: Darlene Nelson—(503) 945-6927

410-120-1295

Non-Participating Provider

(1) For purposes of this rule, a Provider enrolled with the Office of Medical Assistance Programs (OMAP) that does not have a contract with an OMAP-contracted Prepaid Health Plan (PHP) is referred to as a Non-Participating Provider.

(2) For covered services that are subject to reimbursement from the PHP, a Non-Participating Provider, other than a hospital governed by (3)(b) below, must accept from the OMAP-contracted PHP, as payment in full, the amount that the provider would be paid from OMAP if the client was fee-for-service (FFS).

(3) The OMAP-contracted Fully Capitated Health Plan (FCHP) that does not have a contract with a Hospital, is required to reimburse, and Hospitals are required to accept as payment in full the following reimbursement:

(a) The FCHP will reimburse a non-participating Type A and Type B Hospital fully for the cost of covered services based on the cost-to-charge ratio used for each hospital in setting the capitation rates paid to the FCHP for the contract period (ORS 414.727);

(b) All other non-participating hospitals, not designated as a rural access or Type A and Type B Hospital, for dates of service on or after October 1, 2003 reimbursement will be based upon the following:

(i) Inpatient service rates are based upon the capitation rates developed for the budget period, at the level of the statewide average unit cost, multiplied by the geographic factor, the payment discount factor and an adjustment factor of 0.925;

(ii) Outpatient service rates are based upon the capitation rates developed for the budget period, at the level of charges, multiplied by the statewide average cost to charge ratio, the geographic factor, the payment discount factor and an adjustment factor of 0.925.

(4) The geographic factor, and the statewide average unit costs for inpatient service rates for subsection (3)(b)(i) and for outpatient service rates for subsection (3)(b)(ii), are calculated by the Department's contracted actuarial firm. The FCHP Non-Contracted DRG Hospital Reimbursement Rates are on the Department's Web site at: www.dhs.state.or.us/policy/healthplan/guides/hospital/main.html. Each document shows rates for a specific date range. The document dated:

(a) October 1, 2003, is effective for dates of service October 1, 2003 through September 30, 2004;

(b) October 1, 2004, is effective for dates of service October 1, 2004 through September 30, 2005;

(c) October 1, 2005, is effective for dates of service October 1, 2005 through December 31, 2005; (corrected December 23, 2005);

(d) January 1, 2006, is effective for dates of service January 1, 2006 through December 31, 2006 (corrected December 23, 2005);

(e) January 1, 2007, is effective for dates of service January 1, 2007 through December 31, 2007.

(5) A non-participating hospital must notify the FCHP within 2 business days of an FCHP patient admission when the FCHP is the primary payer. Failure to notify does not, in and of itself, result in denial for payment. The FCHP is required to review the hospital claim for:

(a) Medical appropriateness;

(b) Compliance with emergency admission or prior authorization policies;

(c) Member's benefit package

(d) The FCHP contract and OMAP Administrative Rules.

(6) After notification from the non-participating hospital, the FCHP may:

(a) Arrange for a transfer to a contracted facility, if the patient is medically stable and the FCHP has secured another facility to accept the patient;

(b) Perform concurrent review; and/or

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(c) Perform case management activities.

(7) In the event of a disagreement between the FCHP and Hospital, the provider may appeal the decision by asking for an administrative review as specified in OAR 410-120-1580.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.743

Hist.: OMAP 10-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 22-2004, f. & cert. ef. 3-22-04; OMAP 23-2004(Temp), f. & cert. ef. 3-23-04 thru 8-15-04; OMAP 33-2004, f. 5-26-04, cert. ef. 6-1-04; OMAP 75-2004(Temp), f. 9-30-04, cert. ef. 10-1-04 thru 3-15-05; OMAP 4-2005(Temp), f. & cert. ef. 2-9-05 thru 7-1-05; OMAP 33-2005, f. 6-21-05, cert. ef. 7-1-05; OMAP 35-2005, f. 7-21-05, cert. ef. 7-22-05; OMAP 49-2005(Temp), f. 9-15-05, cert. ef. 10-1-05 thru 3-15-06; OMAP 63-2005, f. 11-29-05, cert. ef. 1-1-06; OMAP 66-2005(Temp), f. 12-13-05, cert. ef. 1-1-06 thru 6-28-06; OMAP 72-2005(Temp), f. 12-29-05, cert. ef. 1-1-06 thru 6-28-06; OMAP 28-2006, f. 6-22-06, cert. ef. 6-23-06; OMAP 42-2006(Temp), f. 12-15-06, cert. ef. 1-1-07 thru 6-29-07; DMAP 2-2007, f. & cert. ef. 4-5-07

Department of Human Services, Public Health Division Chapter 333

Rule Caption: Family Planning Expansion Project.

Adm. Order No.: PH 5-2007

Filed with Sec. of State: 4-9-2007

Certified to be Effective: 4-23-07

Notice Publication Date: 3-1-07

Rules Amended: 333-004-0000, 333-004-0010, 333-004-0020, 333-004-0030, 333-004-0040, 333-004-0050, 333-004-0060, 333-004-0070, 333-004-0080, 333-004-0090, 333-004-0100, 333-004-0110, 333-004-0120, 333-004-0130, 333-004-0140, 333-004-0150, 333-004-0160, 333-004-0170, 333-004-0180, 333-004-0190

Rules Repealed: 333-004-0010(T), 333-004-0080(T), 333-004-0110(T)

Subject: The Department of Human Services, Public Health Division is permanently amending their Oregon Administrative Rules related to the Family Planning Expansion Project.

Rules Coordinator: Christina Hartman—(971) 673-1291

333-004-0000

Description of the Family Planning Expansion Project

The Family Planning Expansion Project is a Medicaid waiver demonstration project approved by the Centers for Medicare and Medicaid Services to provide comprehensive family planning services to eligible low-income Oregon men and women statewide. The Family Planning Expansion Project extends Medicaid coverage for family planning services to Oregon women and men with family incomes up to 185% of the Federal Poverty Level through a contract network of qualified family planning providers. The administrative rules set forth for this project apply only to providers who have an approved medical services agreement to provide family planning services through this project. Other family planning services and reimbursement covered by Medicaid are governed by the Department of Human Services, Division of Medical Assistance Program's administrative rules and federal guidelines.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 409.010

Hist.: PH 4-2005, f. & cert. ef. 2-18-05; PH 5-2007, f. 4-9-07, cert. ef. 4-23-07

333-004-0010

Definitions

(1) "Approved medical services agreement" means the completed Family Planning Expansion Project agreement, submitted to and approved by the Office of Family Health.

(2) "Client" means a person of any age or gender who is enrolled in and receives contraceptive management services from the Family Planning Expansion Project.

(3) "Client Visit Record" or "CVR" means the intake form that is completed for each client visit, and that is used as a billing claim form and a data collection instrument for the Family Planning Expansion Project.

(4) "CMS" means the Centers for Medicare and Medicaid Services, located within the federal Department of Health and Human Services.

(5) "Contraceptive management" means a limited scope of family planning services as described in OAR 333-004-0040.

(6) "DHS" means the Department of Human Services.

(7) "DMAP" means the Division of Medical Assistance Programs, within the Department of Human Services.

(8) "Family Planning Expansion Project" or "FPEP" means the Medicaid waiver program that provides statewide family planning services to eligible clients, that is jointly administered by the Office of Family

Health and the Division of Medical Assistance Programs, within the Department of Human Services.

(9) "Family planning services" means services provided to clients of childbearing age, including minors who can be considered to be sexually active, who desire such services and that are intended to prevent pregnancy or otherwise limit family size.

(10) "Family planning service provider" or "provider" means a licensed health care provider operating within a scope of practice, who is authorized by the Office of Family Health to bill for contraceptive management services for eligible Family Planning Expansion Project clients.

(11) "FPL" means the federal poverty level guidelines established each year by the Department of Health and Human Services, used to determine eligibility for the Family Planning Expansion Project and other federally funded programs.

(12) "Lawful Permanent Resident" means a person who, notwithstanding other eligibility requirements, is a qualified non-citizen as described in OAR 461-120-0125(4).

(13) "OFH" means the Office of Family Health, the office within the Department of Human Services, Public Health Division that operates the Family Planning Expansion Project.

(14) "Project number" means the administrative number assigned to the family planning service provider by the Office of Family Health for identification as a Family Planning Expansion Project provider.

(15) "Site number" means the administrative number assigned to the family planning service provider by the Office of Family Health for identification of the geographic location of each Family Planning Expansion Project provider.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 409.010

Hist.: PH 4-2005, f. & cert. ef. 2-18-05; PH 3-2007(Temp), f. 2-23-07, cert. ef. 4-1-07 thru 9-28-07; PH 5-2007, f. 4-9-07, cert. ef. 4-23-07

333-004-0020

Client Eligibility

(1) Clients must meet the following FPEP eligibility criteria:

(a) The client's income based on family size is at or below 185% of the Federal Poverty Level;

(b) The client resides in Oregon; and

(c) The client is a citizen of the United States, or meets the definition of Lawful Permanent Resident as described in OAR 333-004-0010.

(2) Clients receiving or who are eligible for the Citizen/Alien-Waived Emergency Medical benefit package are not eligible for FPEP.

(3) A client who would otherwise be eligible but who is in the custody of a law enforcement agency or is an inmate of a public institution, including a juvenile detention facility, is not eligible for services.

(4) A client enrolled in another Medicaid program that provides family planning benefits is not eligible for FPEP.

(5) Eligibility for FPEP does not constitute eligibility for any other medical assistance program. Eligibility for family planning services, including contraceptive management, as part of any other medical program is determined by the eligibility requirements for that specific program.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 409.010

Hist.: PH 4-2005, f. & cert. ef. 2-18-05; PH 5-2007, f. 4-9-07, cert. ef. 4-23-07

333-004-0030

Client Certification and Enrollment

(1) Clients are certified on a self-declared basis, when they submit a completed and signed FPEP enrollment form, including income information and appropriate residency information at the clinic site at the time of service. Teenagers are certified based on their own income, whether living at home or on their own. Eligibility is effective for one year.

(2) Final determination of eligibility and enrollment into FPEP is made by OFH based on the information provided with the first claim submitted for payment. FPEP providers must keep a current, signed enrollment form on file at the clinic. Clients certified and conditionally enrolled who are found ineligible will be disenrolled.

(3) All clients must be asked at the time of certification, and at each subsequent visit, whether their insurance may be billed or if special confidentiality as provided for in OAR 333-004-0080(8) is needed. The client's response must be documented on the FPEP enrollment form and kept in the medical record file.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 409.010

Hist.: PH 4-2005, f. & cert. ef. 2-18-05; PH 5-2007, f. 4-9-07, cert. ef. 4-23-07

ADMINISTRATIVE RULES

333-004-0040

Covered Services

(1) FPEP covers contraceptive management services that are a limited scope of family planning services directly related to initiating or obtaining a contraceptive method and maintaining effective use of that method. Family planning clinics will only be reimbursed for services related to contraceptive management, and not for excluded services described in OAR 333-004-0050.

(2) Contraceptive management services include, but are not limited to:

- (a) An annual exam, including a pap smear, payable once each year;
- (b) Clinically indicated follow-up visits to evaluate method effectiveness;
- (c) Management of side effects related to method;
- (d) Changing method if medically necessary;
- (e) Family planning counseling and education; and
- (f) Laboratory tests, medical procedures, and pharmaceutical supplies and devices directly related to contraceptive management as documented in clinic protocol.

(3) Each client may receive a one-year supply of a contraceptive method.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 409.010

Hist.: PH 4-2005, f. & cert. ef. 2-18-05; PH 5-2007, f. 4-9-07, cert. ef. 4-23-07

333-004-0050

Excluded Services

(1) Services and laboratories not directly related to contraceptive management are not covered by FPEP for any eligible client. If the client accepts financial responsibility for a non-covered service that is received during a visit, payment arrangements are between the provider and the client.

(2) No payment will be made for any expense incurred for any of the following services or items:

- (a) Sterilizations for male or female clients;
- (b) Treatment for infections;
- (c) Prenatal care, including pregnancy confirmations;
- (d) Repeat pap smears not associated with contraceptive management services;
- (e) Hysterectomies or abortions;
- (f) Transportation to or from a clinic appointment;
- (g) Procedures performed for medical reasons, whether or not the procedure results in preventing or delaying pregnancy or restoring fertility;
- (h) Any other medical service or laboratory whose primary purpose is other than contraceptive management; and
- (i) A clinic visit, the purpose of which is to ensure or reinforce the client's effective use of a contraceptive method where no medical decision-making is required (behavior modification visit).

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 409.010

Hist.: PH 4-2005, f. & cert. ef. 2-18-05; PH 5-2007, f. 4-9-07, cert. ef. 4-23-07

333-004-0060

Standards of Care for Contraceptive Management Services

Participating FPEP providers must agree to provide contraceptive management services according to the following standards.

(1) Informed Consent. The client's decision to participate in and consent to receive contraceptive management services must be voluntary and without bias or coercion:

(a) The informed consent process, provided verbally and supplemented with written materials, must be presented in a language the client understands;

(b) Consent must be obtained from the individual client receiving contraceptive management services, including minor clients.

(2) Confidentiality. Services must be provided in a manner that respects the privacy and dignity of the individual, as provided for in OAR 333-004-0080(8):

(a) Clients must be assured of the confidentiality of services and of their medical records;

(b) Records cannot be released without written client consent, except as may be required by law, or otherwise permitted by the Health Insurance Portability and Accountability Act (HIPAA).

(3) Availability of Contraceptive Services. A broad range of Federal Drug Administration (FDA)-approved contraceptive methods and their applications, consistent with recognized medical practice standards, as well as fertility awareness methods must be available on-site at the clinic:

(a) If the provider organization's clinical staff lack the specialized skills to provide intra-uterine devices (IUDs) or subdermal contraceptives, or if there is insufficient volume to ensure and maintain high skill level for these procedures, clients must be referred to another qualified provider for these procedures. The provider must have an established referral arrangement, preferably with other FPEP providers, for these procedures. The clinician receiving the referral must not bill the client or OFH. Payment will be made to the original FPEP-enrolled provider actually providing the health service or procedure, who must pay the referral clinician;

(b) Clients should be able to get their first choice of contraceptive method at the time of service unless there are specific contraindications.

(4) Linguistic and Cultural Competence. All services, support and other assistance must be provided in a manner that is responsive to the beliefs, interpersonal styles, attitudes, language and behaviors of the individuals who are receiving services, and in a manner that has the greatest likelihood of ensuring their maximum participation in the program:

(a) The provider should employ bilingual-bicultural staff, personnel or volunteers skilled or certified in the provision of medical and clinical interpretation during all clinic encounters for clients with limited English proficiencies or who otherwise need this level of assistance. All persons providing interpretation services must adhere to confidentiality guidelines;

(b) The provider must assure the competency of language assistance provided to limited English proficiency clients by interpreters and bilingual staff. Family and friends should not be used to provide interpretation services, unless requested by the client;

(c) Provider should make available easily understood client related materials and post signage in the languages of groups represented or commonly encountered in the service area;

(d) All print, electronic and audiovisual materials should be appropriate in terms of the client's language and literacy level. A client's need for alternate formats must be accommodated.

(5) Access to Care. Services covered by FPEP must be provided without cost to eligible clients. Clients must be informed of the scope of services available through the program:

(a) Appointments for established clients should be available within a reasonable time period, generally less than two weeks. New clients who cannot be seen within this time period should be referred to other qualified providers in the area;

(b) Contraceptive methods, including emergency contraception must be available at the clinic site and available to the client at the time of service;

(c) Although not covered by FPEP, treatment and supplies for sexually transmitted infections must be available at the site, or by referral;

(d) Clients in need of additional medical or psychosocial services beyond the scope of the provider organization must be provided with information about available local resources, including domestic violence and substance abuse related services. Clients must also be given a brochure listing locations of free or low-cost primary care services in the area;

(e) All services must be provided to eligible clients without regard to age, marital status, race, parity, disability, or sexual orientation;

(f) All counseling and referral-to-care options appropriate to a positive or negative pregnancy test result during authorized contraceptive services must be provided in an unbiased manner, allowing the client full freedom of choice between prenatal care, adoption counseling or pregnancy termination services.

(6) Clinical and Preventive Services.

(a) The scope of contraceptive management services offered to women must include:

(A) A comprehensive health history, including health risk facts and a complete obstetrical, gynecological, contraceptive, personal and family medical history; and a sexual health history, in conjunction with contraceptive counseling;

(B) An initial physical examination that includes a breast and pelvic exam with Pap smears;

(C) Routine laboratory tests related to the decision-making process for contraceptive choices;

(D) Provision of a broad range of FDA-approved contraceptive methods, devices, supplies, and procedures, including emergency contraceptive care;

(E) Follow-up care for maintenance of a client's contraceptive method or for change of method;

(F) Information about providers available for meeting primary care needs and direct referral for needed medical services not covered by FPEP, including management of high-risk conditions and specialty consultation if needed; and

ADMINISTRATIVE RULES

(G) Preventive and control services for communicable diseases, provided within the context of a contraceptive management visit, including:

(i) Testing and diagnosis as appropriate for a physical exam prior to starting a new contraceptive method; and

(ii) Reporting of sexually transmitted infections (STI), as required, to appropriate public health agencies for contact management, prevention, and control.

(b) The scope of contraceptive management and clinical preventative services offered to men must include:

(A) Counseling and education;

(B) Sexual health risk assessments in conjunction with contraceptive counseling; and

(C) Non-prescription contraceptive barrier methods and supplies.

(c) Services for all clients must be documented in the client medical record.

(7) Education and Counseling Services. The following elements comprise the required education and counseling services that must be provided to all contraceptive management clients to clarify personal contraceptive management goals while promoting optimal reproductive health:

(a) Initial individual assessment, and re-assessment as needed, of the client's contraceptive management educational needs and knowledge about reproductive health, including:

(A) A description of services and clinic procedures, including the pelvic exam and instructions for breast or testicular self-exam;

(B) Relevant reproductive anatomy and physiology, method options, and STI and Human Immunodeficiency Virus (HIV) prevention;

(C) Preventive health care, nutrition, preconception health maintenance, and pregnancy plans;

(D) Psycho-social issues, such as partner relationship and communication, risk-taking, and decision-making; and

(E) An explanation of where primary care services, not covered by FPEP, are available and how they can be accessed.

(b) Initial and all subsequent education and counseling sessions must be provided in a way that is understandable to the client and conducted in a manner that facilitates the client's integration of information for the promotion of positive reproductive health behaviors, and must include:

(A) An explanation of the results of the physical examination and the laboratory tests;

(B) Information on where to obtain 24-hour emergency care services;

(C) The option of including a client's partner in the education/counseling session, and other services at the client's discretion; and

(D) Effective educational information that takes into account diverse cultural and socioeconomic factors of the client and the psychosocial aspects of reproductive health.

(c) Each client must be provided with adequate information to make an informed choice about contraceptive management methods, including:

(A) A verbal or written review of all FDA-approved contraceptive methods, including sterilizations and emergency contraception, that address effectiveness, duration, side effects, complications, medical indications and contraindications, social and physical advantages, and disadvantages. Documentation of method education must be maintained in the client record;

(B) A description of the implications and consequences of sterilization procedures, if provided;

(C) Specific instructions for care, use, and possible danger signs for the selected method. Documentation of informed consent must be maintained in the client record;

(D) The opportunity for questions concerning procedures or methods; and

(E) Written information about how to obtain services for contraceptive management-related complications or emergencies.

(d) Clinicians and other staff persons providing education and counseling must be knowledgeable about the psycho-social and medical aspects of reproductive health, and trained in patient counseling techniques. Staff must make referrals for more intensive counseling as indicated.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 409.010

Hist.: PH 4-2005, f. & cert. ef. 2-18-05; PH 5-2007, f. 4-9-07, cert. ef. 4-23-07

333-004-0070

Provider Enrollment

(1) This rule applies only to providers participating in FPEP through an approved provider agreement with OFH.

(2) An individual or organization must meet applicable licensing or regulatory requirements set forth by federal and state statutes, regulations, and rules to be enrolled and to bill as a provider. In addition, all providers

of services within the state of Oregon must have a valid Oregon business license if such a license is a requirement of the state, federal, county or city government to operate a business or to provide services.

(3) Signing the medical services agreement constitutes agreement by providers to comply with all applicable rules of OFH and federal and state laws and regulations.

(4) An individual or organization that is currently subject to sanctions by DHS or the federal government is not eligible for enrollment.

(5) An FPEP project number and site number will be issued to an individual or clinic upon:

(a) Completion of the application and submission of the required documents;

(b) The signing of the provider agreement by the provider or person authorized by the provider to bind the organization or individual to compliance with these rules;

(c) Verification of licensing or certification. Loss of the appropriate licensure or certification will result in immediate disenrollment of the provider and recovery of payments made subsequent to the loss of licensure or certification; and

(d) Approval of the application by OFH.

(6) Issuance of a project number and site number establishes enrollment of an individual or organization as a provider for FPEP services.

(7) If a provider changes address, business affiliation, licensure, ownership, certification, billing agents or Federal Tax Identification Number (TIN), OFH must be notified in writing within 30 days of the change. Failure to notify OFH of a change of Federal Tax Identification Number may result in the imposing of a \$50 fine. Changes in business affiliation, ownership, and Federal Tax Identification Number may require the submission of a new application. Payments made to providers who have not furnished such notification may be recovered.

(8) Providers of services outside the state of Oregon will be enrolled under the following conditions:

(a) The provider is appropriately licensed or certified and meets standards established within the provider's state for participation in Medicaid. Disenrollment from the other state's Medicaid program is a basis for disenrollment from FPEP; and

(b) The provider lives in a state contiguous to Oregon, and is within seventy-five miles of the Oregon border.

(9) Provider termination:

(a) The provider may terminate enrollment at any time. The request must be made to the OFH in writing, via certified mail, return receipt requested. The notice shall specify the provider number to be terminated and the effective date of termination. Termination of the provider enrollment does not terminate any obligations of the provider for dates of services during which the enrollment was in effect;

(b) FPEP provider terminations or suspensions by OFH may be for, but are not limited to the following reasons:

(A) Breaches of the medical services agreement; or

(B) Failure to comply with the statutes, regulations and policies of DHS, and federal or state regulations that are applicable to the provider.

(10) The provider is entitled to a contested case hearing to determine whether the provider's project and site number will be revoked.

(11) In the event of bankruptcy proceedings, the provider must immediately notify OFH in writing.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 409.010

Hist.: PH 4-2005, f. & cert. ef. 2-18-05; PH 5-2007, f. 4-9-07, cert. ef. 4-23-07

333-004-0080

Billing

(1) Only clinics providing family planning services pursuant to an approved medical services agreement, and who have been assigned a project number and site number may submit claims for FPEP services.

(2) All contraceptive management services are billed by submitting CVR data or by using the CVR form.

(3) Supplies are billed through the CVR form at actual acquisition cost; that is, the amount actually paid by the provider, including shipping, after applying any discounts, promotions or other reductions.

(4) All billings must be coded with the most appropriate International Classification of Diseases, 9th Revision, Clinical Modification, 2006 (ICD-9-CM) diagnosis codes in the V25 Contraceptive Management series to the highest level of specificity.

(5) Laboratory services related to contraceptive management are reimbursed through a global reimbursement that includes clinical services and laboratory services. No separate laboratory bills will be reimbursed.

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(6) Birth control methods include natural family planning, abstinence, intrauterine devices, cervical caps, oral contraceptives, subdermal implants, condoms and diaphragms, patches, rings, injectibles, and any other method approved by the Food and Drug Administration.

(7) As reflected in the medical services agreement, the provider must assure that all laboratory tests done at the clinic site or by an outside clinic are conducted by Clinical Laboratory Improvement Amendments (CLIA) certified laboratories.

(8) Billing OFH for contraceptive management services requires an additional confidentiality protection for clients beyond the standard confidentiality of medical services. All clients who have private insurance may request that it not be billed, if they believe they are at risk of physical or emotional harm, should knowledge of the family planning services be known to the parent or partner or other household member. All clients must be asked at each visit whether they have insurance, and whether it can be billed.

(9) A provider enrolled with FPEP must not seek payment from an eligible client, or from a financially responsible relative or representative of that individual, for any services covered by FPEP. Provider accepts OFH reimbursement for each visit as payment in full:

(a) A client may be billed for services that are not covered by FPEP. However, the client must be informed in advance of receiving the specific service that it is not covered, the estimated cost of the service, and that the client or client's representative is financially responsible for payment for the specific service. Providers must be able to document in writing signed by the client or client's representative, that the client was provided this information and the client knowingly and voluntarily agreed to be responsible for payment;

(b) Services not covered by FPEP are those outside of the scope of contraceptive management.

(10) All claims must be billed using the CVR as described in the claims section of the rules. A claim is considered a "valid claim" only if all required data is entered or is sent with each claim form for each visit.

(11) Prior to submission of a claim to OFH for payment, an approved provider agreement must be in place. Upon submission of a claim to OFH for payment, the provider agrees that it has complied with all rules of FPEP:

(a) Except for services performed by a CLIA certified laboratory outside of the clinic, all billings must be for services provided within the provider's licensure or certification;

(b) It is the responsibility of the provider to submit true and accurate information when billing OFH;

(c) A claim may not be submitted prior to providing services.

(12) Diagnosis Code Requirement:

(a) A primary diagnosis code is required on all claims;

(b) Use the highest degree of specificity within ICD-9-CM codes for Contraceptive Management. No other primary diagnosis code can be billed.

(13) No person shall submit to OFH:

(a) Any false claim for payment;

(b) Any claim altered in such a way as to result in a payment for a service that has already been paid; or

(c) Any claim upon which payment has been made by another source unless the amount paid is clearly entered on the claim form.

(14) The provider is required to submit a billing error edit correction, or to refund the amount of the overpayment, on any claim where the provider identifies an overpayment made by OFH.

(15) A provider who, after having been previously warned in writing by DHS or the Department of Justice about improper billing practices, is found to have continued such improper billing practices and has had an opportunity for a contested case hearing, shall be liable to OFH for up to triple the amount of the established overpayment received as a result of such violation.

(16) Third Party Resources:

(a) Unless a client who has private insurance asks for special confidentiality as provided for in section 8 of this rule, federal law requires that all reasonable efforts be taken to ensure that FPEP will be the payor of last resort;

(b) Providers must make reasonable efforts to obtain payment first from other resources. For the purposes of this rule "reasonable efforts" include:

(A) Determining the existence of insurance or other resource by asking the client;

(B) When third party coverage is known to the provider, by any other means available, prior to billing FPEP:

(i) The provider must bill the third party resource;

(ii) Comply with the insurer's billing and authorization requirements; and

(iii) Resubmit a denied claim when the service is payable in whole or in part by an insurer.

(c) If the client has private insurance that has been billed for FPEP services and the reimbursement from the insurance does not cover the entire cost of the services, the remaining balance may be billed to OFH;

(d) Providers are required to submit a billing error edit correction showing the amount of the third party payment or to refund the amount received from another source within 30 days of the date the payment is received. Failure to submit a billing error edit correction within 30 days of receipt of the third party payment or to refund the appropriate amount within this time frame is considered concealment of material facts and grounds for recovery or sanction.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 409.010

Hist.: PH 4-2005, f. & cert. ef. 2-18-05; PH 3-2007(Temp), f. 2-23-07, cert. ef. 4-1-07 thru 9-28-07; PH 5-2007, f. 4-9-07, cert. ef. 4-23-07

333-004-0090

Claims

(1) In addition to serving as a claims form for FPEP, the CVR is a data collection instrument used by the federal Department of Health and Human Service's Office of Population Affairs. The purpose of the form is to collect statistical data for clients who receive family planning services through health programs administered by OFH.

(2) Although data requirements on the CVR may require more information than necessary for payment of a specific claim, all related fields must be filled out and submitted. Data gathered from the CVR is used for health care operations and oversight of the waiver program, as well as for public health purposes established by OFH.

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

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 409.010

Hist.: PH 4-2005, f. & cert. ef. 2-18-05; PH 5-2007, f. 4-9-07, cert. ef. 4-23-07

333-004-0100

Timely Submission of Claims

(1) All claims for services must be submitted within 12 months of the date of service.

(2) Errors causing rejection of any claim must be resolved within 12 months of the date of service. Claims older than 12 months will not be paid, except as provided for in section (3) of this rule.

(3) When OFH has made an error that caused the provider not to be able to bill within 12 months of the date of service, then the claim may be submitted to OFH. The error must be confirmed by OFH.

(4) Client data not related to payment of the claim may be corrected at any time after the date of service.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 409.010

Hist.: PH 4-2005, f. & cert. ef. 2-18-05; PH 5-2007, f. 4-9-07, cert. ef. 4-23-07

333-004-0110

Payment

(1) OFH will make payment only to the enrolled provider who actually performs the services for eligible clients, except as provided for in OAR 333-004-0060(3)(a).

(2) The FPEP encounter rate is set by OFH. Claims are reimbursed at the rate in effect on the date of service.

(3) Family planning pharmaceuticals, devices and supplies are separately reimbursed at acquisition cost.

(4) OFH payments for FPEP provider services, pharmaceuticals, devices and supplies, unless in error, constitute payment in full.

(5) OFH will not make payment on claims that have been assigned, sold, or otherwise transferred, or on which a provider of billing services receives a percentage of the amount billed or payment authorized. This includes, but is not limited to, transfer to a collection agency or individual who advances money to a provider for accounts receivable.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 409.010

Hist.: PH 4-2005, f. & cert. ef. 2-18-05; PH 3-2007(Temp), f. 2-23-07, cert. ef. 4-1-07 thru 9-28-07; PH 5-2007, f. 4-9-07, cert. ef. 4-23-07

333-004-0120

Requirements for Financial, Clinical and Other Records

(1) OFH is responsible for analyzing and monitoring the operation of FPEP and for auditing and verifying the accuracy and appropriateness of payment, utilization of services, the quality of care, and access to care. The provider shall:

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(a) Develop and maintain adequate financial and clinical records and other documentation that supports the services for which payment has been requested. Payment will be made only for services that are adequately documented;

(b) All medical records must document the service provided, primary diagnosis code for the services, the date on which the service was provided, and the individual who provided the services. Patient account and financial records must also include documentation of charges, identify other payment resources pursued, indicate the date and amount of all debit or credit billing actions, and support the appropriateness of the amount billed and paid. The records must be accurate and in sufficient detail to substantiate the data reported.

(2) Clinical records must sufficiently document that the client's diagnosis was primarily for contraceptive management services. The client's record must be annotated each time a service is provided and signed or initialed by the individual who provided the service or must clearly indicate the individual who provided the service. Information contained in the record must meet the standards of care for contraceptive management services, and must be appropriate in quality and quantity to meet the professional standards applicable to the provider or practitioner and any additional standards for documentation found in this rule.

(3) The provider must have policies and procedures to ensure the maintenance of the confidentiality of medical record information. These procedures ensure that the provider may release such information in accordance with federal and state statutes, ORS 179.505 through 179.507, 411.320, 42 CFR part 2, 42 CFR subpart F, 45 CFR 205.50, and including ORS 433.045(3) with respect to HIV test information.

(4) The provider must retain clinical records for seven years and financial and other records described in this rule for at least five years from the date of service. Original enrollment records must be retained for seven years.

(5) Upon written request from OFH, DMAP, DHS, the Oregon Department of Justice Medicaid Fraud Unit, the Oregon Secretary of State or their authorized representatives (Requestor), the provider must furnish requested documentation, without charge, immediately or within the time-frame specified in the written request. Copies of the documents may be furnished unless the originals are requested. At their discretion, representatives of Requestor may review and copy the original documentation in the provider's place of business. Upon the written request of the provider, Requestor may, at their sole discretion, modify or extend the time for provision of such records if, in the opinion of OFH, good cause for such extension is shown. Factors used in determining whether good cause exists include:

(a) Whether the written request was made in advance of the deadline for production;

(b) If the written request is made after the deadline for production, the amount of time elapsed since that deadline;

(c) The efforts already made to comply with the request;

(d) The reasons the deadline cannot be met;

(e) The degree of control that the provider had over its ability to produce the records prior to the deadline; and

(f) Other extenuating factors.

(6) Access to records, inclusive of medical charts and financial records does not require authorization or release from the client if the purpose of such access is:

(a) To perform billing review activities;

(b) To perform utilization review activities;

(c) To review quality, quantity and services provided;

(d) To facilitate payment authorization and related services;

(e) To investigate a client's fair hearing request;

(f) To facilitate investigation by DHS; or

(g) Where review of records is necessary to the operation of the program.

(7) Failure to comply with requests for documents and within the specified time-frames means that the records subject to the request may be deemed by DHS not to exist for purposes of verifying appropriateness of payment, medical appropriateness, the quality of care, and the access to care in an audit or overpayment determination, and accordingly subjects the provider to possible denial or recovery of payments made by DHS, or to sanctions.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 409.010

Hist.: PH 4-2005, f. & cert. ef. 2-18-05; PH 5-2007, f. 4-9-07, cert. ef. 4-23-07

333-004-0130

Compliance with Federal and State Statutes

(1) Submission of a claim for medical services or supplies provided to an FPEP client shall be deemed a representation by the medical provider to OFH of the medical provider's compliance with the applicable sections of the federal and state statutes referenced in this rule:

(a) 45 CFR Part 84 that implements Title V, Section 504 of the Rehabilitation Act of 1973;

(b) Title II and Title III of the Americans with Disabilities Act of 1991;

(c) Title VI of the Civil Rights Act of 1964; and

(d) 42 CFR Part 493 Laboratory Requirements and ORS 438 (Clinical Laboratories).

(2) Providers are required to comply with the "Health Insurance Portability and Accountability Act" (HIPAA) regarding the confidentiality of client records.

(3) Providers described in ORS Chapter 419B are required to report suspected child abuse to their local child welfare office of the DHS or police, in the manner described in ORS 419B.

(4) The Clinical Laboratory Improvement Act (CLIA), requires all entities that perform even one laboratory test, including waived tests on, "materials derived from the human body for the purpose of providing information for the diagnosis, prevention or treatment of any disease or impairment of, or the assessment of the health of, human beings" to meet certain Federal requirements. If an entity performs tests for these purposes, it is considered under CLIA to be a laboratory.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 409.010

Hist.: PH 4-2005, f. & cert. ef. 2-18-05; PH 5-2007, f. 4-9-07, cert. ef. 4-23-07

333-004-0140

Denial or Recovery of Reimbursement Resulting from Review or Audit

(1) OFH's staff, contractor or auditor may review a claim for assurance that the specific medical service or contraceptive device or supply was provided in accordance with the program's policies and rules and the generally accepted standards of a provider's scope of practice or specialty.

(2) Payment may be denied or subject to recovery if review or audit determines the service does not meet the program's policies, rules or the Standards of Care for Contraceptive Management Services set forth in OAR 333-004-0060.

(3) The Division of Medical Assistance Programs will be notified of all audit activities undertaken by OFH.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 409.010

Hist.: PH 4-2005, f. & cert. ef. 2-18-05; PH 5-2007, f. 4-9-07, cert. ef. 4-23-07

333-004-0150

Recovery of Overpayments to Providers Resulting from Review or Audit

(1) When OFH determines that an overpayment has been made to a provider, the amount of overpayment is subject to recovery:

(a) To determine the overpayment amount, OFH may use the random sampling method such as that detailed in the paper entitled "Development of a Sample Design for the Post-Payment Review of Medical Assistance Payments," written by Lyle Calvin, Ph.D., ("Calvin Paper"). The OFH hereby adopts by reference, but is not limited to, the method of random sampling and calculation of overpayment described in the Calvin Paper;

(b) After OFH determines an overpayment amount by the random sampling method set forth in section (1)(a) of this rule, the provider may request a 100 percent audit of all billings submitted to the OFH for contraceptive management services provided during the period in question. If a 100 percent audit is requested:

(A) Payment and arrangement for a 100 percent audit is the responsibility of the provider requesting the audit; and

(B) The audit must be conducted by a certified public accountant who is knowledgeable with the Oregon Administrative Rules covering the payments in question, and must be conducted within 120 calendar days of the request to use such audit in lieu of OFH's random sample.

(2) The amount of the review or audit overpayment to be recovered:

(a) Will be the entire amount determined or agreed to by OFH;

(b) Is not limited to amounts determined by criminal or civil proceedings; and

(c) Will include interest to be charged at allowable State rates.

(3) The OFH will deliver to the provider by registered or certified mail or in person a request for repayment of the overpayment and the documentation to support the alleged amount.

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(4) If the provider disagrees with OFH's determination or the amount of overpayment the provider may appeal the decision by requesting a contested case hearing:

(a) A written request for hearing must be submitted to OFH by the provider within 30 calendar days of the date of the decision affecting the provider. The request must specify the areas of disagreement;

(b) Failure to request a hearing or administrative review in a timely manner constitutes acceptance by the provider of the amount of the overpayment.

(5) The overpayment is due and payable 30 calendar days from the date of the decision by OFH:

(a) An additional 30-day grace period may be granted the provider upon request to the OFH;

(b) A request for a hearing does not change the date the repayment of the overpayment is due.

(6) The OFH may extend the reimbursement period or accept an offer of repayment terms. Any change in reimbursement period or terms must be made in writing by the OFH.

(7) If the provider refuses to reimburse the overpayment or does not adhere to an agreed upon payment schedule, OFH may:

(a) Recoup future provider payments up to the amount of the overpayment; or

(b) Pursue civil action to recover the overpayment.

(8) As the result of a hearing the amount of the overpayment may be reduced in part or in full.

(9) The Office of Family Health may, at any time, change the amount of the overpayment upon receipt of additional information. Any changes will be verified in writing by OFH. Any monies paid to OFH that exceed an overpayment will be refunded to the provider.

(10) If a provider is terminated or sanctioned for any reason, OFH may pursue civil action to recover any amounts due and payable to FPEP.

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

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 409.010

Hist.: PH 4-2005, f. & cert. ef. 2-18-05; PH 5-2007, f. 4-9-07, cert. ef. 4-23-07

333-004-0160

Provider Sanctions

The following are conditions that may result in the imposition of a sanction on a provider.

(1) Basis for Sanction:

(a) Conviction of a provider of a felony or misdemeanor related to a crime or violation of Title XVIII, XIX, or XX of the Social Security Act or related state laws (or entered a plea of nolo contendere);

(b) Conviction of fraud related to any federal, state, or locally financed health care program or commission of an act that is subject to criminal or civil penalties under Medicaid statutes;

(c) Conviction of interference with the investigation of health care fraud;

(d) Conviction of unlawfully manufacturing, distributing, prescribing, or dispensing a controlled substance;

(e) Failure to comply with the state and federal statutory requirements set forth in OAR 333-004-0130;

(f) By actions of any state licensing authority for reasons relating to the provider's professional competence, professional conduct, or financial integrity, the provider either:

(A) Had a health care license suspended or revoked, or has otherwise lost such license; or

(B) Surrendered the license while a formal disciplinary proceeding was pending before a licensing authority.

(g) Suspension or exclusion from participation in a federal or state health care program for reasons related to professional competence, professional performance, or other reason;

(h) Improper billing practices, including billing for excessive charges or visits, furnishing items or services substantially in excess of the patient's contraceptive management needs, or of a quality that fails to meet professionally recognized standards;

(i) Failure to furnish services as required by law or contract with the OFH, if the failure has adversely affected (or has a substantial likelihood of adversely affecting) the client;

(j) Failure to supply requested information on subcontractors and suppliers of goods or services;

(k) Failure to supply requested payment information;

(l) Failure to grant access or to furnish as requested, records, or grant access to facilities upon request of OFH or a designated Requestor;

(m) Receiving payments for services provided to persons who were not eligible;

(n) Establishing multiple claims using procedure codes that overstate or misrepresent the level, amount or type of health care provided;

(o) Failure to develop, maintain, and retain in accordance with relevant rules and standards adequate clinical or other records that document the medical appropriateness, nature, and extent of the health care provided;

(p) Failure to develop, maintain, and retain in accordance with relevant rules and standards adequate financial records that document charges incurred by a client and payments received from any source;

(q) Failure to follow generally accepted accounting principles or accounting standards or cost principles required by federal or state laws, rule, or regulation;

(r) Submission of claims or written orders contrary to generally accepted standards of medical practice;

(s) Submission of claims for services that exceed that requested or agreed to by the client or the responsible relative or guardian or requested by another medical practitioner;

(t) Breach of the terms of the provider service agreement;

(u) Failure to correct deficiencies in operations after receiving written notice of the deficiencies from the OFH;

(v) Submission of any claim for payment for which payment has already been made by OFH; or

(w) Provision of or billing for services provided by ineligible or unsupervised staff.

(2) A provider who has been suspended or terminated from participation in a federal or state medical program, such as Medicare or Medicaid, or whose license to practice has been suspended or revoked by a state licensing board, shall not submit claims for payment, either personally or through claims submitted by any billing provider or other provider, for any services or supplies provided under FPEP, except those services or supplies provided prior to the date of suspension or termination.

(3) No provider shall submit claims for payment to OFH for any services or supplies provided by a person or provider entity that has been suspended or terminated from participation in a federal or state medical program, such as Medicare or Medicaid, or whose license to practice has been suspended or revoked by a state licensing board, except for those services or supplies provided prior to the date of suspension or termination.

(4) When the provisions of sections (2) or (3) of this rule are violated, OFH may suspend or terminate the provider who is responsible for the violation.

(5) Provider sanctions will be imposed at the discretion of DHS or the director of the office whose budget includes payment for the services involved.

(6) The DMAP will be notified whenever a sanction is imposed on a provider.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 409.010

Hist.: PH 4-2005, f. & cert. ef. 2-18-05; PH 5-2007, f. 4-9-07, cert. ef. 4-23-07

333-004-0170

Provider Appeals

A provider may appeal certain decisions affecting the provider made by OFH. There are two levels of appeal. Level 1 is a reconsideration on a claim. Level 2 is a contested case hearing.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 409.010

Hist.: PH 4-2005, f. & cert. ef. 2-18-05; PH 5-2007, f. 4-9-07, cert. ef. 4-23-07

333-004-0180

Provider Appeals (Level 1) — Claims Reconsideration

A provider disputing OFH's claim decision may request reconsideration. The provider must submit the request in writing to OFH. The request must include the reason for the dispute, and any information pertinent to the outcome of the dispute. OFH will complete an additional review and respond back to the provider in writing. If the provider is not satisfied with the review, the provider may request a contested case hearing.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 409.010

Hist.: PH 4-2005, f. & cert. ef. 2-18-05; PH 5-2007, f. 4-9-07, cert. ef. 4-23-07

333-004-0190

Provider Appeals (Level 2) — Contested Case Hearing

Contested case hearings will be held in accordance with ORS 183.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 409.010

Hist.: PH 4-2005, f. & cert. ef. 2-18-05; PH 5-2007, f. 4-9-07, cert. ef. 4-23-07

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Rule Caption: Childhood Diabetes Database.

Adm. Order No.: PH 6-2007

Filed with Sec. of State: 4-13-2007

Certified to be Effective: 4-13-07

Notice Publication Date: 3-1-07

Rules Adopted: 333-010-0600, 333-010-0610, 333-010-0620, 333-010-0630, 333-010-0640, 333-010-0650, 333-010-0660

Subject: The Department of Human Services, Public Health Division is permanently adopting Oregon Administrative Rules to establish a uniform, statewide database for the collection of information on type 1 and type 2 diabetes occurring in children in Oregon.

Rules Coordinator: Christina Hartman—(971) 673-1291

333-010-0600

Definitions

(1) "Case" means a reportable case of type 1 or type 2 diabetes in an individual who is 18 years of age or younger, and a resident of Oregon.

(2) "Diabetes Program" means the Oregon Diabetes Prevention and Control Program of the Department of Human Services, Public Health Division, the program authorized to collect, receive, and maintain a childhood diabetes database under ORS 444.300.

(3) "Date of diagnosis" means the date of initial diagnosis by a practitioner of a case of diabetes being reported to the Diabetes Program.

(4) "Effective Date" means the date after which reporting by schools and physicians shall be required.

(5) "Identifying information" includes, but is not limited to the student's name, address, date of birth, and information that identifies the individual or could be used to identify the individual, and relates to the individual's past, present or future health, and the provision of healthcare to the individual. "Identifying information" also includes "Individually Identifiable Health Information" as that is defined in the 1996 Health Insurance Portability and Accountability Act and "Directory Information" as that is defined in the Federal Family Educational Right to Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99).

(6) "Practitioner" means any person whose professional license allows him or her to diagnose or treat diabetes patients.

(7) "Reportable childhood diabetes" means a medical condition, occurring in a person aged 18 years or younger, and meeting the criteria for diagnosis of diabetes in a child as outlined by the American Diabetes Association. (Reference: **American Diabetes Association. Standards of Medical Care in Diabetes. Diabetes Care 2005**; 28: S4-S36.)

(8) "School" means any public, public charter, or registered private school in Oregon.

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

Stat. Auth.: ORS 444.300

Stats. Implemented: ORS 444.300-444.330

Hist.: PH 6-2007, f. & cert. ef. 4-13-07

333-010-0610

General Authority and Purpose

According to ORS 444.300(1), subject to available funding, including gifts, grants or donations, the Diabetes Program shall establish a uniform, statewide database for the collection of information on type 1 and type 2 diabetes occurring in children in Oregon. The purposes 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 of this state and to make the data available for scientific and medical research and for assistance in making decisions about the allocation of public resources.

Stat. Auth.: ORS 444.300

Stats. Implemented: ORS 444.300-444.330

Hist.: PH 6-2007, f. & cert. ef. 4-13-07

333-010-0620

Reporting Requirements for Schools

(1) The Diabetes Program shall conduct an annual survey to collect information about diabetes occurring in students age 18 years or younger. Preferably the survey will be completed and returned to the Diabetes Program within 30 days of the date the survey or electronic survey link is sent out, but in no event, later than June 15 of each year.

(2) Each school surveyed, upon receipt of written consent of the parent, guardian (or of the student if age 18 years) shall report to the Diabetes Program for each student enrolled at the school, during the academic year, who has type 1 or type 2 diabetes, the following information:

(a) The name and address of the student;

(b) The sex of the student;

(c) The date of birth of the student;

(d) The type of diabetes diagnosed (if known);

(e) The date of diagnosis; (if known); and

(f) The name of the child's practitioner (if known).

Stat. Auth.: ORS 444.300

Stats. Implemented: ORS 444.300-444.330

Hist.: PH 6-2007, f. & cert. ef. 4-13-07

333-010-0630

Reporting Requirements for Practitioners

(1) Upon diagnosing or first treating a case of type 1 or type 2 diabetes in an Oregon child, a practitioner shall report the following information to the Diabetes Program:

(a) The name and address of the child;

(b) The sex of the child;

(c) The date of birth of the child;

(d) The type of diabetes diagnosed;

(e) The date of diagnosis or first treatment by the reporting practitioner; and

(f) The measured height and weight of the child.

(2) The practitioner shall report the case to the Diabetes Program within 30 days of diagnosing or first treating the child.

(a) The practitioner shall report the case using the Diabetes Program's Practitioner Childhood Diabetes Report Form. The report may be sent to the Diabetes Program by mail, electronically, or by fax. Copies of the form, and directions for submission may be obtained from the Diabetes Program, 800 NE Oregon Street, Portland, Oregon 97232; or may be downloaded through the Diabetes Program's website.

(b) The Diabetes Program may elect to supplement passive reporting from practitioners with active solicitation of reporting through periodic contacts with certain practitioners.

Stat. Auth.: ORS 444.300

Stats. Implemented: ORS 444.300-444.330

Hist.: PH 6-2007, f. & cert. ef. 4-13-07

333-010-0640

Confidentiality and Access to Data

(1) All identifying information regarding individual patients, reporting schools, and practitioners reported pursuant to OAR 333-010-0620 and 333-010-0630 shall be confidential and privileged. Except as required in connection with the administration or enforcement of public health laws or rules, no public health official, employee or agent shall be examined in an administrative or judicial proceeding as to the existence or contents of data collected under the childhood diabetes database.

(2) The information collected and maintained by the diabetes database shall be stored in physically secure locations and in a technologically secure manner, and shall be used solely for the purposes stated in ORS 444.330

Stat. Auth.: ORS 444.300

Stats. Implemented: ORS 444.300-444.330

Hist.: PH 6-2007, f. & cert. ef. 4-13-07

333-010-0650

Research Studies

(1) Prior to any confidential data from the database being released to a researcher, the researcher must:

(a) Obtain approval from the Department of Human Services, Public Health Division Institutional Review Board, established in accordance with 45 C.F.R. 46.

(b) Obtain approval from the Diabetes Program.

(2) In reviewing research proposals for approval under section (1)(b) of this rule, the Diabetes Program, with input from its advisory committee, shall consider whether the research will:

(a) Further knowledge of the prevalence and incidence of diabetes occurring in the pediatric population;

(b) Better define causes of and treatment for childhood diabetes; or

(c) Inform decision-making about the allocation of public resources.

(3) The Diabetes Program shall also ensure that the research proposal has been reviewed for scientific excellence by a nationally recognized peer review group.

(4) Prior to confidential information being released to a researcher, the Diabetes Program will contact the family and offer the option to decline contact regarding research opportunities.

Stat. Auth.: ORS 444.300

Stats. Implemented: ORS 444.300-444.330

Hist.: PH 6-2007, f. & cert. ef. 4-13-07

ADMINISTRATIVE RULES

333-010-0660

Advisory Committee

(1) The Diabetes Program may convene an advisory committee to make recommendations regarding the Diabetes Program's use of the database, and to assist in reviewing research proposals under OAR 333-010-0650.

(2) Advisory committee members may not have access to confidential information provided to the program under ORS 444.300 to 444.320.

(3) The advisory committee shall be composed of persons with a professional or personal interest in childhood diabetes.

Stat. Auth.: ORS 444.300
Stats. Implemented: ORS 444.300-444.330
Hist.: PH 6-2007, f. & cert. ef. 4-13-07

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

Rule Caption: Contracted In-Home Care Agency Services.

Adm. Order No.: SPD 2-2007(Temp)

Filed with Sec. of State: 3-30-2007

Certified to be Effective: 3-30-07 thru 9-25-07

Notice Publication Date:

Rules Amended: 411-030-0090

Subject: The Department of Human Services, Seniors and People with Disabilities Division is temporarily amending Oregon Administrative Rule, 411-030-0090, related to contracted In-Home Care Agency services.

Rules Coordinator: Christina Hartman—(503) 945-6398

411-030-0090

Contracted In-Home Care Agency Services

(1) Contracted In-Home Care Agency services are one of the in-home support service options for individuals eligible for Oregon's Home and Community-Based Services Waiver.

(2) In-Home Care Agencies must be licensed in accordance with OAR 333-536-0000 through 333-536-0100, In-Home Care Agencies. The geographic service area in which the agency provides services must comply with OAR 333-536-0050. The specific services provided will be described in each contract's statement of work.

Stat. Auth.: ORS 409.050, 410.070 & 410.090
Stats. Implemented: ORS 410.010, 410.020 & 410.070
Hist.: SSD 4-1993, f. 4-30-93, cert. ef. 6-1-93; SPD 14-2003, f. & cert. ef. 7-31-03; SPD 20-2006, f. 5-26-06, cert. ef. 6-1-06; SPD 2-2007(Temp), f. & cert. ef. 3-30-07 thru 9-25-07

Rule Caption: Transition Spousal Pay Program (General Fund) to Title XIX Home and Community-Based Services Waiver.

Adm. Order No.: SPD 3-2007(Temp)

Filed with Sec. of State: 4-11-2007

Certified to be Effective: 5-1-07 thru 10-28-07

Notice Publication Date:

Rules Amended: 411-030-0020, 411-030-0080

Subject: The Department of Human Services, Seniors and People with Disabilities Division is temporarily amending their rules in chapter 411, division 030 to immediately transition the Spousal Pay Program from a state general fund program to a program receiving federal match dollars included in Oregon's Title XIX Home and Community-Based Services Waiver.

Rules Coordinator: Christina Hartman—(503) 945-6398

411-030-0020

Definitions

As used in these rules:

(1) "Activities of Daily Living (ADL)" means those personal, functional activities required by an individual for continued well-being, which are essential for health and safety. Activities consist of eating, dressing/grooming, bathing/personal hygiene, mobility (ambulation and transfer), elimination (toileting, bowel and bladder management), and cognition/behavior as defined in OAR 411-015-0006.

(2) "Architectural Modifications" means any service leading to the alteration of the structure of a dwelling to meet a specific service need of the eligible individual.

(3) "Area Agency on Aging (AAA)" means the Department of Human Services (DHS) designated agency charged with the responsibility to pro-

vide a comprehensive and coordinated system of services to seniors or people with disabilities in a planning and service area. For purposes of these rules, the term Area Agency on Aging (AAA) is inclusive of both Type A and Type B Area Agencies on Aging as defined in ORS 410.040 and described in ORS 410.210 through 410.300.

(4) "Assistive Devices" means any category of durable medical equipment, mechanical apparatus, electrical appliance, or instrument of technology used to assist and enhance an individual's independence in performing any activity of daily living (ADL). This definition includes the use of service animals, general household items or furniture to assist the individual.

(5) "Business Days" means Monday through Friday and excludes Saturdays, Sundays and state or federal holidays.

(6) "Case Manager" means a SPD or AAA employee who assesses the service needs of an applicant, determines eligibility, and offers service choices to the eligible individual. The Case Manager authorizes and implements the service plan, and monitors the services delivered.

(7) "Client" or "Client-Employer" means the individual eligible for in-home support services.

(8) "Client-Employed Provider Program (CEP)" refers to the program wherein the provider is directly employed by the client and provides either hourly or live-in services. In some aspects of the employer and employee relationship, the Department of Human Services acts as an agent for the client-employer. These functions are clearly described in OAR 411-031-0040.

(9) "Contracted In-Home Care Agency" means an incorporated entity or equivalent, licensed in accordance with OAR 333-536-0000 through 333-536-0100 that provides hourly contracted in-home care to SPD/AAA clients.

(10) "Cost Effective" means being responsible and accountable with Department resources. This is accomplished by offering less costly alternatives when providing choices that adequately meet a client's service needs. Those choices consist of the available services on the published SPD rate schedule, the utilization of assistive devices, natural supports, architectural modifications and alternative service resources (defined in OAR 411-015-0005). Less costly alternatives may include resources not paid for by the Department.

(11) "Department" or "DHS" means the Department of Human Services.

(12) "Exception" means an approval for a monthly payment or monthly rate granted to a specific client in their current residence (or in the proposed residence identified in the exception request) that exceeds the monthly rates on the SPD published rate schedule. The approval is based on the exceptional service needs of the client and is contingent upon meeting the requirements in OAR 411-027-0000 and 411-027-0050. The term "exception" is synonymous with "exceptional rate" or "exceptional payment."

(13) "Homecare Worker (HCW)" means a provider, as described in OAR 411-031-0040, that is directly employed by the client and provides either hourly or live-in services to eligible clients. The term Homecare Worker includes client-employed providers in the Spousal Pay and Oregon Project Independence Programs. It also includes client-employed providers that provide state plan personal care services to seniors and people with physical disabilities. The term does not include Independent Choices Program Providers nor Personal Care Attendants enrolled through developmental disability services or the Addictions and Mental Health Division.

(14) "Hourly Services" means the in-home support services, including activities of daily living and self-management tasks, that are provided at regularly scheduled times.

(15) "In-Home Support Services" means those activities of daily living and self-management tasks that assist an individual to stay in his or her own home.

(16) "Live-In Services" means those Client-Employed Provider Program services provided when a client requires ADL, self-management tasks, and twenty-four hour availability. Time spent by any live-in employee doing self-management and twenty-four hour availability are exempt from federal and state minimum wage and overtime requirements. To ensure continuity of care for the client, live-in service plans must include at least one HCW providing 24-hour availability for a minimum of five days in a calendar week.

(17) "Natural Supports" or "Natural Support System" means the resources available to an individual from their relatives, friends, significant others, neighbors, roommates and the community. Services provided by natural supports are resources not paid for by the Department, except as

ADMINISTRATIVE RULES

allowed in the Independent Choices Program defined in Oregon Administrative Rules chapter 411, division 036.

(18) "Oregon Project Independence (OPI)" means the program of in-home support services defined in OAR chapter 411, division 032.

(19) "Provider" means the individual who actually renders the service.

(20) "Self-Management" or "Instrumental Activities of Daily Living (IADL)" means those activities, other than activities of daily living, required by an individual to continue independent living. The definitions and parameters for assessing needs in self-management tasks are identified in OAR 411-015-0007.

(21) "Service Need" means the assistance an individual requires from another person for those functions or activities identified in OAR 411-015-0006 and 411-015-0007.

(22) "SPD" or "Division" means the Seniors and People with Disabilities Division, within the Department of Human Services.

(23) "Twenty-Four Hour Availability" means the availability and responsibility of an employee to meet activities of daily living and self-management needs of an eligible individual as required by that person over a twenty-four hour period. These services are provided by a live-in employee and are exempt from federal and state minimum wage and overtime requirements.

(24) "Waivered Services" means services provided through Oregon's Medicaid Home and Community-Based Services Waiver under the authority of section 1915(c) and through Oregon's Research and Demonstration Program (Independent Choices Program) under the authority of section 1115(c) of the Social Security Act, that allows the state to provide home and community-based services to eligible individuals in place of nursing facility care. Waivered services include in-home services, residential care facility services, assisted living facility services, adult foster care services, home-delivered meals (when provided in conjunction with in-home services), specialized living services, Spousal Pay Program services and adult day services.

Stat. Auth.: ORS 409.050, 410.070 & 410.090

Stats. Implemented: ORS 410.010, 410.020 & 410.070

Hist.: SSD 5-1983, f. 6-7-83, ef. 7-1-83; SSD 3-1985, f. & ef. 4-1-85; SSD 5-1987, f. & ef. 7-1-87; SSD 4-1993, f. 4-30-93, cert. ef. 6-1-93; SSD 6-1994, f. & cert. ef. 11-15-94; SPD 14-2003, f. & cert. ef. 7-31-03; SPD 15-2003 f. & cert. ef. 9-30-03; SPD 18-2003(Temp), f. & cert. ef. 12-11-03 thru 6-7-04; SPD 15-2004, f. 5-28-04, cert. ef. 6-7-04; SPD 18-2005(Temp), f. 12-20-05, cert. ef. 12-21-05 thru 6-1-06; SPD 20-2006, f. 5-26-06, cert. ef. 6-1-06; SPD 3-2007(Temp), f. 4-11-07, cert. ef. 5-1-07 thru 10-28-07

411-030-0080

Spousal Pay Program

(1) The Spousal Pay Program is one of the live-in service options under the In-Home Support Services Program (defined in chapter 411, division 030) for those who qualify.

(2) For the purposes of this program, a spouse is defined as a person who is legally married per OAR 461-001-0000 to an individual eligible for the In-Home Support Services Program.

(3) An individual may be eligible for the Spousal Pay Program when all of the following conditions are met:

(a) The individual has met all program requirements of the In-Home Support Services Program; and

(b) As determined by an assessment described in chapter 411, division 015 rules, the individual requires full assistance in at least four of the six activities of daily living described in OAR 411-015-0006; and

(c) The individual would otherwise require nursing facility services without in-home support services; and

(d) The individual has a medically-diagnosed, progressive, debilitating condition that will limit additional activities of daily living, or has experienced a spinal cord injury or similar disability with permanent impairment of the ability to perform activities of daily living; and

(e) At the time of requesting enrollment in the Spousal Pay Program, the individual is determined, through a Pre-Admission Screening (PAS) assessment (as defined in OAR 411-070-0040) to meet the requirements described in sections (3)(b), (3)(c) and (3)(d) of this rule. The PAS assessment is a second, independent assessment, conducted by a Department or AAA representative using the Client Assessment and Planning System (CA/PS); and

(f) The individual's service needs exceed in both extent and duration the usual and customary services rendered by one spouse to another; and

(g) The spouse demonstrates the capability and health to provide the services and actually provides the principal care, including the majority of service plan hours, for which payment has been authorized; and

(h) The spouse meets all requirements for enrollment as a Homecare Worker in the Client-Employed Provider Program as described in OAR 411-031-0040; and

(i) DHS Central Office has reviewed the request and approved program eligibility at enrollment and annually upon re-assessment.

(4) Payments:

(a) All payments must be prior authorized by the Department or its designee.

(b) The hours authorized in the service plan must consist of one-half of the assessed hours for 24-hour availability, one-half of the assessed hours for self-management tasks, plus all of the hours for specific activities of daily living based on the service needs of the individual.

(c) Spousal Pay Providers are paid at live-in Homecare Worker rates as published by the Department for activities of daily living, self-management tasks and 24 hour availability, except as described otherwise in section (4)(d) of this rule.

(d) Homecare Workers who marry their client-employer retain the same standard of compensation, if their employer meets the spousal pay eligibility criteria as described in section (3) of this rule. Additional self-management task hours may be authorized in the service plan when necessary to prevent a loss of compensation to the Homecare Worker following marriage to the client-employer.

(e) Spousal pay providers must not claim payment from the Department for:

(A) Hours that the Spousal Pay Provider did not work; or

(B) Time spent arranging coverage to meet the client-employer's needs; or

(C) Services provided to the client by substitute providers.

(f) DHS is not responsible for payment of a substitute provider during interim absences while the Spousal Pay Provider is taking leave without pay. As used in this rule, leave without pay means time that is not covered by the Spousal Pay Homecare Worker's live in paid leave benefit. During these interim absences when the spouse needs to secure a substitute provider to perform the authorized duties normally performed by the Spousal Pay Provider, the spouse must arrange for adequate coverage to meet the service needs and pay the substitute provider for periods of leave without pay.

(5) Individuals receiving Spousal Pay Program services who have excess income must contribute to the cost of services pursuant to OAR 461-160-0610 and 461-160-0620.

Stat. Auth.: ORS 409.050, 410.070 & 410.090

Stats. Implemented: ORS 410.010, 410.020 & 410.070

Hist.: SSD 4-1984, f. 4-27-84, ef. 5-1-84; SSD 3-1985, f. & ef. 4-1-85; SSD 4-1993, f. 4-30-93, cert. ef. 6-1-93, Renumbered from 411-030-0027; SDDS 2-2000, f. 3-27-00, cert. ef. 4-1-00; SPD 2-2003(Temp), f. 1-31-03, cert. ef. 2-1-03 thru 7-30-03; SPD 14-2003, f. & cert. ef. 7-31-03; SPD 15-2003 f. & cert. ef. 9-30-03; SPD 15-2004, f. 5-28-04, cert. ef. 6-7-04; SPD 20-2006, f. 5-26-06, cert. ef. 6-1-06; SPD 3-2007(Temp), f. 4-11-07, cert. ef. 5-1-07 thru 10-28-07

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

Adm. Order No.: SPD 4-2007

Filed with Sec. of State: 4-12-2007

Certified to be Effective: 4-17-07

Notice Publication Date: 3-1-07

Rules Amended: 411-031-0020, 411-031-0040

Rules Repealed: 411-031-0020(T), 411-031-0040(T)

Subject: The Department of Human Services, Seniors and People with Disabilities Division is permanently amending their Oregon Administrative Rules related to Homecare Workers enrolled in the Client-Employed Provider Program.

Rules Coordinator: Christina Hartman—(503) 945-6398

411-031-0020

Definitions

(1) "Activities of Daily Living (ADL)" means those personal, functional activities required by an individual for continued well-being, which are essential for health and safety. Activities include eating, dressing/grooming, bathing/personal hygiene, mobility (ambulation and transfer), elimination (toileting, bowel and bladder management), and cognition/behavior as defined in OAR chapter 411, division 015.

(2) "Adult Protective Services" means a service to be provided in response to the need for protection from harm or neglect to an aged, disabled, or blind person 18 years of age or older regardless of income, as described in OAR chapter 411, division 020.

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(3) "Area Agency on Aging (AAA)" means the Department of Human Services (DHS) designated agency charged with the responsibility to provide a comprehensive and coordinated system of services to seniors or individuals with disabilities in a planning and service area. For purposes of these rules, the term Area Agency on Aging (AAA) is inclusive of both Type A and Type B Area Agencies on Aging as defined in ORS 410.040 and described in ORS 410.210 through 410.300.

(4) "Burden of Proof" means that the existence or nonexistence of a fact must be established by a preponderance of the evidence.

(5) "Business Days" means Monday through Friday and excludes Saturdays, Sundays and state-sanctioned holidays.

(6) "Career Homecare Worker" means a Homecare Worker with an unrestricted provider enrollment. A Career Homecare Worker has a provider enrollment that allows him or her to provide services to any eligible in-home support services client. At any given time, a Career Homecare Worker may choose not to be referred for work.

(7) "Case Manager" means a SPD/AAA employee that assesses the service needs of an applicant, determines eligibility, and offers service choices to the eligible individual. The Case Manager authorizes and implements the service plan, and monitors the services delivered.

(8) "Client" or "Client-Employer" means the individual eligible for in-home services.

(9) "Client-Employed Provider Program (CEP)" refers to the program wherein the provider is directly employed by the client and provides either hourly or live-in services. In some aspects of the employer and employee relationship, the Department of Human Services acts as an agent for the Client-Employer. These functions are clearly described in OAR 411-031-0040.

(10) "Companionship Services" means those services designated by the Department of Labor as meeting the personal needs of a client. Companionship services are exempt from federal and state minimum wage laws.

(11) "Department" or "DHS" means the Department of Human Services.

(12) "Evidence" means testimony, writings, material objects, or other things presented to the senses that are offered to prove the existence or nonexistence of a fact.

(13) "Fiscal Improprieties" means the Homecare Worker committed financial misconduct involving the client's money, property or benefits. Improprieties include, but are not limited to, financial exploitation, borrowing money from the client, taking the client's property or money, having the client purchase items for the Homecare Worker, forging the client's signature, falsifying payment records, claiming payment for hours not worked, or similar acts intentionally committed for financial gain.

(14) "Homecare Worker (HCW)" means a provider, as described in OAR 411-031-0040, that is directly employed by the client and provides either hourly or live-in services to eligible clients. The term Homecare Worker includes client-employed providers in the Spousal Pay and Oregon Project Independence Programs. It also includes client-employed providers that provide state plan personal care services to seniors and people with physical disabilities. The term does not include Independent Choices Program providers nor Personal Care Attendants enrolled through developmental disability services or the Addictions and Mental Health Division .

(15) "Hourly Services" means the in-home services, including activities of daily living and self-management tasks, that are provided at regularly scheduled times.

(16) "Imminent Danger" means there is reasonable cause to believe a person's life or physical, emotional or financial well-being is in danger if no intervention is immediately initiated.

(17) "In-Home Services" means those activities of daily living and self-management tasks that assist an individual to stay in his or her own home.

(18) "Lack of Skills, Knowledge and Ability to Adequately or Safely Perform the Required Work" means the Homecare Worker does not possess the skills to perform services needed by SPD clients. The Homecare Worker may not be physically, mentally, or emotionally capable of providing services to seniors and persons with disabilities. Their lack of skills may put clients at risk, because they fail to perform, or learn to perform, their duties adequately to meet the needs of the client.

(19) "Lack of Ability or Willingness to Maintain Client-Employer Confidentiality" means the Homecare Worker is unable or unwilling to keep personal information about their Client-Employer private. Unless given specific permission by the Client-Employer or his or her legal representative, the Homecare Worker must not share any personal information

about the eligible individual including medical, social service, financial, public assistance, legal, or interpersonal details.

(20) "Limited Enrollment" means SPD or AAA has placed restrictions on an individual Homecare Workers' provider enrollment. Homecare Workers approved under a limited enrollment are designated as either Restricted Homecare Workers or Exclusive Homecare Workers, as described in OAR 411-031-0040(8)(d).

(21) "Live-In Services" means those Client-Employed Provider Program services provided when a client requires ADL, self-management tasks, and twenty-four hour availability. Time spent by any live-in Homecare Worker doing self-management and twenty-four hour availability are exempt from federal and state minimum wage and overtime requirements under companionship services. To ensure continuity of care for the client, live-in service plans must include at least one Homecare Worker providing twenty-four hour availability for a minimum of five days in a calendar week.

(22) "Office of Administrative Hearings" means the panel established within the Employment Department described in ORS 183.600 through 183.690, that conducts contested case proceedings and other such duties on behalf of designated state agencies.

(23) "Oregon Project Independence (OPI)" means the program of in-home services described in OAR chapter 411, division 032.

(24) "Preponderance of the Evidence" means that one party's evidence is more convincing than the other party's.

(25) "Provider" means the individual that actually renders the service.

(26) "Provider Enrollment" means a Homecare Worker's authorization to work as a provider employed by the client, for the purpose of receiving payment for authorized services provided to SPD clients. Provider enrollment includes the issuance of a provider number.

(27) "Provider Number" means an identifying number, issued to each Homecare Worker who is enrolled as a provider through SPD.

(28) "Self-Management Tasks" or "Instrumental Activities of Daily Living (IADL)" means those activities, other than activities of daily living, required by an individual to continue independent living (i.e., medication and oxygen management, transportation, meal preparation, shopping, and client-focused housekeeping).

(29) "Seniors and People with Disabilities Division (SPD)" or "Division" means the part of the Department of Human Services responsible for the administration of programs to seniors and people with disabilities, including the state local offices that administer benefits and services to eligible individuals in regional areas throughout the state.

(30) "Services are Not Provided as Required" means the Homecare Worker does not provide the services to the client as described in the service plan authorized by SPD.

(31) "Twenty-Four Hour Availability" means the availability and responsibility of a Homecare Worker to meet activities of daily living and self-management needs of a client as required by that client over a twenty-four hour period. These services are provided by a live-in Homecare Worker and are exempt from federal and state minimum wage and overtime requirements.

(32) "Unacceptable Conduct at Work" means the Homecare Worker has repeatedly engaged in one or more of the following behaviors:

(a) Delay in their arrival to work or absences from work not pre-scheduled with the client, that are either unsatisfactory to the client or that neglect the client's service needs; or

(b) Inviting unwelcome guests or pets into the client's home, resulting in the client's dissatisfaction or inattention to the client's required service needs.

(33) "Unacceptable Criminal History" means that a criminal history check and fitness determination have been conducted resulting in a "denied" status, as defined in OAR 410-007-0210. A "denied" criminal history check results in the denial or termination of the Homecare Workers' provider enrollment.

(34) "Violation of a Drug-Free Workplace" means there was a substantiated complaint against the Homecare Worker for:

(a) Being intoxicated by alcohol or drugs while responsible for the care of the client, while in the client's home, or while transporting the client; or

(b) Manufacturing or distributing drugs while providing authorized services to the client or while in the client's home.

(35) "Violations of Protective Service and Abuse Rules" means the Homecare Worker violated protective service and abuse rules as defined in OAR 411-020-0002(1). Abuse includes physical abuse, emotional or verbal abuse, financial exploitation, sexual abuse (including inappropriate sexual advances), neglect of care, abandonment, and denying medical care or

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treatment. Abuse also includes the use of medications or physical restraints when used to discipline the client or for the convenience of the provider.

Stat. Auth.: ORS 409.050, 410.070 & 410.090

Stats. Implemented: ORS 410.010, 410.020 & 410.070

Hist.: SPD 17-2004, f. 5-28-04, cert. ef. 6-1-04; SPD 40-2004(Temp), f. 12-30-04, cert. ef. 1-1-05 thru 6-30-05; SPD 10-2005, f. & cert. ef. 7-1-05; SPD 15-2005(Temp), f. & cert. ef. 11-16-05 thru 5-15-06; SPD 15-2006, f. 4-26-06, cert. ef. 5-1-06; SPD 28-2006(Temp), f. 10-18-06, cert. ef. 10-23-06 thru 4-20-07; SPD 4-2007, f. 4-12-07, cert. ef. 4-17-07

411-031-0040

Client-Employed Provider Program

The Client-Employed Provider Program contains systems and payment structures to employ both hourly and live-in providers. The live-in structure assumes that the provider will be required for activities of daily living and self-management tasks and twenty-four hour availability. The hourly structure assumes that the provider will be required for activities of daily living and self-management tasks during specific substantial periods. Except as indicated, all of the following criteria apply to both structures:

(1) Employment Relationship: The relationship between the provider and the client is that of employee and employer.

(2) Client-Employer Job Descriptions: To comply with Code of Federal Regulations (CFR) 552.110 "Recordkeeping requirements" each Client-Employer is responsible for creating and maintaining a job description for the potential employee in coordination with the services authorized by the Case Manager.

(3) Homecare Worker Liabilities: The only benefits available to Homecare Workers are those negotiated in the collective bargaining agreement between the Home Care Commission and the Service Employee's International Union, Local 503, Oregon Public Employees' Union. This agreement does not include participation in the Public Employees Retirement System (PERS) or the Oregon Public Service Retirement Plan (OPSRP). Homecare Workers are not state employees.

(4) Client-Employer Absences: When a Client-Employer is absent from the home due to an illness or medical treatment and is expected to return to the home within a 30 day period, a live-in provider, that is the only live-in provider for that client, may be retained to ensure his or her presence upon the Client-Employer's return or to maintain the client's home for up to 30 days at the rate of pay immediately preceding the client's absence. Spousal Pay Providers are not eligible for payment during a client absence.

(5) Selection of Homecare Worker: The Client-Employer carries primary responsibility for locating, interviewing, screening, and hiring his or her own employees. The Client-Employer has the right to employ any individual who successfully meets the provider enrollment standards described in section (8) of this rule. The SPD/AAA office determines whether the employee meets minimum qualifications to provide the authorized services paid by SPD.

(6) Employment Agreement: The Client-Employer retains the full right to establish the employer-employee relationship at any time after Bureau of Citizenship and Immigration Services papers have been completed and identification photocopied. SPD will not guarantee payment for those services until all acceptable enrollment standards have been verified and both the employer and Homecare Worker have been formally notified in writing that payment by SPD is authorized.

(7) Terms of Employment: The terms of the employment relationship are the responsibility of the Client-Employer to establish at the time of hire. These terms of employment include dismissal or resignation notice, work scheduling, and absence reporting as well as any sleeping arrangements or meals provided for live-in or hourly employees.

(8) Provider Enrollment.

(a) Enrollment Standards: A Homecare Worker must meet all of the following standards to be enrolled with the SPD's Client-Employed Provider Program:

(A) The Homecare Worker must maintain a drug-free work place.

(B) The Homecare Worker must be "approved" following a criminal history check as defined in OAR 410-007-0210.

(C) The Homecare Worker must have the skills, knowledge, and ability to perform, or to learn to perform the required work.

(D) The Homecare Worker's U.S. employment authorization must be verified.

(E) The Homecare Worker must be 18 years of age or older. SPD Central Office may approve a restricted enrollment, as described in section (8)(d) of this rule, for a Homecare Worker who is at least sixteen years of age.

(F) The Homecare Worker must complete an orientation as described in section (8)(e) of this rule.

(b) SPD/AAA may deny an application for provider enrollment in the Client-Employed Provider Program when:

(A) The applicant has a history of violating protective service and abuse rules;

(B) The applicant has committed fiscal improprieties;

(C) The applicant does not have the skills, knowledge or ability to adequately or safely provide services;

(D) The applicant lacks the ability or willingness to maintain Client-Employer confidentiality;

(E) The applicant has an unacceptable criminal history;

(F) The applicant is not 18 years of age;

(G) The applicant has been excluded by the Health and Human Services, Office of Inspector General, from participation in Medicaid, Medicare and all other Federal Health Care Programs; or

(H) SPD/AAA has information that enrolling the applicant as a Homecare Worker would put vulnerable clients at risk.

(c) Criminal History Rechecks: Criminal history rechecks will be conducted at least every other year from the date the Homecare Worker is enrolled. SPD/AAA may conduct a recheck more frequently based on additional information discovered about the Homecare Worker, such as possible criminal activity or other allegations.

(A) When a Homecare Worker is approved without restrictions following a criminal history check fitness determination, the approval will meet the Homecare Worker enrollment requirement statewide whether the qualified entity is a state-operated SPD office or an AAA operated by a county, Council of Governments or a non-profit organization.

(B) Criminal history check approval is effective for two years unless:

(i) Based on possible criminal activity or other allegations against the Homecare Worker, a new fitness determination is conducted resulting in a change in approval status; or

(ii) Approval under probationary status has ended following a final fitness determination, as defined in OAR 410-007-0210 and described in 410-007-0310 and 410-007-0320; or

(iii) The approval has ended because DHS has inactivated or terminated the Homecare Worker's provider enrollment for one or more reasons described in OAR 411-031-0040 or 411-031-0050.

(C) Prior criminal history check approval for another Department provider type is inadequate to meet criminal history check requirements for Homecare Worker enrollment.

(d) Limited enrollment.

(A) SPD/AAA may approve a limited enrollment for a provider as an Exclusive Homecare Worker based on the applicant's personal choice to provide services only to specific family members, friends or neighbors. To remove Exclusive Homecare Worker status and be designated as a Career Homecare Worker, a Homecare Worker must complete a new application and criminal history check and be approved by SPD/AAA.

(B) SPD/AAA may approve a limited enrollment for a provider as a Restricted Homecare Worker to provide services to specific individuals. To remove Restricted Homecare Worker status and be designated as a Career Homecare Worker, the applicant must complete a new application and criminal history check and be approved by SPD/AAA.

(i) Criminal History: After conducting a weighing test as described in OAR chapter 410, division 007, SPD/AAA may approve a Homecare Worker with prior criminal history under a restricted enrollment to provide services to only specific individuals who are family members, neighbors or friends.

(ii) Based on the applicant's lack of skills, knowledge or abilities (as defined in OAR 411-031-0020), SPD/AAA may approve an applicant as a Restricted Homecare Worker to provide services only to specific individuals who are family members, neighbors or friends.

(iii) Based on an exception to the age requirements for provider enrollment approved by SPD Central Office as described in section (8)(a)(E) of this rule, a Homecare Worker who is at least 16 years of age may be approved as a Restricted Homecare Worker.

(C) Applicants who choose to provide services only to family, friends or neighbors, will only be approved for limited enrollment as a Restricted Homecare Worker when:

(i) The applicant has a potentially disqualifying criminal history that following a weighing test he or she would be denied as a Career Homecare Worker; or

(ii) The applicant lacks the skills, knowledge or abilities (as defined in OAR 411-031-0020) to be approved as a Career Homecare Worker; or

(iii) The applicant is at least 16 years of age and has been approved by SPD Central Office for an exception to the age requirements for provider enrollment as described in section (8)(a)(E) of this rule.

(e) Homecare Worker Orientation: Homecare Workers must participate in an orientation arranged through a SPD/AAA office. The orientation

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should occur within the first 30 days after becoming enrolled in the Client-Employed Provider Program and prior to beginning work for any specific SPD/AAA clients. When completion of an orientation is not possible within those timelines, orientation must be completed within 90 days of being enrolled. If a Homecare Worker fails to complete an orientation within 90 days of provider enrollment, their provider number will be inactivated and any authorization for payment of services will be discontinued.

(f) A Homecare Worker's provider enrollment may be inactivated when:

(A) The Homecare Worker has not provided any paid services to any client in the last twelve months;

(B) The Homecare Worker fails to complete a criminal history check authorization or provide fingerprints in accordance with the criminal history check, when requested by SPD/AAA;

(C) The Homecare Worker informs SPD/AAA they will no longer be providing Homecare Worker services in Oregon;

(D) The provider fails to participate in a Homecare Worker orientation arranged through an SPD/AAA office within 90 days of provider enrollment; or

(E) A complaint is being investigated against a Homecare Worker who, at the time, is not providing any paid services to clients.

(9) Paid Leave.

(a) Live-in Homecare Workers: Irrespective of the number of clients served, SPD will authorize one twenty-four hour period of leave each month, when a live-in Homecare Worker or Spousal Pay Provider is the only live-in provider during the course of a month. For any part of a month worked, the live-in Homecare Worker will receive a proportional share of that twenty-four hour period of leave authorization. A prorated share of the twenty-four hours will be allocated proportionately to each live-in when there is more than one live-in provider per client.

(A) Accumulation and Usage: A provider may not accumulate more than 144 hours of accrued leave. The employer, Homecare Worker, and Case Manager will coordinate the timely use of these hours. Usage may be in one-hour increments. Accrued leave must be taken while employed as a live-in.

(B) The Right to Retain Live-in Paid Leave: The Homecare Worker retains the right to access earned paid leave when terminating employment with one employer, so long as the Homecare Worker is employed with another employer as a live-in within one year of termination.

(C) Transferability of Live-In Paid Leave: Live-in Homecare Workers who convert to hourly or separate from live-in service and return as an hourly Homecare Worker within one year from the last date of live-in services will be credited with their unused hours of leave up to a maximum of 16 hours. Effective July 1, 2006, unused hours of leave will be credited up to a maximum of 32 hours. Paid leave cannot be cashed out.

(b) Hourly Homecare Workers: On July 1st of each year, active Homecare Workers who worked 80 authorized and paid hours in any one of the three months that immediately precede July (April, May, June) will be credited with one 16 hour block of paid leave to use during the current fiscal biennium (July 1 through June 30) in which it was accrued. On February 1st of each year, active employees who worked 80 authorized and paid hours in any one of the three months that immediately precede February (November, December, January) will be credited with 16 hours of paid time off. One 16 hour block of paid leave will be credited to each eligible Homecare Worker, irrespective of the number of clients they serve. Such leave will not be cumulative from biennium to biennium.

(A) Utilization of Hourly Paid Leave: Such time off must be utilized in one eight -hour block subject to authorization. If the Homecare Worker's normal workday is less than eight hours, such time off may be utilized in blocks equivalent to the normal workday. Any remaining hours that are less than the normally scheduled workday may be taken as a single block.

(B) Limitations of Hourly Paid Leave: If the leave hours are not used within the biennium, the balance will be reduced to zero. Homecare Workers will not be compensated for paid leave unless the time off work is actually taken. Hourly paid leave cannot be cashed out.

(C) Transferability of Hourly Paid Leave: An hourly Homecare Worker who transfers to work as a live-in Homecare Worker (within the biennium that their hourly leave is earned) will maintain their balance of hourly paid leave and begin accruing live-in paid leave.

(10) SPD Fiscal and Accounting Responsibility:

(a) Direct Service Payments: SPD will make payment to the provider on behalf of the client for all in-home services. This payment will be considered full payment for the services rendered under Title XIX. Under no circumstances is the Homecare Worker to demand or receive additional payment for these Title XIX-covered services from the client or any other

source. Additional payment to Homecare Workers for the same services covered by Oregon's Title XIX Home and Community Based Services Waiver is prohibited.

(b) Timely Submission of Claims: In accordance with OAR 410-120-1300, all claims for services must be submitted within 12 months of the date of service.

(c) Ancillary Contributions:

(A) Federal Insurance Contributions Act (FICA): Acting on behalf of the Client-Employer, SPD will apply any applicable FICA regulations and will:

(i) Withhold the Homecare Worker-employee contribution from payments; and

(ii) Submit the Client-Employer contribution and the amounts withheld from the Homecare Worker-employee to the Social Security Administration.

(B) Benefit Fund Assessment: The Workers' Benefit Fund Assessment pays for programs that provide direct benefits to injured workers and their beneficiaries and that assist employers in helping injured workers return to work. The Department of Consumer & Business Services sets the Workers' Benefit Fund Assessment Rate for each calendar year. SPD calculates the hours rounded up to the nearest whole hour and deducts an amount rounded up to the nearest cent. Acting on behalf of the Client-Employer, SPD will:

(i) Deduct the Homecare Worker-employees' share of the Benefit Fund Assessment Rate for each hour or partial hour worked by each paid Homecare Worker;

(ii) Collect the Client-Employer's share of the Benefit Fund Assessment for each hour or partial hour of paid services received; and

(iii) Submit the client and Homecare Worker's contributions to the Workers' Benefit Fund.

(C) SPD will pay the employer's share of the Unemployment Tax.

(d) Ancillary Withholdings. For purposes of section (10)(d) of this rule, "labor organization" means any organization that has, as one of its purposes, representing employees in their employment relations.

(A) SPD will deduct from the Homecare Worker's monthly salary or wages the specified amount for payment to a labor organization.

(B) In order to receive this payment, the labor organization must enter into a written agreement with SPD to pay the actual administrative costs of the deductions.

(C) SPD will pay the deducted amount monthly to the designated labor organization.

(e) State and Federal Income Tax Withholding.

(A) SPD will withhold state and federal income taxes on all payments to Homecare Workers, as indicated in the Home Care Commission's Collective Bargaining Agreement with the Service Employee's International Union.

(B) Homecare Workers must complete and return a current Internal Revenue Service (IRS) W-4 form to the local office. SPD will apply standard income tax withholding practices in accordance with the Code of Federal Regulations, Title 26, Part 31 (26 CFR 31).

(11) Homecare Worker Expenses Secondary to Performance of Duties.

(a) Providers may be reimbursed at the published state mileage rate when they use their own car for service plan related transportation, if prior authorized by the Case Manager. If unscheduled transportation needs arise during non-office hours, an explanation as to the need for the transportation must be provided and approved prior to reimbursement.

(b) Medical transportation through the DHS, Division of Medical Assistance Programs (DMAP), volunteer transportation, and other transportation services included in the service plan will be considered a prior resource.

(c) DHS is not responsible for vehicle damage or personal injury sustained while using a personal motor vehicle for DMAP or service plan-related transportation, except as may be covered by workers' compensation.

(12) Workers' Compensation and health insurance are available to eligible Homecare Workers as defined in the Home Care Commission's Bargaining Agreement with the Service Employee's International Union. In order to receive Homecare Worker services, the Client-Employer must provide written authorization and consent to SPD for the provision of workers' compensation insurance for their employee.

(13) Overpayments:

(a) An overpayment is any payment made to a Homecare Worker by SPD that is more than the person is authorized to receive.

(b) Overpayments are categorized as follows:

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(A) Administrative Error Overpayment: Occurs when SPD failed to authorize, compute or process the correct amount of in-home service hours or wage rate.

(B) Provider Error Overpayment: Occurs when SPD overpays the Homecare Worker due to a misunderstanding or unintentional error.

(C) Fraud Overpayment: "Fraud" means taking actions that could result in receiving a benefit in excess of the correct amount, whether by intentional deception, misrepresentation or failure to account for payments or money received. "Fraud" also means spending payments or money that provider was not entitled to and any act that constitutes fraud under applicable federal or state law (including 42 CFR 455.2). SPD will determine, based on a preponderance of the evidence, when fraud has resulted in an overpayment. The Department of Justice, Medicaid Fraud Unit will determine when a Medicaid Fraud allegation will be pursued for prosecution.

(c) Overpayments are recovered as follows:

(A) Overpayments will be collected prior to garnishments, such as child support, Internal Revenue Service back taxes, and educational loans.

(B) Administrative or provider error overpayments will be collected at no more than five percent (5%) of the Homecare Worker's gross wages.

(C) Fraud Overpayments: SPD will determine when a fraud overpayment has occurred and the manner and amount to be recovered.

(D) Providers no longer employed as Homecare Workers, will have any remaining overpayment deducted from their final check. The provider is responsible for repaying the amount in full when the final check is insufficient to cover the remaining overpayment.

Stat. Auth.: ORS 409.050, 410.070 & 410.090

Stats. Implemented: ORS 410.010, 410.020 & 410.070

Hist.: SPD 17-2004, f. 5-28-04, cert. ef. 6-1-04; SPD 40-2004(Temp), f. 12-30-04, cert. ef. 1-1-05 thru 6-30-05; SPD 10-2005, f. & cert. ef. 7-1-05; SPD 15-2006, f. 4-26-06, cert. ef. 5-1-06; SPD 28-2006(Temp), f. 10-18-06, cert. ef. 10-23-06 thru 4-20-07; SPD 4-2007, f. 4-12-07, cert. ef. 4-17-07

Department of Justice Chapter 137

Rule Caption: Mandates the payment of support collected by employers be made by Electric Fund Transfer.

Adm. Order No.: DOJ 2-2007

Filed with Sec. of State: 4-2-2007

Certified to be Effective: 4-2-07

Notice Publication Date: 2-1-07

Rules Adopted: 137-055-5035

Subject: The Child Support Program is adopting a new rule, 137-055-5035, that mandates the payment of support collected by employers to be made by Electronic Funds Transfer.

Rules Coordinator: Carol Riches—(503) 986-6240

137-055-5035

Payment by Electronic Funds Transfer

(1) As used in this rule, the following definitions apply:

(a) "Electronic Funds Transfer" (EFT) means the movement of funds by nonpaper means, usually through a payment system including, but not limited to, an automated clearinghouse or the Federal Reserve's Fedwire system;

(b) "Employer" means any entity or individual who:

(A) Does business in Oregon or has a registered agent in Oregon; and

(B) Engages an individual to perform work or services for which compensation is given in periodic payments or otherwise.

(c) "Income withholding order" means an order to withhold income issued under ORS 25.372 to 25.424.

(2) Except as provided in section (3), an employer must remit all support payments to the Department of Justice (DOJ) by EFT in the following circumstances:

(a) An employer with five or more employees has received at least one income withholding order for an employee;

(b) An employer with less than five employees has received an income withholding order for more than one employee; or

(c) An employer is required by Treasury regulations to make federal corporation estimated tax payments or federal payroll tax payments by means of EFT.

(3) DOJ may grant an exemption from the requirement in section (2) to pay by EFT if the employer demonstrates that its payroll or accounting system will not support EFT. The exemption will be granted on a case by case basis. DOJ's decision is final with regard to the exemption, but may be appealed as an other than contested case order under ORS 183.484.

(4) Notwithstanding sections (2) and (3), an employer must remit all support payments to DOJ by EFT in the following circumstances:

(a) The employer has received at least one income withholding order for an employee and has failed to withhold or failed to withhold within the time provided by ORS 25.411 at least twice;

(b) The employer has submitted at least one dishonored check; or

(c) The employer continues to incorrectly identify withholdings or makes other errors that affect proper distribution of the support, despite contact and information from DOJ on how to correct the error.

(5) All EFT payments must identify the employee for whom the payment is made, the amount of the payment, and the child support case number to which the payment is to be applied.

Stat. Auth.: ORS 180.345, 293.525

Stats. Implemented: ORS 25.372 - 25.424, 293.525

Hist.: DOJ 2-2007, f. & cert. ef. 4-2-07

Rule Caption: Creates Sexual Assault Nurse Examiner (SANE) Certification Commission.

Adm. Order No.: DOJ 3-2007

Filed with Sec. of State: 3-16-2007

Certified to be Effective: 3-16-07

Notice Publication Date: 2-1-07

Rules Adopted: 137-084-0500

Subject: The proposed rule would create a Sexual Assault Nurse Examiner (SANE) Certification Commission, appointed by the Attorney General; specify membership on the SANE Certification Commission; and outline the Commission's duties. Duties include recommending rules to the Attorney General about requirements for SANE certification, evaluating applications for certification, and publishing best practices for sexual assault examinations.

Rules Coordinator: Carol Riches—(503) 947-4400

137-084-0500

Sexual Assault Nurse Examiner (SANE) Certification Commission

(1) The Attorney General establishes a Sexual Assault Nurse Examiners (SANE) Certification Commission. The Commission is established to help ensure that registered nurses who provide sexual assault medical care and conduct forensic examinations in Oregon and receive compensation through the Sexual Assault Victims' Emergency Medical Response Fund established by Oregon Laws 2003 c. 789 have the necessary training and qualifications to do so in accordance with the best standards of care, after consultation with the Attorney General's Sexual Assault Task Force.

(2) Commission members shall be appointed by the Attorney General and shall serve a period of two years from time of appointment. Terms may be renewed upon approval by the Attorney General.

(3) The Commission shall consist of seven (7) members, one each from the following groups:

(a) One (1) Oregon Certified Sexual Assault Nurse Examiner;

(b) One (1) Oregon Certified Sexual Assault Nurse Examiner representing the Oregon Nurses Association (ONA);

(c) One (1) Representative of the Oregon State Board of Nursing (OSBN);

(d) One (1) Emergency Room Physician representing the Oregon Chapter of Emergency Physicians (OCEP);

(e) One (1) Emergency Room Physician (at large);

(f) One (1) Advocate; and

(g) One (1) At-large position.

(4) A majority of a quorum of the Commission may take action and make recommendations to the Attorney General. A quorum shall be established by a simple majority of Commission members.

(5) The Attorney General delegates to the Commission the following powers and duties:

(a) Make recommendations to the Attorney General for rules deemed necessary to implement the Sexual Assault Nurse Examiners Program, including standards for certification and renewal of certification by the Commission;

(b) Evaluate and act upon applications for certification; and

(c) Identify, update, and publicize best practices related to sexual assault examinations.

Stat. Auth.: ORS 147.465(3); 2003 OL, Ch 789, §2 (SB 752)

Stats. Implemented: ORS 147.453, 147.468; 2003 OL, Ch 789 (SB 752)

Hist.: DOJ 3-2007, f & cert. ef. 3-16-07

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Rule Caption: Address Confidentiality Program Rules.

Adm. Order No.: DOJ 4-2007

Filed with Sec. of State: 4-12-2007

Certified to be Effective: 4-16-07

Notice Publication Date: 1-1-07

Rules Adopted: 137-079-0110, 137-079-0120, 137-079-0130, 137-079-0140, 137-079-0150, 137-097-0160, 137-079-0170, 137-079-0180, 137-079-0190, 137-079-0200, 137-079-0210

Subject: The rules set out guidelines for the operation of the Address Confidentiality Program. The rules create a Division (79) with the Department of Justice Chapter 137.

Rules Coordinator: Carol Riches—(503) 378-6313

137-079-0110

Authority and Purpose

These rules set out guidelines for the operation of the Address Confidentiality Program set forth in ORS 192.820 through 192.868, including the designation of Application Assistants, the process by which an individual may apply to participate in the Address Confidentiality Program, the certification of a program participant, ongoing participation and termination of participation in the Address Confidentiality Program, the responsibility of public agencies to use the substitute address provided by the Address Confidentiality Program, conditions under which a participant's actual address may be disclosed or participation in the Address Confidentiality Program may be verified, service of process on a participant and other aspects of program operation.

Stat. Auth.: ORS 192.860, 2005 OL, Ch. 821, SB 850

Stats. Implemented: ORS 192.820-192.868, 2005 OL, Ch. 821, SB 850

Hist.: DOJ 4-2007, f. 4-12-07, cert. ef. 4-16-07

137-079-0120

Definitions

(1) "Department" is the Oregon Department of Justice.

(2) "Applicant" is an individual who completes and submits an application to participate in the Address Confidentiality Program.

(3) "Application Assistant" is an individual designated by the Department to assist applicants with the completion and submission of an application to the Address Confidentiality Program, as further defined in ORS 192.820(3).

(4) "Application Assistant Agreement" is the agreement signed by the Department and an Application Assistant, which specifies the responsibilities of the Application Assistant and the Department.

(5) "Mailing Address" is an address to which a program participant requests mail to be sent by the Address Confidentiality Program. A mailing address may be a post office box, if the participant's actual address is a street address in Oregon.

(6) "Program" is the Address Confidentiality Program established in ORS 192.820-192.868.

(7) "Administrative Coordinator" is the person designated by the Department to provide programmatic coordination to the Program.

Stat. Auth.: ORS 192.860, 2005 OL, Ch. 821, SB 850

Stats. Implemented: ORS 192.820-192.868, 2005 OL, Ch. 821, SB 850

Hist.: DOJ 4-2007, f. 4-12-07, cert. ef. 4-16-07

137-079-0130

Application Assistant Certification

(1) Application Assistants shall be designated by the Department upon satisfaction of the requirements included in this section and in compliance with ORS 192.826 and 192.854.

(2) Requirements for designation of an Application Assistant shall include:

(a) Current service in a public or private entity as described in ORS 192.854(1);

(b) At least forty (40) hours of comprehensive training in domestic violence, sexual assault and stalking in-person advocacy, which may include the training required for in-person domestic violence, sexual assault and stalking responders by the Department of Human Services, or comparable training, as determined by the Administrative Coordinator. Topic areas covered by such training shall include comprehensive safety planning and confidentiality;

(c) Completion of training provided by the Department or designee on the Program and the role of the Application Assistant;

(d) Signing an Application Assistant Agreement with the Department, and specifying the agency which the Application Assistant is currently serving; and

(e) Such other requirements as the Department may require in its discretion in order to carry out the activities enumerated in ORS 192.820 through ORS 192.865. When an Application Assistant applies to renew a designation, these requirements may include but are not limited to supplemental or additional training.

(3) Notwithstanding the above requirements, designation and the renewal of designation of an Application Assistant shall be at the discretion of the Department.

(4) The Application Assistant Agreement shall be for a term of two (2) years, and shall be renewable upon request of the Application Assistant and upon a determination by the Department in its discretion that the Application Assistant continues to fulfill the requirements for designation, including to continue to serve the agency specified in the Application Assistant Agreement.

(5) When an Application Assistant who has been designated leaves the agency specified in the Application Assistant Agreement, the Agreement shall terminate and the Application Assistant designation shall be cancelled. The Application Assistant may apply for a new designation and shall be designated according to the provisions of this section and ORS 192.820-192.854.

(6) The Department shall keep a list of agencies at which Application Assistants are currently designated and shall make the information available to the public.

(7) If the Department fails to receive sufficient funding to allow the Program to operate, the Department shall notify each currently designated Application Assistant that the Program is no longer accepting applications from prospective participants and is terminating the Application Assistant Agreement. If, after sending such notice, the Department receives funding to allow the Program to resume, the Department shall notify each Application Assistant whose designation was cancelled due to lack of funding, and shall offer a process for redesignation.

Stat. Auth.: ORS 192.860, 2005 OL, Ch. 821, SB 850

Stats. Implemented: ORS 192.820-192.868, 2005 OL, Ch. 821, SB 850

Hist.: DOJ 4-2007, f. 4-12-07, cert. ef. 4-16-07

137-079-0140

Application Process

(1) The Program shall create an Address Confidentiality Program Application that includes the requirements set forth in ORS 192.826, as well as the address to which the application must be sent. The Program shall make copies of the application available to all currently designated Application Assistants, along with instructions as to how the application must be submitted. The Program shall make copies of the application available to others at the discretion of the Administrative Coordinator and in compliance with the requirements of these rules and ORS 192.826.

(2) In addition to the requirements set forth in ORS 192.826, the Address Confidentiality Program Application and/or accompanying written materials provided to the applicant as part of the application process shall:

(a) Specify the term of certification to the Program as described in section 137-079-0150(3);

(b) Specify any other rights and obligations of a Program participant pursuant to ORS 192.820-192.868; and

(c) Inform the applicant that participation in the Program will cause a delay in the receipt of mail sent to the Program substitute address and forwarded to the Program participant by the Program.

(3) "Other forms of evidence" as described in ORS 192.826(3)(b)(D) include any written or oral evidence from which an Application Assistant can reasonably conclude that the applicant is a victim of domestic violence, stalking or a sexual offense within the meaning of ORS 192.820 (8)–(10).

(4) The evidence required to be contained by the application by ORS 192.826(3)(b) shall consist of a statement by the Application Assistant that the Application Assistant has reviewed and considered evidence that meets the requirements of ORS 192.826 and paragraph 3 of this section.

(5) The Program shall review every application it receives for completeness. If an application is received by the Program that is incomplete and therefore cannot be certified, the Administrative Coordinator shall make reasonable efforts to remedy the incompleteness. If the application is unable to be completed within thirty (30) days of receipt by the Program, the Administrative Coordinator shall notify the applicant that the application has been denied, and that the applicant may submit a new, complete application to the Program at any time. The Administrative Coordinator may exercise discretion and extend the thirty (30) day period for a reasonable amount of time if the Administrative Coordinator determines that such extension serves the purpose of the Program.

(6) When an application is denied by the Department for any reason, the Administrative Coordinator shall inform the applicant in writing that the

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application has been denied and the reason for the denial. The notice shall state that the Program participant has thirty (30) days from the date of the notice in which to submit to the Program an appeal of the denial and shall provide the address to which the appeal must be sent. The notice shall specify:

- (a) That the appeal must be in writing, signed by the Program participant, and must include information as to why the application should be approved;
- (b) That the appeal will be reviewed by the Attorney General or designee and determined within five (5) business days of receipt by the Program;
- (c) That the applicant will be notified in writing of the determination; and
- (d) That the decision of the Attorney General or designee is final.

Stat. Auth.: ORS 192.860, 2005 OL, Ch. 821, SB 850
Stats. Implemented: ORS 192.820-192.868, 2005 OL, Ch. 821, SB 850
Hist.: DOJ 4-2007, f. 4-12-07, cert. ef. 4-16-07

137-079-0150

Certification Process for Program Participation

(1) When an application received by the Program is determined to be complete and the information it contains is in compliance with Program requirements and the application is approved by the Attorney General or designee, the Program shall promptly certify the applicant to the Program.

(2) As soon as an applicant is certified as a Program participant, the Program shall assign a substitute address in compliance with ORS 192.822(2) and shall:

- (a) Notify the Program participant of that address, as well as the requirements for its use;
- (b) Provide the Program participant with the authorization card described in ORS 192.826(5); and
- (c) Notify the Program participant of any additional information that will enable the Program participant to fully participate in the Program.

(3) Per ORS 192.826(6), the term of certification of a Program participant to the Program shall be for a period of four (4) years.

(4) A Program participant may renew the certification by filing an application for renewal with the Program at least thirty (30) days prior to the expiration of the current certification. No later than sixty (60) days prior to the expiration of the current certification, the Administrative Coordinator shall send the Program participant the information and materials needed in order to file the application for renewal, as well as the date by which the application must be filed. The application for renewal shall contain all the information required by ORS 192.826. For purposes of a renewal of certification, the evidence required to be included in the application by ORS 192.826(3)(b) may consist of a statement by the Program participant that the information included in the original application remains materially unchanged and therefore the Program participant continues to need the services provided by the Program. The Administrative Coordinator may waive the thirty (30) day requirement described in this paragraph if the Administrative Coordinator determines that the reason for waiving the requirement serves the purpose of the Program.

(5) If the term of certification described in paragraph 3 of this section has ended and the Program participant has not filed an application for renewal of certification, the Program shall cancel the certification.

(6) A Program participant's certification may be cancelled at the request of the participant. The request must be in writing and signed by the participant. The signature shall be notarized by a notary public or witnessed by a currently certified Application Assistant. The cancellation shall be considered effective the next business day after the request is received by the Program. The Program shall immediately confirm this cancellation in writing and shall inform the Program participant that all Program services have been discontinued. The Program will return all mail received, indicating that the addressee is no longer at the Program address.

(7) In addition to the cancellation described in paragraph 5 of this section, a Program participant's certification shall be cancelled by the Program:

- (a) When the Program participant has obtained a legal name change;
- (b) When the Program participant has violated statutory or Program requirements; or
- (c) When mail forwarded to the Program participant is returned to the Program as undeliverable.

(8) When certification is cancelled pursuant to 7(a) of this section, prior to cancellation, the Administrative Coordinator shall notify the Program participant that the Program participant may apply for certification under the new legal name, as described in section 137-079-0160(1) of these rules.

(9) When certification is cancelled by the Program for any reason, the Administrative Coordinator shall send a written notice of the cancellation to the Program participant. The notice shall specify the reason(s) for cancellation and shall state that the Program participant has thirty (30) days from the date of the notice in which to submit to the Program an appeal of the cancellation. The notice shall specify:

- (a) That the appeal must be in writing, signed by the Program participant, and must include information as to why the certification should not be cancelled;
- (b) That the appeal will be reviewed by the Attorney General or designee and determined within five (5) business days of receipt by the Program;
- (c) That the applicant will be notified in writing of the determination; and
- (d) That the decision of the Attorney General or designee is final.

(10) When certification is cancelled by the Program pursuant to paragraph 7(a) or 7(b) of this section, the written notice described in paragraph 9 of this section shall state, in addition to the information specified in paragraph 9(a)-(c), that the Program will continue to forward mail to the Program participant for thirty (30) days after the date of the notice if no appeal is received or, if an appeal is received within thirty (30) days, until the appeal is resolved.

(11) When certification is cancelled by the Program pursuant to paragraph 7(c) of this section, the written notice described in paragraph 9 of this section shall state, in addition to the information specified in paragraph 9(a)-(c), that all Program services have been discontinued and that the Program will return mail received for the Program participant to the Post Office to return to the sender.

(12) If the Department fails to receive sufficient funding to allow the Program to operate, the Department shall notify each currently certified Program participant that the Program is no longer able to receive and forward the Program participant's mail and is canceling the Program participant's participation in the Program. The notice shall specify a reasonable amount of time, no less than 30 days, during which the Program will continue to receive and forward the Program participant's mail, and in which the Program participant must establish a new address and inform other agencies of change of address. If, after sending such notice, the Department receives funding to allow the Program to resume, the Department shall notify each Program participant whose certification was cancelled due to lack of funding, and shall describe the process for recertification.

(13) When certification is cancelled for any reason, and in addition to information described in paragraphs 2-11 of this section, the Program shall send the Program participant information instructing the Program participant:

- (a) To return the authorization card to the Program immediately; and
- (b) To notify persons and public bodies using the substitute address as the address of the Program participant that the substitute address is no longer valid for the Program participant. The instruction shall include the information that it is the Program participant's responsibility to provide public bodies and others with the Program participant's new address.

Stat. Auth.: ORS 192.860, 2005 OL, Ch. 821, SB 850
Stats. Implemented: ORS 192.820-192.868, 2005 OL, Ch. 821, SB 850
Hist.: DOJ 4-2007, f. 4-12-07, cert. ef. 4-16-07

137-079-0160

Ongoing Program Participation

(1) When a Program participant notifies the Program of a legal name change pursuant to ORS 192.832(1), and requests continued participation in the Program, the Administrative Coordinator shall send the Program participant an application to apply to the Program under the new legal name, as well as the information required in order to complete the new application. The new application shall be received and processed according to the provisions of 137-079-0140.

(2) When a Program participant notifies the Program of a legal name change pursuant to ORS 192.832(1), and does not request to continue participation in the Program, the Administrative Coordinator shall send the Program participant notice as described in section 137-079-0150(9) (10) and (13) of these rules.

(3) When a Program participant notifies the Program of a change of address or telephone number in writing pursuant to ORS 192.832(2), the Administrative Coordinator shall request from the Program participant such information as is necessary to determine whether the Program participant is still eligible to be certified for participation in the Program.

(a) If the Administrative Coordinator determines that the Program participant remains eligible for participation, the Administrative Coordinator will enter the new information in Program records so that mail

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sent to the Program and required to be forwarded to the Program participant is forwarded to the correct Program participant address.

(b) If the Administrative Coordinator determines that the Program participant is no longer eligible for participation, the Administrative Coordinator shall send the Program participant notice of cancellation as described in section 137-079-0150(7)-(13) of these rules.

(4) The Administrative Coordinator shall establish a procedure in order to assure records are kept with regard to certified and registered mail received for Program participants.

Stat. Auth.: ORS 192.860, 2005 OL, Ch. 821, SB 850
Stats. Implemented: ORS 192.820-192.868, 2005 OL, Ch. 821, SB 850
Hist.: DOJ 4-2007, f. 4-12-07, cert. ef. 4-16-07

137-079-0170

Responsibility of Public Bodies to Use Substitute Address

(1) Upon certification of a Program participant as described in 137-079-0150(1) and (2), the Program shall notify the Program participant in writing of the requirements of public bodies to use the substitute address and the Program participant's responsibility with regard to requesting that public bodies use the address, pursuant to ORS 192.836(1) and (2).

(2) In addition to the information described in paragraph 1 of this section, the Program shall:

(a) Provide the Program participant with specific information, as such information is available, regarding the use of the substitute address with various public bodies, including information, as available, as to how the delays in mail receipt caused by participation in the Program may impact the benefits or services provided by public bodies; and

(b) Notify the Program participant that a public body may request a waiver to not use the substitute address, pursuant to ORS 192.836(3) and (4).

(3) The Program will accept and retain information from Program participants regarding public bodies that refuse to accept the substitute address for the creation of public records or modification of existing records.

Stat. Auth.: ORS 192.860, 2005 OL, Ch. 821, SB 850
Stats. Implemented: ORS 192.820-192.868, 2005 OL, Ch. 821, SB 850
Hist.: DOJ 4-2007, f. 4-12-07, cert. ef. 4-16-07

137-079-0180

Public Body Exemption Waiver

(1) A request for a waiver from the requirements of the Program made by a public body pursuant to ORS 192.836(3) may be for an individual Program participant, for a class of Program participants or for all Program participants. The request must be in writing and must contain:

(a) The information specified in ORS 192.836(3)(a) and (b), including a description of the specific record or records for which the exemption is requested and identifying the individual(s) who will have access to the record; and

(b) A description of the alternatives to the waiver the public body has considered and why those alternatives are not feasible.

(2) When the Program receives a request for a waiver pursuant to ORS 192.836(3), the Administrative Coordinator will determine if the request meets the requirements of ORS 192.836(3). If the request is not in writing, or fails to include the explanation or the affirmation described in ORS 192.836(3)(a) and/or (b), or is otherwise incomplete, the Administrative Coordinator will inform the requestor of the incompleteness within five (5) business days of receiving the request, and that no determination will be made until the request is complete.

(3) When the Program receives a request for a waiver that is complete, the Attorney General or designee shall consider whether the public body submitting the request has demonstrated its inability to meet its statutory or administrative obligations by possessing or using the substitute address. The Attorney General or designee's acceptance or denial of the request:

(a) Shall be recorded pursuant to ORS 192.836(4);

(b) Shall specify the duration of the waiver, if approved, which shall be based upon the reason or reasons for which the waiver is approved; and

(c) Shall be sent to the requestor within ten (10) business days of the date on which the complete request was received.

Stat. Auth.: ORS 192.860, 2005 OL, Ch. 821, SB 850
Stats. Implemented: ORS 192.820-192.868, 2005 OL, Ch. 821, SB 850
Hist.: DOJ 4-2007, f. 4-12-07, cert. ef. 4-16-07

137-079-0190

Verification/Proof of Program Participation (192.848(4))

(1) A request for verification of a Program participant's participation in the Program made by a representative of a public body for an official purpose pursuant to ORS 192.848(4) may be made to the Program in writing or verbally. The person requesting verification, the public body they

represent, and the purpose for which verification is requested must be provided and will be recorded by the Program.

(2) If the Administrative Coordinator determines that the request for verification is being made by a public body for an official reason, the Administrative Coordinator may verify the Program participant's participation. A signed release from the Program participant for whom the verification is requested may be required by the Department in support of the request.

(3) The verification of participation in the Address Confidentiality Program may be made in writing or verbally at the discretion of the Administrative Coordinator.

(4) A request for verification may include more than one Program participant, if the request satisfies the requirements of ORS 192.848(4) and this section for each Program participant for whom the request is made.

(5) A non-governmental entity or individual may submit a request for verification of a Program participant's participation in the Program. The request:

(a) must be in writing;

(b) must include the reason for which the verification is requested; and

(c) must be supported by a signed release from the Program participant for whom the verification is requested. When such a request and supporting documentation are received, the Administrative Coordinator may, at his or her discretion, verify the Program participant's participation to the requestor.

Stat. Auth.: ORS 192.860, 2005 OL, Ch. 821, SB 850
Stats. Implemented: ORS 192.820-192.868, 2005 OL, Ch. 821, SB 850
Hist.: DOJ 4-2007, f. 4-12-07, cert. ef. 4-16-07

137-079-0200

Disclosure of Information Prohibited – Exceptions

(1) Any request for disclosure of a Program participant's actual address or telephone number, other than a disclosure required as part of a registration for sex offenders as required under ORS 181.598 and 181.599, shall be in the form of a court order signed by a judge pursuant to a finding of good cause. For the purposes of this section, "good cause" exists when disclosure is sought for a lawful purpose that outweighs the risk of disclosure and, in the case of requests from federal, state or local law enforcement agencies, district attorneys or public bodies, when information is provided to the court that describes the official purpose for which the Program participant's actual address or telephone number will be used. If good cause is found to exist, the safety and protection of the participant shall be addressed, as much as practicable, in the terms of the order requiring disclosure.

(2) In cases where the Attorney General has not received prior notice of a court order, not later than three (3) business days after receiving the order, the Attorney General may object to the order and request a hearing before the judge who signed the order.

(3) When the Department discloses a Program participant's actual address or telephone number pursuant to a court order, the disclosure shall include in writing the statutory mandate specified in ORS 192.848(2) against re-disclosure of the address or telephone number, except pursuant to a court order. The disclosure may also include any other terms or requirements that will best protect the safety of the Program participant.

(4) The Department shall keep a record of requests for disclosure of a Program participant's actual address or telephone number and of the response to each request.

(5) The Program will accept and retain information from Program participants and from others regarding public bodies that disclose a Program participant's actual address or telephone number in violation of ORS 192.844, 192.848 and these rules.

Stat. Auth.: ORS 192.860, 2005 OL, Ch. 821, SB 850
Stats. Implemented: ORS 192.820-192.868, 2005 OL, Ch. 821, SB 850
Hist.: DOJ 4-2007, f. 4-12-07, cert. ef. 4-16-07

137-079-0210

Service of Process

(1) Service of process by mail on a Program participant shall be forwarded in accordance with general Program procedures according to the manner in which it was received.

(2) When personal service on a Program participant is required, it may be delivered to the Department of Justice at 1162 Court Street NE, Salem, Oregon. The recipient of such service shall immediately notify, by telephone, the Administrative Coordinator of such service.

(3) The Program shall forward personally served documents to the Program participant at the participant's actual or mailing address within one (1) business day of the documents being served. When documents that have

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been personally served are forwarded to the Program participant, the Program shall include a copy of the notice described in Section 137-079-0150(2)(c) of these Rules.

Stat. Auth.: ORS 192.860, 2005 OL, Ch. 821, SB 850
Stats. Implemented: ORS 192.820-192.868, 2005 OL, Ch. 821, SB 850
Hist.: DOJ 4-2007, f. 4-12-07, cert. ef. 4-16-07

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**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 license year.

Adm. Order No.: OSFM 1-2007

Filed with Sec. of State: 3-30-2007

Certified to be Effective: 4-1-07

Notice Publication Date: 3-1-07

Rules Amended: 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

Subject: 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—(503) 373-1540 ext 276

837-020-0025

Purpose and Scope

These rules establish licensing requirements for *nonretail facility* and *conditional nonretail facility owners and operators*. These rules also establish the requirements that each *nonretail customer* and *conditional use customer* must meet to dispense Class 1 flammable liquids at those facilities.

Stat. Auth.: ORS 476 & 480.380
Stats. Implemented: ORS 480.310 - 480.385
Hist.: FM 5-1990, f. 7-13-90, cert. ef. 10-15-90; FM 4-1991(Temp), f. 12-31-91, cert. ef. 1-1-92; FM 4-1992, f. 6-15-92, cert. ef. 7-15-92; OSFM 1-2002, f. & cert. ef. 2-25-02; OSFM 1-2007, f. 3-30-07, cert. ef. 4-1-07

837-020-0035

Definitions

For purposes of ORS 480.310 to 480.385 and OAR 837-020-0025 through 837-020-0125 only, the following definitions apply:

(1) “*Business Use*” means that all *Class 1 flammable liquids* dispensed into *motor vehicles* and *containers* must be used only in the course of business activities.

(2) “*Class 1 Flammable Liquid*” means any liquid with a flash point below 25 degrees Fahrenheit, closed cup tester. Note: Diesel fuel is not a *Class 1 flammable liquid*.

(3) “*Container*” means all types of portable *containers*.

(4) “*Conditional Use Customer*” means a *person* who may dispense *Class 1 flammable liquids* at a licensed *conditional nonretail facility*, and meets the requirements of OAR 837-020-0045 through 837-020-0125.

(5) “*Conditional Nonretail Facility*” means a *nonretail facility* licensed by the State Fire Marshal, where *conditional use customers* may dispense *Class 1 flammable liquids*.

(6) “*Dispensing*” means the transfer of a *Class 1 flammable liquid* from a *facility* to a *motor vehicle* or *container*.

(7) “*Documentation*” means a *verifiable* Federal Employer Identification Number or *documentation* that verifies participation in a business or employment with a government agency or nonprofit or charitable organization. Initial documents may be photocopies or facsimiles of the original documents. Subsequent *documentation* may be photocopies or facsimiles of the original documents, or printouts of web site licensing information that shows the business is currently licensed to operate.

(8) “*Dual Operations*” means a *nonretail facility* where *Class 1 flammable liquids* are dispensed at retail and nonretail with either a time separation of the retail and nonretail operations or a separation of the retail and nonretail pump islands by a distance of at least 50 feet.

(9) “*Emergency*” means any man-made or natural element or circumstance causing or threatening loss of life, injury to *person* or property, human suffering or financial loss, and includes, but is not limited to, fire, explosion, flood, severe weather, drought, earthquake, volcanic activity, spills or releases of oil or hazardous material as defined in ORS 466.605, contamination, utility or transportation emergencies, disease, blight, infestation, crisis influx of migrants unmanageable by the county, civil disturbance, riot, sabotage and war.

(10) “*Emergency Management Agency*” means an organization created and authorized under ORS 401.015 to 401.105, 401.260 to 401.325 and 401.355 to 401.580 by the state, county or city to provide for and ensure the conduct and coordination of functions for comprehensive emergency program management.

(11) “*Emergency Service Agency*” means an agency defined in ORS 401.025 or an entity authorized by an *emergency service agency* to provide services during an emergency.

(12) “*Emergency Service Worker*” means an *individual* who, under the direction of an *emergency service agency* or *emergency management agency*, performs emergency services and:

(a) Is a registered volunteer or independently volunteers to serve without compensation and is accepted by the office or the *emergency management agency* of a county or city; or

(b) Is a member of the Oregon State Defense Force acting in support of the *emergency service system*.

(13) “*Emergency Services*” means and includes those activities provided by state and local government agencies with *emergency* operational responsibilities to prepare for and carry out any activity to prevent, minimize, respond to or recover from an *emergency*. These activities include, without limitation, coordination, preparedness planning, training, interagency liaison, fire fighting, oil or hazardous material spill or release cleanup as defined in ORS 466.605, law enforcement, medical, health and sanitation services, engineering and public works, search and rescue activities, warning and public information, damage assessment, administration and fiscal management, and those measures defined as “civil defense” in section 3 of the Act of January 12, 1951, P.L. 81-920 (50 U.S.C. 22520).

(14) “*Employee*” means an *individual* who works for an *operator* or an *owner*.

(15) “*Equivalent Documentation*” means verifiable *documentation* that meets or exceeds the requirements of *documentation* required under ORS 480.345. The final decision as to what is acceptable as *equivalent documentation* rests with the State Fire Marshal.

(16) “*Facility*” means a site where *Class 1 flammable liquids* are dispensed. A *facility* can be either *retail*, *non-retail* or a combination or both.

(17) “*General Public*” means someone other than a *nonretail customer* or a *conditional use customer*.

(18) “*Individual*” means a single human being.

(19) “*License*” means the official document issued by the State Fire Marshal that authorizes the operation of a *nonretail facility* or a *conditional nonretail facility* when otherwise in compliance with all applicable requirements of OAR 837-020-0040.

(20) “*License Application*” means the form and accompanying documentation required to be completed and submitted to the State Fire Marshal for approval prior to the issuance of a *nonretail facility* or a *conditional nonretail facility license*.

(21) “*May*” means a regulation of conduct and implies probability or permission.

(22) “*May not*” means a prohibition of conduct.

(23) “*Motor Vehicle*” means a vehicle that is self-propelled or designed for self-propulsion, as defined by Oregon Vehicle Code 801.360.

(24) “*Must*” means a mandatory requirement.

(25) “*Nonretail Customer*” means an operating business enterprise, government agency, or nonprofit or charitable organization who otherwise meets the customer requirements of ORS 480.345

(26) “*Nonretail Facility*” means a *facility* licensed by the State Fire Marshal, where *Class 1 flammable liquids* are dispensed through a fuel *dispensing* device that limits access to qualified *nonretail customers*.

NOTE: A dual operation facility is also a nonretail facility.

(27) “*Operator*” means a *person* that operates a *nonretail facility* or a *conditional nonretail facility*.

(28) “*Oregon Fire Code (OFC)*” means the *Oregon Fire Code*, 2006 Edition.

(29) “*Owner*” means any *person* that is the *owner* of a *nonretail facility* or a *conditional nonretail facility*. An *owner* may also be an *operator*.

(30) “*Person*” means one or more *individuals*, legal representatives, partnerships, joint ventures, associations, corporations (whether or not organized for profit), business trusts, or any organized group of *persons* and includes the state, state agencies, counties, municipal corporations, school districts and other public corporations.

(31) “*Retail Facility*” means a facility that sells *Class 1 flammable liquids* to the *general public* in compliance with ORS 480.330.

(32) “*Verifiable Documentation*” means *documentation* that can be verified by the State Fire Marshal as true and accurate.

Stat. Auth.: ORS 480.380
Stats. Implemented: ORS 480.310 - 480.385

ADMINISTRATIVE RULES

Hist.: FM 5-1990, f. 7-13-90, cert. ef. 10-15-90; FM 4-1991(Temp), f. 12-31-91, cert. ef. 1-1-92; FM 4-1992, f. 6-15-92, cert. ef. 7-15-92; FM 2-1995, f. 10-11-95, cert. ef. 10-16-95; OSFM 1-2002, f. & cert. ef. 2-25-02; OSFM 6-2005, f. 5-24-05, cert. ef. 5-26-05; OSFM 1-2007, f. 3-30-07, cert. ef. 4-1-07

837-020-0040

General

(1) *Nonretail facility* and *conditional nonretail facility operators* desiring to engage in *nonretail facility* or *conditional nonretail facility* operations *must* comply with all applicable state, federal and local laws, rules and regulations including, but not limited to:

- (a) ORS 480.310 through 480.385;
- (b) OAR 837-020-0025 through 837-020-0125;
- (c) *Oregon Fire Code*, 2006 Edition;
- (d) OAR chapter 837, division 85 — Hazardous Materials Reporting;

and

- (e) NFPA 30 and 30A.

(2) In addition to other applicable provisions of law, each *nonretail facility* and *conditional nonretail facility* *must* meet the following requirements as per OAR 837-020-0040:

(a) Proper drainage grades or curbs *must* be situated to prevent any spills from flowing towards any building or other pump islands;

(b) Locations for the *emergency* fuel shut off devices *must* be clearly and conspicuously posted;

(c) Instructions for the operation of nonretail dispensers *must* be clearly and conspicuously posted;

(d) Locations of all fire extinguishers *must* be clearly and conspicuously posted;

- (e) Fire extinguishers *must* be accessible;

- (f) Be adequately lighted at all times when available for use;

(g) A fire alarm transmitting device or a telephone not requiring a coin or credit card to operate *must* be provided, and be accessible, at each *nonretail facility* and *conditional nonretail facility* during all hours of operation. This equipment *must* be maintained in good working order in the event *emergency* assistance is needed; and

- (h) All applicable provisions of the OFC *must* be met.

(3) All *nonretail facilities* and *conditional nonretail facilities* *must* have the following warning signs posted. These signs *must* be readily visible and readable from each *Class 1 flammable liquid* dispensing pump from a distance of ten feet and state:

- (a) Smoking is prohibited;

- (b) Vehicle engines *must* be shut off while fueling;

- (c) The *nonretail facility* or *conditional use facility* address;

- (d) The telephone number of the *owner* or *operator*;

- (e) Do not fill unapproved *containers*;

(f) Portable *containers* *must* be removed from inside the trunk, passenger compartment, or truck bed of a vehicle and placed on the ground before filling;

(g) It is a violation of law, subject to penalty, to dispense *Class 1 flammable liquids* without first receiving the training required by OAR 837-020-0055; and

(h) It is a violation of law, subject to penalty, to dispense *Class 1 flammable liquids* for personal use or into *motor vehicles* or *containers* not owned or used by a business, government, non-profit, or charitable organization, per ORS 480.345(4), (not required at *conditional nonretail facilities*);

(i) Discharge your static electricity before fueling by touching a metal surface away from the nozzle.

(j) To prevent static charge, do not reenter your vehicle while gasoline is pumping;

- (k) If a fire starts, do not remove nozzle, use emergency fuel shut off.

(4) In addition to the provisions required by OAR 837-020-0040, nonretail *dual operation* facilities separated by distance *must*:

(a) Have signs visible from each driveway access point identifying the retail and nonretail pump islands. Signs *must* be readily visible and readable, be at least three feet by four feet in size, and have a minimum height of six inch letters on a contrasting background;

(b) Where retail and nonretail dispensing of *Class 1 flammable liquids* occurs during the same hours, nonretail pump islands *must* be separated from retail pump islands by a space of at least 50 feet. Nonretail and retail pump islands *may* be separated by a distance of no less than 20 feet, provided prior approval is given by the State Fire Marshal, and that one of the following barriers is present:

(A) An approved solid physical barrier or a solid wall at least four feet high, constructed of fire resistive materials, and which runs the entire length of the pump island; or

(B) A fire resistive building, meeting the requirements of the building code.

(c) Unless pump islands are separated by at least 50 feet (20 feet with an approved barrier), retail and nonretail *dispensing may not* occur during the same hours at a facility;

(d) Where retail and nonretail *dispensing* is separated only by time, signs *must* be visible from each driveway access point and each *Class 1 flammable liquid dispensing* pump stating the days and hours that separate retail and nonretail operations occur. These signs *must* be readily visible and readable, be at least three feet by four feet in size, and have a minimum height of six inch letters on a contrasting background.

(5) At least 45 days prior to the start of intended operations, the facility *owner* or *operator* of each new *nonretail facility* and *conditional nonretail facility* covered by OAR 837-020-0040 *must* file the appropriate *license application* forms and certifications with the State Fire Marshal.

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

Stat. Auth.: ORS 480.380

Stats. Implemented: ORS 480.310 - 480.385

Hist.: FM 4-1992, f. 6-15-92, cert. ef. 7-15-92; FM 2-1995, f. 10-11-95, cert. ef. 10-16-95; OSFM 1-2002, f. & cert. ef. 2-25-02; OSFM 10-2002, f. & cert. ef. 12-6-02; OSFM 6-2005, f. 5-24-05, cert. ef. 5-26-05; OSFM 1-2007, f. 3-30-07, cert. ef. 4-1-07

837-020-0045

Operation of Class 1 Flammable Liquid Dispensing Device by General Public Prohibited

Owners or *operators* of facilities where *Class 1 flammable liquids* are dispensed at retail *may not* allow any *individual* other than *owners*, *operators*, and their *employees*, when acting in their employment capacity to use or manipulate any pump, hose, pipe or other device used at the *facility* to dispense *Class 1 flammable liquids* into a fuel tank of a *motor vehicle* or *container*.

EXCEPTIONS:

(1) *Individuals* other than *owners*, *operators* and *employees* of the *nonretail facility* may be authorized to dispense *Class 1 flammable liquids* at *nonretail facilities* if such *individuals* meet the requirements of ORS 480.310 through 480.385 and OAR 837-020-0025 through 837-020-0125.

(2) Motorcycle assisted fueling at *retail facilities*. A motorcyclist operating their motorcycle *may* handle the nozzle for *dispensing* fuel, but *may not* activate or deactivate any fuel dispensing device. *Individuals* who violate this fueling procedure *may* be subject to citation under OAR 837-020-0125.

(3) Aviation fuel dispensed at airports permitted by the Oregon Department of Aviation.

Stat. Auth.: ORS 476 & 480.380

Stats. Implemented: ORS 480.330 & 480.345

Hist.: FM 5-1990, f. 7-13-90, cert. ef. 10-15-90; FM 4-1991(Temp), f. 12-31-91, cert. ef. 1-1-92; FM 4-1992, f. 6-15-92, cert. ef. 7-15-92; OSFM 1-2002, f. & cert. ef. 2-25-02; OSFM 1-2007, f. 3-30-07, cert. ef. 4-1-07

837-020-0050

Conditions for Operation of Dispensing Device by Nonretail Customers

Notwithstanding ORS 480.330 and 480.340 or OAR 837-020-0045, *persons*, other than *owners*, *may* be authorized to dispense *Class 1 flammable liquids* at *nonretail facilities* only under the following conditions: *The nonretail customer* and *conditional use customer* satisfies all requirements of OAR 837-020-0045 through 837-020-0095.

Stat. Auth.: ORS 480.380

Stats. Implemented: ORS 480.345

Hist.: FM 4-1991(Temp), f. 12-31-91, cert. ef. 1-1-92; FM 4-1992, f. 6-15-92, cert. ef. 7-15-92; OSFM 1-2002, f. & cert. ef. 2-25-02; OSFM 10-2002, f. & cert. ef. 12-6-02; OSFM 6-2005, f. 5-24-05, cert. ef. 5-26-05; OSFM 1-2007, f. 3-30-07, cert. ef. 4-1-07

837-020-0055

Fire Safety Training

(1) *Owners* or *operators* of *nonretail facilities* and *conditional nonretail facilities* *must* provide an initial fire safety training course to each *nonretail customer* and each *conditional use customer* authorized to dispense *Class 1 flammable liquids*. The training *may* be delivered through any suitable method that contains all provisions of 837-020-0055(2) and *must* be provided prior to allowing *nonretail customers* and *conditional use customers* to dispense *Class 1 flammable liquids*. A signed document indicating receipt of safety training *must* be maintained by each *operator* as part of each customer file.

- (2) The fire safety training described in section (1) *must* include:

(a) The hazards of all forms of *Class 1 flammable liquids* to be *dispensed* by the *nonretail customers* and *conditional use customers*;

(b) The location and operation of *emergency* fuel shut off devices required under the OFC;

- (c) The no smoking set-back requirements of the OFC;

(d) Procedures for contacting the local fire department and other *emergency* service organizations;

- (e) The use of the fire extinguishers required under the OFC; and

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(f) The type of portable *containers* that may be filled and the safe procedures for filling them.

(3) All *nonretail customers* and *conditional use customers* who wish to dispense *Class 1 flammable liquids* at *nonretail facilities* and *conditional nonretail facilities* must successfully complete the fire safety training described in sections (1) and (2) of this rule prior to engaging in *dispensing operations*.

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

Stat. Auth.: ORS 476 & 480.380

Stats. Implemented: ORS 480.345

Hist.: FM 5-1990, f. 7-13-90, cert. ef. 10-15-90; FM 4-1992, f. 6-15-92, cert. ef. 7-15-92; OSFM 1-2002, f. & cert. ef. 2-25-02; OSFM 6-2005, f. 5-24-05, cert. ef. 5-26-05; OSFM 1-2007, f. 3-30-07, cert. ef. 4-1-07

837-020-0060

Quantity of Purchase Criteria

(1) Except as provided below, each *nonretail customer* must file *documentation* with the *owner* or *operator* to show the *nonretail customer* purchases at least 900 gallons of *Class 1 flammable liquids* fuel every 12 months for business, government, nonprofit, or charitable purposes.

(2) The 900 gallons may have been purchased from any source. The *nonretail customer* must provide *documentation* to the *owner* or *operator* to demonstrate this requirement has been met if the *nonretail customer* does not purchase 900 gallons from the *owner* or *operator* they have entered into an agreement with. This *documentation* must be readily available for review by the State Fire Marshal.

(3) Diesel fuel used for the purpose of fueling a motor vehicle may be counted toward the 900 gallon minimum fuel purchase requirement.

(4) *Nonretail customers* that do not meet the requirements of ORS 480.345 and this section must have their access to nonretail fuel *dispensing* revoked by the *nonretail facility owner* or *operator*.

(5) *Nonretail customers* who wish to dispense *Class 1 flammable liquids* at a *nonretail facility* are not required to meet the provisions of this section if:

(a) The *nonretail customer* annually provides *documentation* that the fuel qualifies as a deductible farming expense on the *nonretail customer's* Schedule F of their federal income tax return; or

(b) The fuel was purchased by a governmental agency providing fire, ambulance or police services; or

(c) The *nonretail customer* was a customer of a *nonretail facility* on and since June 30, 1991, and meets all other requirements of OAR 837-020-0050.

(6) *Nonretail customer* applicants must certify under ORS 162.075 they will purchase the quantity of fuel required by OAR 837-020-0060 within 12 months of the date of their first fuel purchase or when their account was established. Customers failing to meet this requirement must be terminated as a *nonretail customer*.

NOTE: This section does not apply to *Conditional Use Customers*.

Stat. Auth.: ORS 480.380

Stats. Implemented: ORS 480.345 & 480.360

Hist.: FM 4-1991(Temp), f. 12-31-91, cert. ef. 1-1-92; FM 4-1992, f. 6-15-92, cert. ef. 7-15-92; OSFM 1-2002, f. & cert. ef. 2-25-02; OSFM 10-2002, f. & cert. ef. 12-6-02; OSFM 6-2005, f. 5-24-05, cert. ef. 5-26-05; OSFM 1-2007, f. 3-30-07, cert. ef. 4-1-07

837-020-0065

Certification and Record Keeping

(1) Each *owner* or *operator* of a *nonretail facility* or a *conditional nonretail facility* must provide the safety training required by OAR 837-020-0055 to all their *nonretail customers* and their *conditional use customers*.

(2) *Owners* or *operators* of *nonretail facilities* and *conditional nonretail facilities* must maintain electronic or hard copy *documentation* that is readily accessible to demonstrate all *nonretail customers* and *conditional use customers* meet the requirements of OAR 837-020-0050.

(3) *Owners* or *operators* of *nonretail facilities* and *conditional nonretail facilities* must maintain *documentation* to demonstrate that, at a minimum, weekly site visits of each *nonretail facility* and *conditional nonretail facility* have been performed. Such *documentation* must be noted on forms approved by the State Fire Marshal, and must be readily accessible to demonstrate this requirement has been met.

(4) *Owner* or *operators* of *nonretail facilities* and *conditional nonretail facilities* must provide *documentation* to the State Fire Marshal to certify violations of OAR 837-020-0025 through 837-020-0125 have been corrected.

(5) The *documentation* of corrections must be received by the specified time referenced in the Notice and Order of Correction provided by the State Fire Marshal.

(6) Failure to provide *documentation* in accordance with OAR 837-020-0025 through 837-020-0125 constitutes a violation which may result in civil penalty assessment to the *owner* or *operator*, and may result in the revocation of their *license*.

Stat. Auth.: ORS 476 & 480.380

Stats. Implemented: ORS 480.345 - 480.375

Hist.: FM 5-1990, f. 7-13-90, cert. ef. 10-15-90; FM 4-1991(Temp), f. 12-31-91, cert. ef. 1-1-92; FM 4-1992, f. 6-15-92, cert. ef. 7-15-92; OSFM 1-2002, f. & cert. ef. 2-25-02; OSFM 6-2005, f. 5-24-05, cert. ef. 5-26-05; OSFM 1-2007, f. 3-30-07, cert. ef. 4-1-07

837-020-0070

Nonretail and Conditional Use Customer Agreements

(1) The *owner* or *operator* must enter into a written agreement with *nonretail customers* and *conditional use customers* permitted under OAR 837-020-0050 to dispense fuel at the *nonretail facility* and *conditional nonretail facility*. Except as otherwise provided in ORS 480.355, the agreement must at a minimum:

(a) Certify that the *nonretail customer* will purchase at least 900 gallons of *Class 1 flammable liquids*, including diesel fuel, from any source during a 12-month period, or if the amount of *Class 1 flammable*, including diesel fuel, purchased is less than 900 gallons annually, file *documentation* that:

(A) The fuel qualifies as a deductible farming expense on the *nonretail customer's* current Schedule F of their federal income tax return; or

(B) The fuel was purchased by a governmental agency providing fire, ambulance or police services;

(C) The *nonretail customer* was a customer of *nonretail facility* on and since June 30, 1991, and meets all other requirements of OAR 837-020-0050.

(b) Provide a verifiable federal employer identification number or *equivalent documentation* to indicate participation in a business or employment with a government agency or nonprofit or charitable organization;

(c) Certify that the *nonretail customer* is employed by a business, government agency or nonprofit or charitable organization and that the *nonretail customer* will dispense *Class 1 flammable liquids* only into the fuel tank of a *motor vehicle* or *container* owned or used by the business, government agency or nonprofit or charitable organization;

(d) That all *Class 1 flammable liquids* dispensed at *nonretail facilities* will be for *business use* only, and that the *nonretail customer* is subject to a penalty if fueling a *motor vehicle* or *container* for personal use; and

(e) Certify that the *nonretail customer* or *conditional use customer* has satisfied safety training requirements in compliance with rules of the State Fire Marshal; and

(f) Require the *nonretail customer* or *conditional use customer* to submit a sworn statement, as defined in ORS 162.055, that the information supplied in the agreement is true and correct.

(2) The requirements of subsections (1)(a), (b), (c), and (d) of this rule to not apply to *conditional use customer* agreements.

Stat. Auth.: ORS 480.380

Stats. Implemented: ORS 480.345 & 480.355

Hist.: FM 4-1991(Temp), f. 12-31-91, cert. ef. 1-1-92; FM 4-1992, f. 6-15-92, cert. ef. 7-15-92; OSFM 1-2002, f. & cert. ef. 2-25-02; OSFM 6-2005, f. 5-24-05, cert. ef. 5-26-05; OSFM 1-2007, f. 3-30-07, cert. ef. 4-1-07

837-020-0075

Complaint and Enforcement Procedures

(1) Alleged violations at *retail facilities*, *nonretail facilities*, and *conditional nonretail facilities* are subject to investigation by the State Fire Marshal.

(2) Upon request of the State Fire Marshal, the *owner* or *operator* must be able to demonstrate that all *nonretail customers* and *conditional use customers* dispensing *Class 1 flammable liquids* at their *nonretail facilities* and *conditional nonretail facilities* meet the requirements of OAR 837-020-0050.

(3) *Owners* or *operators* of *retail facilities*, *nonretail facilities*, and *conditional nonretail facilities* who fail to meet the applicable requirements of OAR 837-020-0040 may be subject to the enforcement and closure provisions of ORS 479.170 in addition to the provisions in OAR 837-020-0125.

Stat. Auth.: ORS 476 & 480.380

Stats. Implemented: ORS 480.365 - 480.375 & 480.385

Hist.: FM 5-1990, f. 7-13-90, cert. ef. 10-15-90; FM 4-1991(Temp), f. 12-31-91, cert. ef. 1-1-92; FM 4-1992, f. 6-15-92, cert. ef. 7-15-92; OSFM 1-2002, f. & cert. ef. 2-25-02; OSFM 1-2007, f. 3-30-07, cert. ef. 4-1-07

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837-020-0080

Nonretail Fuel Dispensing During a Governor Declared Emergency

(1) During an *emergency* as defined in ORS 401.025, a *nonretail facility* may permit *individuals* who are not otherwise qualified under ORS 480.345 to dispense *Class 1 flammable liquids* if all conditions specified in this section are satisfied.

(2) The *owner* or *operator* of the *nonretail facility* holds a valid *nonretail facility license* issued by the State Fire Marshal;

(3) The *owner* or *operator* has paid an application fee of \$250 as required by ORS 480.350 for each *nonretail facility* and an annual fee of \$5 for each *nonretail customer* that enters into a written agreement with the *owner* or *operator*.

(4) The *owner* or *operator* has provided a blank copy of the form required by ORS 480.345 and OAR 837-020-0070 that will be used as the written agreement between the *owner* or *operator* and *nonretail customer* that outlines the safety training and *emergency* procedures to be used at the *nonretail facility*.

(5) The *nonretail customer* and the *owner* or *operator* of the *nonretail facility* have entered into a written agreement that meets the requirements of OAR 837-020-0070.

(6) The *Class 1 flammable liquid* is dispensed only into a *motor vehicle* or *container* of an *emergency service agency* as defined in ORS 401.025 or to an entity authorized by an *emergency service agency* to provide services during an *emergency*.

(7)(a) The *nonretail customer*, other than the *owner* or *operator*, is an *emergency service worker* as defined in ORS 401.025 and dispenses *Class 1 flammable liquids* only into the fuel tank of a *motor vehicle* or *container* owned or used by the *emergency service agency*; or

(b) An *owner* or *employee* of the entity authorized by the *emergency service agency* to provide services during an *emergency* and dispenses *Class 1 flammable liquids* only into the fuel tank of a *motor vehicle* or other *container* owned or used by the entity authorized by that agency to provide services during an *emergency*.

(8) The *nonretail customer*, other than the *owner* or *operator* or *employee*, dispensing *Class 1 flammable liquids* satisfies safety training requirements of OAR 837-020-0055.

(9) The *owner* or *operator* is responsible to bear the burden of production and proof that the requirements of OAR 837-020-0040, and any other rules of the State Fire Marshal have been satisfied.

Stat. Auth.: ORS 480.347
Stats Implemented: ORS 480
Hist.: OSFM 1-2002, f. & cert. ef. 2-25-02; OSFM 10-2002, f. & cert. ef. 12-6-02; OSFM 1-2007, f. 3-30-07, cert. ef. 4-1-07

837-020-0085

Nonretail and Conditional Nonretail Facility License Requirements

(1) *Nonretail* and *conditional nonretail facilities* must obtain a valid *license* issued by the State Fire Marshal, prior to operating a *nonretail facility* or a *conditional nonretail facility*.

(2) A separate *license* is required for each *nonretail facility* and *conditional nonretail facility*.

(3) All initial *facility licenses* be valid for one year from the date of issue.

(4) In accordance with ORS 183.705, a renewal date of a *facility license* may be adjusted or prorated to correspond with existing State Fire Marshal licensing year dates.

(5) The State Fire Marshal will issue a *license* to the *owner* or *operator* if the *owner* or *operator* has:

(a) Complied with the requirements established by OAR 837-020-0040;

(b) Submitted the application to the State Fire Marshal on forms supplied by the State Fire Marshal;

(c) Certified that the *owner* or *operator* will comply with all provisions of ORS 480.345, the OFC, and this division;

(d) Provided a blank copy of the form that will be used as the written agreement required under ORS 480.345 and OAR 837-020-0070;

(e) Provided a blank copy of the safety training that is provided to their *nonretail customers* and *conditional use customers*, to ensure the safety training meets all requirements of OAR 837-020-0055;

(f) Paid an application fee of \$250 for each *facility site* and \$5 for each *nonretail customer* and *conditional use customer* as required by OAR 837-020-0115.

(6) Any and all certification required by this section *must* be made in accordance with ORS 162.075.

(7) The *owner* or *operator* bears the burden of production and proof that the requirements of this Division, and all applicable rules of the State Fire Marshal have been satisfied.

(8) The State Fire Marshal *may* conduct an on-site inspection to determine compliance with OAR 837-020-0040 and other applicable fire and life safety laws prior to issuing a *nonretail facility* or *conditional nonretail facility license* to the *owner* or *operator* under section (4) of this rule.

(9) In addition to the requirements set forth in this section, *owners* or *operators* who wish to operate a *dual operations facility*, the *owner* or *operator* *must* provide to the State Fire Marshal, on State Fire Marshal forms, the specific hours and days when the *owner* or *operator* proposes to conduct only *retail dispensing* and the specific hours and days when the *owner* or *operator* proposes to conduct only *nonretail dispensing*.

(10) In addition to the requirements set forth in this section, *owners* or *operators* who wish to operate a *conditional nonretail facility*, *must* comply with the following:

(a) A *conditional nonretail facility* may permit *persons* who are not otherwise qualified under OAR 837-020-0050 to dispense *Class 1 flammable liquids* if all conditions specified in this section are satisfied;

(b) After investigation and public hearing, and after considering the comments of local residents and government officials, the State Fire Marshal *may* issue a *conditional nonretail license* to an *owner* or *operator* for local non-commercial use if the State Fire Marshal finds:

(A) There is no *facility* where *Class 1 flammable liquids* are dispensed by attendants at *retail*, including *dual operation facilities*, within seven miles of the *owner* or *operator's nonretail facility*, and other undue hardship conditions exist. Such undue hardship conditions are determined on a case by case basis and *may* include, but are not limited to, road conditions, and volume and type of traffic in the affected area;

(B) The *owner* or *operator* has certified that the *owner* or *operator* will comply with the applicable provisions of ORS 480.345(1), (5), (6)(d), and (6)(e), and this division;

(C) The method of access to a *conditional nonretail facility* only allows access to that specific *conditional nonretail facility* and no other *nonretail facility* or *conditional nonretail facility*.

(11) Within a given geographical area, applications for *conditional nonretail licenses* issued under this section are considered in order of priority of receipt. The date the State Fire Marshal actually receives the application determines its priority.

(12) A *conditional nonretail license* may not be renewed if the requirements of this Section are not met at the time of application for renewal. There is no guarantee of continued operations under this section.

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

Stat. Auth.: ORS 480.380 & 480.355

Stats. Implemented: ORS 480.350 & 480.355

Hist.: FM 4-1991(Temp), f. 12-31-91, cert. ef. 1-1-92; FM 4-1992, f. 6-15-92, cert. ef. 7-15-92; OSFM 1-2002, f. & cert. ef. 2-25-02; OSFM 6-2005, f. 5-24-05, cert. ef. 5-26-05; OSFM 1-2007, f. 3-30-07, cert. ef. 4-1-07

837-020-0105

License Denials, Revocations and Suspensions; Civil Penalties and Appeals

(1) The State Fire Marshal *may* deny, revoke, or suspend a *nonretail facility* or *conditional nonretail facility license* if the *owner* or *operator*:

(a) Fails to comply with OAR 837-020-0040, or any other rule, pertaining to *nonretail fuel dispensing*, adopted by the State Fire Marshal; or

(b) Falsifies any information in the application for the *license*.

(2) The option of denial, revocation or suspension *may* be based on the following:

(a) The number of similar or related violations alleged to have been committed in the current *license* year;

(b) Whether the violation or violations were willful or intentional;

(c) The prior history of violations committed by the *owner* or *operator*; or

(d) Other circumstances determined by the State Fire Marshal to be applicable to the particular violation or violations.

(3) Suspension or revocation of a *license* may include suspension or revocation of the current *license* and the right to apply for a subsequent *license*.

(4) Where the State Fire Marshal has alleged a self-service violation at a *retail facility*, *nonretail facility*, or *conditional nonretail facility*, the burden of proof to show the purchase was in compliance with the requirements of ORS 480.330 through 480.385 and OAR chapter 837, division 20 shifts from the state to the *owner* or *operator* once the state establishes and provides the *owner* or *operator* with the following information:

(a) The date and time of the alleged violation;

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(b) The *facility* location, including the pump number where the alleged violation occurred;

(c) The vehicle description and *license* number; and

(d) A description of the *individual dispensing the Class 1 flammable liquids*.

(5) Any *owner* or *operator* who applies for a *license* required by OAR 837-020-0085, and whose application is denied, is entitled to file an appeal. Appeals are conducted as contested case proceedings pursuant to ORS 183.413 to 183.470.

(6) Before suspending, revoking or terminating a *license* issued under OAR 837-020-0085, the State Fire Marshal will give prior notice to the licensee and offer a hearing. If requested, such hearings are conducted as contested case proceedings pursuant to ORS 183.413 to 183.470.

(7) Where the State Fire Marshal proposes to assess a civil penalty under ORS 480.385 and OAR 837-020-0125, appropriate notice of appeal rights will be given under ORS 480.385.

(8) Judicial review of a final order made after a hearing requested under section (1) or (2) of this rule will be as provided in ORS 183.480 to 183.497 for judicial review of contested cases.

(9) Nothing in this Section *may* prevent the State Fire Marshal from closing a *nonretail facility* or a *conditional nonretail facility* under ORS 479.170, provided that the accelerated appeals process explained in ORS 479.180 is observed.

(10) Where a *nonretail customer* or a *conditional use customer* account list has been submitted to the State Fire Marshal during enforcement or appeal proceedings, the State Fire Marshal will treat the list as confidential to the extent allowed by law.

Stat. Auth.: ORS 480.380
 Stats. Implemented: ORS 480.355, 480.365 - 480.375 & 480.385
 Hist.: FM 4-1991(Temp), f. 12-31-91, cert. ef. 1-1-92; FM 4-1992, f. 6-15-92, cert. ef. 7-15-92; OSFM 1-2002, f. & cert. ef. 2-25-02; OSFM 6-2005, f. 5-24-05, cert. ef. 5-26-05; OSFM 1-2007, f. 3-30-07, cert. ef. 4-1-07

837-020-0115

Application, License Renewals, and Annual Fees

(1) Any *owner* or *operator* engaged in, or intending to engage in, the operation of a *nonretail facility* or a *conditional nonretail facility* must apply for and obtain a *license* issued by the State Fire Marshal. The application, fees, and supporting documents for new facilities *must* be submitted and received by the State Fire Marshal 45 days prior to the start of the operation.

(2) A separate *license* *must* be applied for and obtained for each *nonretail facility* or *conditional nonretail facility*.

(3) The *license* *must* be obtained prior to start of the *nonretail facility* or *conditional nonretail facility* operation, or the *owner* or *operator* may be assessed a civil penalty and be subject to closure of the *Nonretail* or *conditional nonretail facility*.

(4) The application fee for each *nonretail facility* and *conditional nonretail facility license* is \$250 per facility. *Licenses* are valid for one year from the date of issue.

(5) In accordance with ORS 183.705, the *license* renewal date of a *facility* *may* be adjusted or prorated to correspond with existing State Fire Marshal licensing year dates.

(6) *License* fees *may* be either paid at, or mailed to, the State Fire Marshal. The *license application* *may* be either delivered to or mailed to the State Fire Marshal.

(7) Payment *may* be made by personal check, business check, cashier's check or money order made payable to the State Fire Marshal. If the fee is paid by either personal or business check, the State Fire Marshal *may not* take any action on the *license application* until the check has cleared the bank.

(8) In addition to the application and renewal fees assessed by this section, *owners* or *operators* of *nonretail facilities* and *conditional nonretail facilities* *must* pay to the State Fire Marshal an annual account fee of \$5 for each *nonretail customer* and *conditional use customer* who has access to dispense *Class 1 flammable liquids* at any time during the applicable *license* year.

(9) *License* renewal applications, accompanying *documentation*, and payment *must* be postmarked by a United States Postmark, or received at the Office of State Fire Marshal, no later than 30 days prior to the *license* expiration for a *license* renewal valid for the following *license*. If the 30 days prior to the *license* expiration date falls on a day when a postmark cannot be obtained, the applications *must* be postmarked or received by the Office of State Fire Marshal on the preceding business day.

(10) *License application* renewals postmarked or received after the deadline set forth under subsection (8) of this rule *may* be subject to a civil penalty.

Stat. Auth.: ORS 480.380
 Stats. Implemented: ORS 480.350 & 480.355
 Hist.: FM 4-1991(Temp), f. 12-31-91, cert. ef. 1-1-92; FM 3-1992(Temp), f. & cert. ef. 4-24-92; FM 4-1992, f. 6-15-92, cert. ef. 7-15-92; OSFM 1-2002, f. & cert. ef. 2-25-02; OSFM 6-2005, f. 5-24-05, cert. ef. 5-26-05; OSFM 1-2007, f. 3-30-07, cert. ef. 4-1-07

837-020-0120

Hearings and Contested Cases

A *person* *may* request a Formal Hearing regarding the suspension, revocation, or denial of a *license* by the State Fire Marshal.

(1) A Request for Hearing *must* be timely filed.

(2) A Request for Hearing is timely filed when the request is post-marked or received by the State Fire Marshal within 20 days from the date of service of the notice of suspension, revocation, or denial, unless a 60-day deadline applies pursuant to ORS 183.435.

(3) If a Request for Hearing is not timely filed under section (c) of this rule, the *person* waives the right to a contested case under ORS Chapter 183.

(4) A *person* *may* write to or call the State Fire Marshal to informally discuss the notice of suspension, revocation, or denial; however, an informal communication does not extend the deadline established in 837-020-0105 subsection (3).

(5) A contested case *may* include:

- (a) An Informal Conference;
- (b) A Formal Hearing, or both.

(6) A contested case will be conducted pursuant to the provisions of ORS Chapter 183 and the rules adopted thereto.

(7) The State Fire Marshal *may* provide an opportunity for an Informal Conference. A request for an Informal Conference *must* be in writing; and *must*:

- (a) Be addressed to the State Fire Marshal; and
- (b) Clearly state the issue or issues to be discussed; and
- (c) If the State Fire Marshal and the party or parties agree, an Informal Conference *may* be held by telephone.

(8) After an Informal Conference, the State Fire Marshal *may* amend, withdraw, or reduce the suspension, revocation, or denial. Such action will be taken in accordance with ORS Chapter 183 and the rules adopted thereto.

(9) A *person* *may* file a written Request for Hearing before or after an Informal Conference, at any time before the deadline established in section (3) of the Contested Cases section of OAR 837-020-0120.

(10) The State Fire Marshal is responsible to arrange for a hearings officer to conduct the Formal Hearing.

(11) The State Fire Marshal will set a date, time, and location for the Formal Hearing.

Stat. Auth.: ORS 476.030 & 480.310 - 480.385
 Stats. Implemented: ORS 480.310 - 480.385
 Hist.: OSFM 6-2005, f. 5-24-05, cert. ef. 5-26-05; OSFM 1-2007, f. 3-30-07, cert. ef. 4-1-07

837-020-0125

Penalties

The State Fire Marshal *may* impose a civil penalty of up to \$500 for each violation of ORS 480.310 through 480.385, and OAR 837-020-0040. All penalties are imposed in accordance with the following penalty matrix established by the State Fire Marshal. Penalties *may* be based on history, violation types, number of instances of violations identified, and severity of violations.

Violation Types, Instances, and Penalty Assessments

(1) The Types of Violations are:

- (a) Least — Type I;
- (b) Minimal — Type II;
- (c) Moderate — Type II;I
- (d) Severe — Type IV.

(2) The violation instance is determined based on the number of times a *person*, *individual*, *owner*, or *operator* has committed a violation. A violation occurs each time a *person*, *individual*, *owner*, or *operator* breaks a rule established by OAR 837-020-0040.

PENALTY MATRIX: VIOLATION TYPE PENALTY INSTANCE			
	1	2	3
I. LEAST	\$25	\$50	\$ 75
II. MINIMAL	\$50	\$75	\$150
III. MODERATE	\$150	\$200	\$250
IV. SEVERE	\$300	\$400	\$500

TYPE I: LEAST
Eligibility Documentation (excluding safety training)
 Signs—
 Retail/Nonretail locations
 Phone # of operator

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It is a violation of law...
Days and hours of operation of time separation *facility* not present or correct
Other _____
TYPE II: MINIMAL
License applications not received by deadline
AST labels for above ground tanks not present
Dispensing instructions not present
Other _____
TYPE III: MODERATE
Unlawful *dispensing at nonretail facilities*
Certification of correction of deficiencies not provided in accordance with Notice and Order
Weekly Site Inspections not done on a regular basis.
Signs —
No Smoking...
Emergency Fuel Shut Off Device location
Fire Extinguisher location
Do Not Fill Unapproved *Containers*
In Case of Fire...
Portable container
Discharge static electricity
Other _____
TYPE IV: SEVERE
Falsified license application
Required *facility* equipment not present or not in good working order
Safety training not provided prior to allowing customer to dispense fuel
Unlawful *dispensing at retail facilities*
Operating a *nonretail facility or conditional nonretail facility* without a *license*
Other _____
Stat. Auth.: ORS 480.380
Stats. Implemented: ORS 480.380 & 480.385
Hist.: FM 4-1991(Temp), f. 12-31-91, cert. ef. 1-1-92; FM 4-1992, f. 6-15-92, cert. ef. 7-15-92 (and corrected 6-22-92); OSFM 1-2002, f. & cert. ef. 2-25-02; OSFM 10-2002, f. & cert. ef. 12-6-02; OSFM 6-2005, f. 5-24-05, cert. ef. 5-26-05; OSFM 1-2007, f. 3-30-07, cert. ef. 4-1-07

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Department of Revenue
Chapter 150

Rule Caption: Eliminates '10 unit' denomination of cigarette tax stamp and adds 'one unit' denomination.

Adm. Order No.: REV 2-2007(Temp)

Filed with Sec. of State: 3-21-2007

Certified to be Effective: 3-21-07 thru 7-30-07

Notice Publication Date:

Rules Amended: 150-323.160(1)

Subject: To provide the manner in which the Department of Revenue will sell self-adhesive cigarette tax stamps. To delete references to stamps sold for a 10 unit package of cigarettes.

Rules Coordinator: Debra L. Buchanan—(503) 945-8653

150-323.160(1)

Tax Stamp Units of Sale; Minimum Sales

(1) The Department of Revenue will sell cigarette tax stamps only to licensed distributors and their properly authorized employees whose signature cards are in the possession of the designated agent of the department. The department has set the minimum unit purchases for each sale as follows:

(2)(a) Heat-applied decal tax stamps for the denominated value of 20 units per pack are sold in rolls containing 30,000 stamps. The stamps are sold in full rolls only and the smallest sale unit is one roll;

(b) Heat-applied decal tax stamps for the denominated value of 25 units per pack are sold in rolls containing 7,200 stamps. The stamps are sold in full rolls only and the smallest sale unit is one roll;

(c) Heat-applied decal tax stamps for the denominated value of 20 units per pack are sold in pads containing 10 sheets of 100 stamps per sheet. The stamps are sold in full pads and the smallest sale unit is one pad of 10 sheets totaling 1,000 stamps;

(d) Self-adhesive decal tax stamps for the denominated value of 1 unit per pack are sold in pads containing 10 sheets of 150 stamps per sheet. The stamps are sold in full pads and the smallest sale unit is one pad of 10 sheets totaling 1,500 stamps.

Stat. Auth.: ORS 305.100 & 323.440
Stats. Implemented: ORS 323.160
Hist.: 6-66; 9-71; RD 8-1984, f. 12-5-84, cert. ef. 12-31-84; RD 5-1993, f. 12-30-93, cert. ef. 12-31-93; REV 11-1999, f. 12-30-99, cert. ef. 12-31-99; Renumbered from 150-323.155, REV 5-2004, f. 7-30-04, cert. ef. 7-31-04; REV 2-2007(Temp), f. & cert. ef. 3-21-07 thru 7-30-07

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Rule Caption: Alternative Method of Certifying Expenditures related to County Assessment Function Funding Assistance (CAFFA) Account Grants.

Adm. Order No.: REV 3-2007(Temp)

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

Certified to be Effective: 4-5-07 thru 10-1-07

Notice Publication Date:

Rules Adopted: 150-294.181

Subject: Describes how a county may qualify for certification of assessment and taxation (A&T) expenditures using an alternative method of certification for purpose of participating in the County administrative function funding account (CAFFA) grant program when the county is unable to achieve required performance for assessment and taxation expenditures.

Rules Coordinator: Debra L. Buchanan—(503) 945-8653

150-294.181

Alternative Method for Certification

(1) If, at a conference held pursuant to notice under ORS 294.175, a county is unable to meet the level of expenditures required by the department for certification in the county assessment function funding assistance program for a particular year, that county may request that the department certify a lesser level of expenditures under the alternative method described in this rule.

(2) To meet the requirements of this alternative method of certification, a county must submit a plan that describes the actions the county will take to achieve adequacy of expenditures for the county assessment and taxation program. The department will not certify any plan submitted by a county that requires more than three tax years to comply with ORS 308.232 and 308.234, ORS Chapter 309 and other laws requiring equality and uniformity in the system of property taxation within the county.

(3) The plan submitted by the county may include any combination of increased expenditures or increased efficiencies that will lead to adequacy within the specified duration of the plan.

(4) Acceptance of the plan described in paragraph (2) of this rule is at the discretion of the department. No plan will be accepted for which compliance is conditioned only upon the county's future receipt of funding authority not in existence at the time of submission of the plan.

Example 1:

The department determines County A's assessment program is inadequate because it fails to meet the minimum requirements under ORS 294.175. The department determines that two appraisers are necessary to satisfy the minimum requirements. Pursuant to a plan submitted under ORS 294.181, County A proposes to add two appraisers beginning in December of the fiscal year, contingent on passage of a local option levy in November to fund the positions. Because the plan to fund the appraisers is contingent upon passing the local option levy, it cannot be approved by the department.

Example 2:

The department determines County B's assessment program is inadequate because it fails to meet the minimum requirements under ORS 294.175. County B submits a plan under ORS 294.181 that agrees to add two appraisers by January 1 of the first year of the plan. The department determines that this will enable County B to achieve adequacy in the assessment program by the midpoint of the second year of the plan. Accordingly, the department certifies the expenditures presented by the county under the plan. The county also proposes to add yet another appraiser (for a total of three) if a local option measure passes in the first year of the plan. Though the addition of the third appraiser is contingent upon passage of the local option, the plan to add two appraisers is not so conditioned. The fact that a local option has been proposed to add staff or resources during the plan period will not automatically disqualify the plan submitted by the county.

(5) The department will not certify expenditures under this alternative method of certification if the expenditures for the tax year for which the filing under ORS 294.175 was made, or for any subsequent year covered by the plan, do not demonstrate the county's ability to maintain adequacy in all of the following functions:

(a) Accurate appraisal of real property in accordance with OAR 150-308.234;

(b) Assessment of new construction, subdivisions, segregations, consolidations, omitted property, and other exceptions activity described in ORS 308.146;

(c) Accurate processing of special assessment qualification applications and disqualifications, including but not limited to, farm, forest, and small tract forest programs;

(d) Accurate processing of property tax exemption and deferral applications and disqualifications;

(e) Accurate processing of personal property, real property, and combined property tax returns;

(f) Providing explanation of the process of developing real market value to a court of jurisdiction for a property tax assessment under appeal;

(g) Completing an annual ratio report and appraisal plan that meets the requirements of ORS 309.200, 308.234, and OAR 150-309.200(A), (B), and (C);

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(h) Maintaining accurate property records by timely processing deeds, including address and name changes and property transfers;

(i) Maintaining tax collection and distribution activity as prescribed by statute, including tax statement issuance, roll corrections, refunds, and processes related to delinquency notification, foreclosures, warrants, and bankruptcies;

(j) Maintaining all cadastral functions for new and existing tax lots, including lot line adjustments, consolidations, creating new maps, and updating tax code boundary changes;

(k) Maintaining accurate and current assessment and tax rolls; and

(l) Completing roll summary reports as required by ORS 309.330.

(6) The department will notify the county governing body if it determines the plan as submitted does not meet the requirements of this rule. The notice will contain an explanation of the reasons for the determination and describe specific items required to achieve adequacy.

(7) If the department determines that the plan submitted by the county or subsequently modified during conference meets the requirements of this rule, the department will certify to the county governing body the expenditures for assessment and taxation at the level contained in the county's estimate filed with the department pursuant to ORS 294.175 or as adjusted by the conference agreement.

(8) A county operating under an accepted plan must certify to the department not less than 15 days prior to the close of each fiscal quarter that the county is in compliance with the accepted plan. The certification must be in the form of a written status report that provides details demonstrating the county's compliance with the accepted plan.

(9) The department will deny grant funds pursuant to ORS 294.178(5) for any quarter in which the department determines the county has failed to demonstrate compliance with the accepted plan.

Stat. Auth.: ORS 305.100, 294.175

Stats. Implemented: ORS 294.175, 294.178, 294.181

Hist.: REV 3-2007(Temp), f. & cert. ef. 4-5-07 thru 10-1-07

Department of State Lands Chapter 141

Rule Caption: Mitigation Banking Prospectus — Public Notice Process.

Adm. Order No.: DSL 1-2007(Temp)

Filed with Sec. of State: 3-20-2007

Certified to be Effective: 3-20-07 thru 9-16-07

Notice Publication Date:

Rules Amended: 141-085-0421

Subject: The agency is changing the publication requirements for noticing its intent to create a mitigation bank by posting notice of the prospectus on the official agency web site. Currently, the agency is required to publish the notice not less than three (3) successive weeks in both a statewide and local newspaper.

Rules Coordinator: Nicole Kielsmeier—(503) 378-3805, ext. 239

141-085-0421

Requirements to Establish a Mitigation Bank

(1) All persons proposing to establish a mitigation bank shall:

(a) Meet with the Department to discuss their proposed bank and the content of their Mitigation Bank Prospectus.

(b) Prepare and submit a Mitigation Bank Prospectus to the Department.

(2) The Mitigation Bank Instrument shall contain the following elements, as applicable:

(a) The physical location of the proposed bank and identification of service area (indicated through the use of maps or aerial photographs clearly showing recognizable geographic place names, features, and/or watershed boundaries).

(b) Demonstration of need for the bank as shown by past removal-fill activities, projected demographics for the proposed service area, statements of expected activities from the local planning agency, and like documentation.

(c) List of adjacent property owners within five hundred (500) feet of any boundary of the proposed bank.

(d) Proof of ownership of, or explicit legal and recordable permission granted by the landowner to perpetually dedicate the land upon which the bank and any associated buffer is proposed.

(e) Site plan for the mitigation area indicating the location of hydrogeomorphic and Cowardin wetland classes to be produced at the site, areas

where grading will be required, location of buffers, vegetation planting plan, etc.

(f) Description of former or current uses of the proposed bank site which may have resulted in contamination by toxic materials.

(g) Description of the ecological goals and objectives of the bank.

(h) Description of the degree to which the bank potentially will provide wetland functions such as flood storage and shoreline protection, wildlife and fisheries habitat, wildlife corridors, and/or filtration of nutrients and pollution reduction.

(i) Description of the effects of adjacent existing, potential, and proposed land uses on the proposed bank.

(j) Description of the wetland losses by hydrogeomorphic and Cowardin wetland classes for which the bank will be designed to offer credits.

(k) Description of the specific and measurable performance standards against which the development of the credits in the bank will be judged.

(l) Description of reference site(s), if proposed, and their relationship to OAR 141-085-0421(2)(j) of these rules.

(m) A site assessment of the proposed bank area providing information on the:

(A) Hydrogeomorphic and Cowardin wetland classes;

(B) Ecological baseline characterizing the level of each function (if the site is currently a wetland), using a standardized regionally-appropriate function assessment method (such as the Willamette HGM) as well as vegetation, soils, hydrology, and wildlife habitat and usage; and

(C) Results of a wetland determination or delineation.

(n) Description of the method(s) used to determine the availability of credits at the proposed bank, as well as those that will be used to account for and report credit and debit transactions.

(o) Total estimated project cost itemized by major cost elements (for example, land acquisition, bank design and construction, consulting and legal fees, maintenance and monitoring over the long-term, and contingency fund).

(p) Proof that the sponsor has the financial resources to undertake, operate, and maintain the proposed bank over the long-term, as well as the ability to correct project deficiencies or performance failures.

(q) Description of the sampling protocols (including sampling frequency and seasonal schedule) used to monitor bank elements, and the name(s) and qualifications of the person(s) who will conduct such monitoring.

(r) Detailed contingency plan describing how project deficiencies or performance failures will be corrected, including assignment of responsibilities for failures such as earthquakes, floods, vandalism, damage by pests and wildlife, invasion by undesirable vegetation, etc.

(s) Proof in the form of written approval from the local government and in zone designations for the mitigation bank site and surrounding lands, applicable overlay zones, permitted and conditional uses in base and overlay zones, applicable local policies, and identification of necessary local permits and other approvals that the wetland bank is consistent with the requirements of all applicable comprehensive plans and land use regulations, watershed management plans, and/or other applicable land use plans.

(t) All items required in Compensatory Mitigation Plans provided in OAR 141-085-0141.

(u) Drafts of proposed long-term protection measures (such as conservation easements, deed restrictions, donation to non-profit environmental groups, etc.), and management plans, and mechanisms for funding. Prior to approval of the Instrument, these documents shall be signed and recorded with the appropriate government agency.

(v) Statement indicating when each of the conditions of the Instrument will terminate, unless they are perpetual in nature.

(3) The Department will review the Prospectus for sufficiency, and shall notify the sponsor in writing of the sufficiency of the document within thirty (30) calendar days of receipt. Each submittal containing substantial revisions shall restart the time clock.

(4) Any Prospectus received by the Department that does not provide sufficient information for review, or that appears to present a proposal in which the Department will not participate, will be returned to the sponsor with a written explanation.

(5) The Department reserves the right to decline to participate in the development of a Mitigation Bank Instrument and may, instead, suggest other options to the sponsor including the standard Removal-Fill Permit process, or participation in other wetland stewardship options if the sponsor cannot demonstrate:

(a) Need for the mitigation credits; or that

(b) The bank is technically feasible and ecologically desirable.

ADMINISTRATIVE RULES

(6) Upon determining that the Prospectus is sufficient, the Department shall give public notice of the Prospectus. This notice shall be called "Intent To Create A Mitigation Bank" and shall:

(a) Be posted on the agency's official web site for three (3) successive weeks.

(b) Be sent to city and county planning departments, and state agencies having jurisdiction over the mitigation bank site(s), federal natural resources and regulatory agencies, adjacent landowners, conservation organizations and other interested persons requesting such notices.

(c) Briefly describe the proposed mitigation bank and reference the Prospectus provided by the bank sponsor.

(d) Indicate that comments must be received for thirty (30) calendar days from the date of the public notice.

(7) The Department shall consider but is not bound by comments received during the public notice period in (6). If comments are not received from a state agency or from an affected local government or special district within the 30 day comment period, the Department shall assume the entity does not desire to provide comments.

(8) A Mitigation Bank Review Team (MBRT) shall be formed within thirty (30) calendar days of the date of the public notice. An MBRT shall not have more than ten (10) members, and shall be chaired jointly by a representative of the Department and, if applicable, the Corps. When the Corps does not participate in a mitigation bank proposal, the Department may, but is not obligated to, invite other federal involvement.

(a) The members of a MBRT shall be selected jointly by the Department and the Corps. Each of the following agencies will be asked to nominate a representative to participate in each MBRT:

- (A) Oregon Department of Environmental Quality;
- (B) Oregon Department of Fish and Wildlife;
- (C) Oregon Department of Land Conservation and Development;
- (D) U.S. Fish and Wildlife Service;
- (E) U.S. Environmental Protection Agency;
- (F) Soil and Water Conservation District; and
- (G) Local Government Planner, or equivalent.

(b) Other members of the MBRT shall be selected based on the nature and location of the project, particular interest in the project by persons or groups, and/or any specific expertise which may be required by the Department and the Corps in development of the Instrument.

(9) The MBRT shall:

(a) Review and comment upon the Prospectus, and provide input to the Department concerning deficiencies noted, and additional information required.

(b) Consider the comments received in response to the notice of "Intent To Create A Mitigation Bank."

(c) Assist with the drafting of the Instrument.

(d) Determine an appropriate level of financial assurance to ensure project development, construction, long-term maintenance and monitoring, and the ability of the sponsor to correct project deficiencies or performance failures.

(e) Review the performance of the bank annually, or more frequently as set by the MBRT, to determine whether it is in compliance with the ecological goals and objectives established in the Instrument, and continues to hold adequate financial resources and assurances to ensure continued long-term operation pursuant to those goals and objectives. This review may include site visits and audits of bank documents at irregular time periods.

(f) The consensus of the MBRT shall be fully considered by the Department throughout the life of the bank.

(10) A sponsor may begin construction of a bank prior to developing an Instrument by:

(a) Providing detailed documentation of the baseline conditions existing at the proposed site(s) of the bank; and

(b) Receiving written consent from the Department prior to undertaking any construction. However, such consent from the Department does not exempt the sponsor from having to apply for, and obtain a Removal-Fill Permit, if required. Written consent from the Department recognizes the sponsor's intent to create a bank only, but does not guarantee subsequent approval of the Mitigation Banking Instrument by the Department, which assumes no liability for the sponsor's actions.

(11) The Instrument shall:

(a) Contain all information listed in OAR 141-085-0421(2) of these rules, as well as any other data required by the Department.

(b) Be approved and signed by the Department and the sponsor, at the discretion of the Department.

(c) Be subject to revision over time as mutually agreed to by the signers of the Instrument.

(12) Upon approval of the Instrument, the Department shall notify city and county planning departments where the bank is located and affected state agencies, adjacent landowners, and persons who have requested to be notified.

Stat. Auth.: ORS 196.825 & 196.600 - 196.665

Stats. Implemented: ORS 196.600 - 196.692 & 196.800 - 196.990

Hist.: LB 2-1997, f. & cert. ef. 2-14-97; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 1-2006, f. 3-21-06, cert. ef. 3-27-06; DSL 1-2007(Temp), f. & cert. ef. 3-20-07 thru 9-16-07

Rule Caption: Establishes a prototype expedited permit for fish habitat improvement projects, including large wood and boulders.

Adm. Order No.: DSL 2-2007(Temp)

Filed with Sec. of State: 3-26-2007

Certified to be Effective: 3-26-07 thru 9-22-07

Notice Publication Date:

Rules Adopted: 141-089-0450, 141-089-0455, 141-089-0460, 141-089-0465, 141-089-0470, 141-089-0475, 141-089-0480

Subject: Establish a prototype expedited General Authorization (GA) for the placement of large wood and boulder clusters (in bedrock dominated systems) to improve fish habitat conditions. The process to obtain authorization would be to notify the agency on the GA application and obtain a verification, "approval," from the agency before starting the activity. The application would not go out for public review. It is anticipated that DSL review, will in most cases, occur in approximately 15 days instead of the current 40 days allowed under the existing GA process. This GA prototype will be available on a voluntary basis to a select number of applicants, based on the availability of Department resources, in order to allow adequate testing and evaluation to occur before adoption of permanent rules.

Rules Coordinator: Nicole Kielsmeier—(503) 378-3805 x 239

141-089-0450

Purpose and Applicability

This rule sets forth conditions under which an applicant may, without an individual removal-fill permit from the Department, place or remove material within waters of the state (including Essential Salmon Habitat as designated in OAR 141-102) for the purposes of fish habitat enhancement. An authorization from the Department is required prior to any person commencing an activity authorized by this general authorization. An applicant is required to submit a complete application on a form provided by the Department and must agree to the eligibility requirements and mandatory requirements (141-089-0455) and the conditions for issuance (141-089-0465). The term and conditions of issuance must be stated in the authorization. The authorization is not transferable to another person.

(1) This general authorization is made pursuant to ORS 196.850 and is based upon the determination that the authorized activities are similar in nature, will not result in long-term harm to water resources of the state, and will cause only minimal individual and cumulative environmental impacts.

(2) This general authorization does not apply to activities or waters exempt from the removal-fill law as described in OAR 141-085-0015 and 141-085-0020.

(3) Unless otherwise specified, the terms used in this general authorization (GA) are defined in OAR 141-085-0010.

(4) Applications for activities and/or projects, which qualify for this general authorization, are exempt from removal-fill permit fees as set forth in OAR 141-085-0064.

(5) In the event a dispute arises as to the applicability of this general authorization to any project application, the Department shall make the final determination. The Department shall rely upon the applicant's project application and supporting documentation for its decision, as well as other relevant criteria.

(6) Applicant participation in this general authorization is voluntary. The Department may limit the number or type of applicants that are eligible to apply under this general authorization based on staff resources or other relevant constraints.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 2-2007(Temp), f. & cert. ef. 3-26-07 thru 9-22-07

141-089-0455

Eligibility Requirements and Mandatory Requirements

(1) In order to issue an authorization the Department must review each application to determine that the project is eligible and complies with the applicable mandatory requirements as described in this rule.

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(2) To be eligible a project must:

- (a) Be constructed for the purpose of improving fish habitat;
- (b) Be consistent with the following:

(A) Oregon Aquatic Habitat Restoration and Enhancement Guide (Prepared for the Oregon Plan for Salmon and Watersheds, May 1999 or most recent version); or

(B) A Guide to Placing Large Wood in Streams (Prepared by the Oregon Department of Forestry and Oregon Department of Fish and Wildlife, May 1995 or most recent version); and

(C) Oregon Department of Fish and Wildlife's requirements for upstream and downstream fish passage under ORS 509.580 to 509.645.

(c) Be consistent with the criteria specified for the placement of large wood or boulders in (3) and (4) Below.

(3) Placement of large wood, including logs, trees and rootwads, in stream channels where large wood should naturally occur but is currently lacking due to past management practices or other conditions.

(a) Large wood placement must be relatively stable, but able to reconfigure to a limited degree with the natural stream flow.

(b) Large wood must be intact, hard, and undecayed to partially decaying with root wads when possible.

(c) Large wood placement projects must rely on the size of the wood for stability, to the extent possible.

(d) Boulders may be used with large wood to provide resistance to downstream movement under the following circumstances:

(A) The volume of boulders used must be restricted to the minimum amount necessary to provide stability for the large wood.

(B) Boulders must be sized appropriately for the stream. For stability, it is recommended that key boulders be a minimum of twice the diameter of the average of the ten largest naturally occurring boulders in the project stream reach (measured upstream and downstream of the project site).

(C) Boulders may not extend along the streambank more than four times the diameter of the wood, upstream and downstream

(D) Boulders and wood may not be combined to form barbs or channelize stream flow.

(e) Log habitat structures must contain a minimum of two key wood pieces that meet minimum length and diameter requirements in relation to the stream size and slope. The addition of other large wood and coarse wood to the structures is permitted.

(A) The length of the key wood pieces, if the rootwad is still attached, must be at least one and one-half times the bankfull width (including the rootwad); or

(B) The length of the key wood piece, if the rootwad is not attached, must be at least twice the stream's bankfull width; and

(C) The diameter of the key wood pieces must meet the minimum thresholds specified in following table.

(4) Placement of boulders within bedrock-dominated stream reaches with a slope of less than 10%, where rock and boulders would naturally occur but are currently lacking. [Table not included. See ED. NOTE.]

(a) Boulders must be sized appropriately for the stream.

(A) For stability, key boulders must be, to the extent practicable, a minimum of twice the diameter of the average of the 10 largest naturally occurring boulders in the project stream reach (measured upstream and downstream of the project site).

(B) Boulder size must be of a size sufficient to be stable under expected high flows (typically 50 year recurrence interval).

(b) Boulder placement shall be in a random fashion mimicking natural occurrence.

(c) Boulder placement shall not be used to channelize flow or as a means to prevent naturally occurring erosion.

(d) Individual boulder clusters may not exceed one-third of the active channel width and may not be placed on a single side of the stream. The boulder patterns must not be configured to shift the stream flow to a single flow pattern in the middle or to the side of the stream.

(e) Boulder clusters must have a minimum of a three-foot gap between clusters to allow adult and juvenile fish passage.

(f) Coarse wood may be placed under the boulders to increase recruitment of sediment.

(g) The total length of stream to be treated with boulder clusters is limited to 500 feet as measured in the middle of the stream from the first boulder upstream to the last boulder downstream. If the project is restoring multiple segments of the stream the combination of all segments may not exceed 500 feet.

(5) The project may not use permanent anchoring including rebar, cabling, or keying into the streambank to meet stability criteria. However,

for wood placement projects, biodegradable manila or sisal rope may be used for temporary stabilization.

(6) The project may not convert wetlands to other waters and the project may not have any negative impacts to wetlands.

(7) The project must occur in a channel with an intact, well-vegetated riparian area or be conducted in conjunction with riparian restoration or management.

(8) The project may not be located within a designated State Scenic Waterway.

(9) The project may not be located within an area that is tidally influenced.

(10) The project may not include constructed access roads within Waters of the State or associated riparian areas. This includes grading or sloping the ground surface and temporarily placing rock or dirt in order to access the waterway. Operation of equipment across the surface of the ground with minimal tread disturbance is allowed.

(11) The project must abide by all of the permit conditions outlined in 141-089-0465 below.

(12) When necessary to protect and conserve the water resources of the state, the Department may waive or modify any conflicting guidelines, mandatory requirements or conditions of this general authorization.

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

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 2-2007(Temp), f.& cert. ef. 3-26-07 thru 9-22-07

141-089-0460

Application Requirements; Public Notice Review Process

(1) An application for general authorization under this rule must be submitted on the form titled "Application For General Authorization for the Placement of Large Wood and Boulders".

(2) The Department must receive a complete application before an authorization can be issued.

(a) A complete application is one that contains all the information required in the application provided by the Department.

(b) A complete application must include signatures from the following agencies, in the corresponding boxes on the application.

(A) The appropriate District Fisheries Biologist of the Oregon Department of Fish and Wildlife; and

(B) The local city or county planning department.

(3) If the application is deemed incomplete, the Department must notify the applicant and identify the missing, inaccurate or insufficient information.

(4) If the Department determines the application does not meet all the requirements for this general authorization, but is complete and meets the requirements for the Fish Habitat Enhancement General Authorization (OAR 141-085-0100 through 0130), it must notify the applicant and process the application accordingly.

(5) If the Department determines that the proposed project is ineligible or otherwise does not qualify for this general authorization or the Fish Habitat Enhancement General Authorization, the applicant may submit the project for processing and review as an individual permit under OAR 141-085.

(6) The Department may require an individual removal-fill permit for a project that would otherwise be authorized by this general authorization, if the Department determines that the activity might cause more than minimal individual or cumulative environmental impacts or might result in long-term harm to the water resources of the state. The Department may also require an individual removal-fill permit if requested to do so by the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality or the affected local land use planning department.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 2-2007(Temp), f.& cert. ef. 3-26-07 thru 9-22-07

141-089-0465

Conditions of Issuance of General Authorization

All holders of a letter of authorization (authorization holder) must adhere to the conditions of the general authorization.

(1) The authorization holder must conduct all work in compliance with all local, state, or federal regulations pertaining to the project. All necessary approvals and permits must be obtained before commencing the project under this general authorization.

(2) The authorization holder must obtain all necessary access permits or rights-of-way prior to entering lands owned by another for the purposes of completing a project authorized under this general authorization.

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(3) The authorization holder must keep a copy of the letter of authorization available at the work site whenever the activity is being conducted.

(4) All work must be conducted to avoid or minimize water quality impacts and adverse effects to fish and wildlife.

(5) The authorization holder must conduct the activity during the time period recommended by the Oregon Department of Fish and Wildlife, unless after consultation with ODFW, the Department approves a longer or alternative time period.

(6) The authorization holder must not disturb or destroy known archeological sites unless authorized under a permit issued by the State Historic Preservation Office (SHPO). When previously unknown occurrences of archeological sites are discovered during construction, the authorization holder must immediately cease work at the discovery site and contact the Department and SHPO at (503) 986-0677.

(7) The authorization holder must ensure that the authorized work does not unreasonably interfere with or create a hazard to recreational navigation.

(8) The authorization holder must ensure that the authorized work does not interfere with secured tribal treaty right and associated rights to access fishing grounds.

(9) The authorization holder must ensure that woody vegetation removal is limited to the minimum amount needed to complete the project including construction access. If possible, woody vegetation that will sprout from cut stumps, and would otherwise be removed as part of the project, should be cut and allowed to re-establish once the project is complete.

(10) The authorization holder must ensure that areas disturbed in the course of completing the work must be re-vegetated with the same mix of native herbs, shrubs and/or trees in approximately the same numeric proportion as were removed from the site. Seed mixes that are certified free of noxious weeds and contain exotic species that will hold the soil and not persist can be used for initial site stabilization.

(11) Operation of heavy equipment in the streambed is not allowed except under the following circumstances:

(a) The streambed consists of bedrock, or where no compaction will occur in the streambed and only minimal compaction will occur in the floodplain; or

(b) There is no surface flow in the channel; or

(c) Equipment cannot safely reach the channel work site due to steep and/or rugged terrain; or

(d) Where it is necessary to cross the stream to avoid springs, wetlands, or other sensitive areas; or

(e) To avoid or minimize disturbance of valuable riparian vegetation.

(12) Equipment used for in-stream work must be cleaned prior to entering the two-year flood plain. External oil, grease, dirt, and mud must be removed off-site or at an appropriate staging area not less than 150 feet from the waterway. Wash and rinse water must not be discharged into waterways, unless adequately treated.

(13) The authorization holder must ensure that no petroleum products, chemicals or deleterious materials are allowed to enter waters of the state.

(a) An adequate spill response kit with an incident response plan must be on-site and ready to be deployed prior to the start of work.

(b) All equipment must be inspected for leaks frequently. Diapering or other spill prevention measures must be in place prior to operation of equipment in or near waters.

(14) Project-related spills that enter waters of the state or onto land with a potential to enter waters of the state must be reported to the Oregon Emergency Response System at 800-452-0311.

(15) Prior to construction, the authorization holder must ensure that erosion and sediment control measures are installed and functioning properly, as described in the DEQ's "Erosion and Sediment Control Manual," April 2005. During construction, erosion and sediment control measures must be monitored to ensure that areas of failure are identified and repaired immediately.

(16) The authorized work must not cause turbidity of affected waters to exceed natural background turbidity by more than 10 percent, as measured 100 feet downstream from the work area.

(a) If all appropriate erosion/turbidity control measures, as described in the ODEQ Erosion and Sediment Control Manual (April 2005), are in place and functioning properly then this standard may be exceeded, in each 24-hour period, for only:

(A) One 2-hour period in fast moving water (>2% stream bed gradient).

(B) One 4-hour period in slow moving water (<2% stream bed gradient).

(b) Turbidity must be monitored at least 100 feet upstream of the current work area to obtain a natural background level and 100 feet downstream of the current work area, in the visible plume if one is present, unless otherwise approved by DSL after consulting with DEQ. A turbidimeter is recommended for measuring; however, visual observation is acceptable. If a turbidimeter is not used, turbidity that is visible over background at a distance of 100 feet downstream of the current work area is a violation of the permit conditions.

(c) Monitoring of turbidity must take place during daylight hours each day of in-water work and every 2 hours in fast moving waters and every 4 hours in slow moving waters as described above in (a). A written record of turbidity monitoring must be kept.

(d) If the levels of turbidity are elevated at the time of the first compliance-monitoring interval, all practicable erosion control measures must be implemented to reduce the levels of turbidity. If the levels of turbidity are in exceedance during the second monitoring interval, the activity causing the elevated levels of turbidity must cease until the levels of turbidity return to background.

(17) Employees of the Department and all duly authorized representatives must be permitted access to the project area at all reasonable times for the purpose of inspecting work performed under this authorization.

(18) The Department makes no representation regarding the quality or adequacy of the project design, materials, construction, or maintenance, except to approve the project's design and materials as satisfying the resource protection, scenic, safety, recreation, and public access requirements of ORS Chapters 196 and related administrative rules.

(19) The State of Oregon, and its officers, agents, and employees must be held harmless from any claim, suit, or action for property damage or personal injury or death arising out of the design, material, construction, or maintenance of the permitted improvements.

(20) The Department may, at any time, by notice to affected authorization holders revoke or modify any authorization granted under this general authorization if it determines the conditions of the general authorization are insufficient to minimize individual or cumulative environmental impacts.

(21) The authorization holder is responsible for the activities of all contractors or other operators involved in project work covered by this authorization.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990
Hist.: DSL 2-2007(Temp), f.& cert. ef. 3-26-07 thru 9-22-07

141-089-0470 Mandatory Reporting Requirement

Upon completion of the project, the authorization holder must report to the Department, on the Oregon Watershed Restoration Reporting Form, or other acceptable form.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990
Hist.: DSL 2-2007(Temp), f.& cert. ef. 3-26-07 thru 9-22-07

141-089-0475 Violation of General Authorization; Enforcement

Violations of the terms and conditions of this general authorization are subject to administrative and/or legal action including the imposition of civil penalties, which may result in revocation of the authorization. The authorization holder is responsible for the activities of all contractors or other operators involved in work done at the site or under the authorization.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990, 390.805 - 390.925
Hist.: DSL 2-2007(Temp), f.& cert. ef. 3-26-07 thru 9-22-07

141-089-0480 Appeals; Expiration; Review of General Authorization

(1) An applicant whose application for the general authorization is determined by the Department to be ineligible or otherwise not qualified for this general authorization may obtain an informal review of the Department's decision through the alternative dispute resolution process resolution process described in OAR 141-085-0075. However, this is only opportunity to review the Department's decision and does not give the person a right to a contested case hearing.

(2) This General Authorization will expire not more than 180 days from the date of adoption. An approval issued prior to expiration of this General Authorization must remain in effect until January 1, 2012.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990, 390.805 - 390.925
Hist.: DSL 2-2007(Temp), f.& cert. ef. 3-26-07 thru 9-22-07

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Department of Transportation Chapter 731

Rule Caption: Adoption of Simplified Mediation Confidentiality rules.

Adm. Order No.: DOT 3-2007

Filed with Sec. of State: 3-26-2007

Certified to be Effective: 3-26-07

Notice Publication Date: 2-1-07

Rules Adopted: 731-001-0720, 731-001-0730

Rules Repealed: 731-001-0100, 731-001-0110, 731-001-0120, 731-001-0130, 731-001-0140, 731-001-0150, 731-001-0160, 731-001-0170, 731-001-0180, 731-001-0190, 731-001-0200, 731-001-0210, 731-001-0220, 731-001-0230, 731-001-0240, 731-001-0250, 731-001-0260, 731-001-0270, 731-001-0280, 731-001-0290, 731-001-0300, 731-001-0310, 731-001-0320, 731-001-0330, 731-001-0340, 731-001-0350, 731-001-0360, 731-001-0370, 731-001-0380, 731-001-0390, 731-001-0400, 731-001-0410, 731-001-0420, 731-001-0430, 731-001-0440, 731-001-0450, 731-001-0460, 731-001-0470, 731-001-0480, 731-001-0490, 731-001-0500, 731-001-0510, 731-001-0520, 731-001-0530, 731-001-0540, 731-001-0550, 731-001-0560, 731-001-0570, 731-001-0580, 731-001-0590, 731-001-0600, 731-001-0610, 731-001-0620, 731-001-0630, 731-001-0640, 731-001-0650, 731-001-0660, 731-001-0670, 731-001-0680, 731-001-0690, 731-001-0700, 731-001-0710

Subject: ORS 36.220 through 36.238 authorize state agencies to make mediation communications confidential. This Act also limits the discovery and admissibility of mediation communications in subsequent proceedings. The Department of Transportation currently has lengthy rules relating to mediation confidentiality. Since ODOT adopted these rules, the Department of Justice has developed simplified language for mediation confidentiality rules. ODOT has now adopted this simplified language. One rule covers mediation confidentiality for all areas of ODOT business except employee disputes. One rule applies specifically to mediation confidentiality for employee disputes.

Rules Coordinator: Brenda Trump—(503) 986-3171

731-001-0720

Confidentiality and Inadmissibility of Mediation Communications

(1) The words and phrases used in this rule have the same meaning as given to them in ORS 36.110 and 36.234.

(2) Nothing in this rule affects any confidentiality created by other law. Nothing in this rule relieves a public body from complying with the Public Meetings Law, ORS 192.610 to 192.690. Whether or not they are confidential under this or other rules of the agency, mediation communications are exempt from disclosure under the Public Records Law to the extent provided in ORS 192.410 to 192.505.

(3) This rule applies only to mediations in which the agency is a party or is mediating a dispute as to which the agency has regulatory authority. This rule does not apply when the agency is acting as the "mediator" in a matter in which the agency also is a party as defined in ORS 36.234.

(4) To the extent mediation communications would otherwise be compromise negotiations under ORS 40.190 (OEC Rule 408), those mediation communications are not admissible as provided in ORS 40.190 (OEC Rule 408), notwithstanding any provisions to the contrary in section (9) of this rule.

(5) Mediations Excluded. Sections (6)–(10) of this rule do not apply to:

(a) Mediation of workplace interpersonal disputes involving the interpersonal relationships between this agency's employees, officials or employees and officials, unless a formal grievance under a labor contract, a tort claim notice or a lawsuit has been filed;

(b) Mediation in which the person acting as the mediator will also act as the hearings officer in a contested case involving some or all of the same matters;

(c) Mediation in which the only parties are public bodies;

(d) Mediation involving two or more public bodies and a private party if the laws, rule or policies governing mediation confidentiality for at least one of the public bodies provide that mediation communications in the mediation are not confidential; or

(e) Mediation involving 15 or more parties if the agency has designated that another mediation confidentiality rule adopted by the agency may apply to that mediation.

(6) Disclosures by Mediator. A mediator may not disclose or be compelled to disclose mediation communications in a mediation and, if disclosed, such communications may not be introduced into evidence in any subsequent administrative, judicial or arbitration proceeding unless:

(a) All the parties to the mediation and the mediator agree in writing to the disclosure; or

(b) The mediation communication may be disclosed or introduced into evidence in a subsequent proceeding as provided in subsections (c)–(d), (j)–(l) or (o)–(p) of section (9) of this rule.

(7) Confidentiality and Inadmissibility of Mediation Communications. Except as provided in sections (8)–(9) of this rule, mediation communications are confidential and may not be disclosed to any other person, are not admissible in any subsequent administrative, judicial or arbitration proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent proceeding, or introduced as evidence by the parties or the mediator in any subsequent proceeding.

(8) Written Agreement. Section (7) of this rule does not apply to a mediation unless the parties to the mediation agree in writing, as provided in this section, that the mediation communications in the mediation will be confidential and/or nondiscoverable and inadmissible. If the mediator is the employee of and acting on behalf of a state agency, the mediator or an authorized agency representative must also sign the agreement. The parties' agreement to participate in a confidential mediation must be in substantiality the following form. This form may be used separately or incorporated into an "agreement to mediate."

Agreement to Participate in a Confidential Mediation

The agency and the parties to the mediation agree to participate in a mediation in which the mediation communications are confidential and/or nondiscoverable and inadmissible to the extent authorized by OAR 731-001-0720(7) and this agreement. This agreement relates to the following mediation:

a) _____

(Identify the mediation to which this agreement applies)

b) To the extent authorized by OAR 731-001-0720(7), mediation communications in this mediation are: (check one or more)

___ confidential and may not be disclosed to any other person

___ not admissible in any subsequent administrative proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent administrative proceeding, or introduced as evidence by the parties or the mediator in any subsequent administrative proceeding

___ not admissible in any subsequent administrative, judicial or arbitration proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent administrative, judicial or arbitration proceeding, or introduced as evidence by the parties or the mediator in any subsequent administrative, judicial or arbitration proceeding

c) _____

Name of Agency

Signature of Agency's authorized representative (when agency Date is a party) or Agency employee acting as the mediator (when Agency is mediating the dispute)

d) _____

Name of party to the mediation

Signature of party's authorized representative Date

e) _____

Name of party to the mediation

Signature of party's authorized representative Date

(9) Exceptions to confidentiality and inadmissibility:

(a) Any statements, memoranda, work products, documents and other materials, otherwise subject to discovery that were not prepared specifically for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding;

(b) Any mediation communications that are public records, as defined in ORS 192.410(4), and were not specifically prepared for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential or privileged under state or federal law;

(c) A mediation communication is not confidential and may be disclosed by any person receiving the communication to the extent that person reasonably believes that disclosing the communication is necessary to prevent the commission of a crime that is likely to result in death or bodily injury to any person. A mediation communication is not confidential and may be disclosed in a subsequent proceeding to the extent its disclosure may further the investigation or prosecution of a felony crime involving physical violence to a person.

(d) Any mediation communication related to the conduct of a licensed professional that is made to or in the presence of a person who, as a condition of his or her professional license, is obligated to report such commu-

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nication by law or court rule is not confidential and may be disclosed to the extent necessary to make such a report;

(e) The parties to the mediation may agree in writing that all or part of the mediation communications are not confidential or that all or part of the mediation communications may be disclosed and may be introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential, privileged or otherwise prohibited from disclosure under state or federal law;

(f) A party to the mediation may disclose confidential mediation communications to a person if the party's communication with that person is privileged under ORS Chapter 40 or other provision of law. A party to the mediation may disclose confidential mediation communications to a person for the purpose of obtaining advice concerning the subject matter of the mediation, if all the parties agree;

(g) An employee of the agency may disclose confidential mediation communications to another agency employee so long as the disclosure is necessary to conduct authorized activities of the agency. An employee receiving a confidential mediation communication under this subsection is bound by the same confidentiality requirements as apply to the parties to the mediation;

(h) A written mediation communication may be disclosed or introduced as evidence in a subsequent proceeding at the discretion of the party who prepared the communication so long as the communication is not otherwise confidential under state or federal law and does not contain confidential information from the mediator or another party who does not agree to the disclosure;

(i) In any proceeding to enforce, modify or set aside a mediation agreement, a party to the mediation may disclose mediation communications and such communications may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of mediation communications or agreements to persons other than the parties to the agreement;

(j) In an action for damages or other relief between a party to the mediation and a mediator or mediation program, mediation communications are not confidential and may be disclosed and may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of the mediation communications or agreements;

(k) When a mediation is conducted as part of the negotiation of a collective bargaining agreement, the following mediation communications are not confidential and such communications may be introduced into evidence in a subsequent administrative, judicial or arbitration proceeding:

(A) A request for mediation; or

(B) A communication from the Employment Relations Board Conciliation Service establishing the time and place of mediation; or

(C) A final offer submitted by the parties to the mediator pursuant to ORS 243.712; or

(D) A strike notice submitted to the Employment Relations Board.

(l) To the extent a mediation communication contains information the substance of which is required to be disclosed by Oregon statute, other than ORS 192.410 to 192.505, that portion of the communication may be disclosed as required by statute;

(m) Written mediation communications prepared by or for the agency or its attorney are not confidential and may be disclosed and may be introduced as evidence in any subsequent administrative, judicial or arbitration proceeding to the extent the communication does not contain confidential information from the mediator or another party, except for those written mediation communications that are:

(A) Attorney-client privileged communications so long as they have been disclosed to no one other than the mediator in the course of the mediation or to persons as to whom disclosure of the communication would not waive the privilege; or

(B) Attorney work product prepared in anticipation of litigation or for trial; or

(C) Prepared exclusively for the mediator or in a caucus session and not given to another party in the mediation other than a state agency; or

(D) Prepared in response to the written request of the mediator for specific documents or information and given to another party in the mediation; or

(E) Settlement concepts or proposals, shared with the mediator or other parties.

(n) A mediation communication made to the agency may be disclosed and may be admitted into evidence to the extent the Oregon Department of

Transportation Director determines that disclosure of the communication is necessary to prevent or mitigate a serious danger to the public's health or safety, and the communication is not otherwise confidential or privileged under state or federal law;

(o) The terms of any mediation agreement are not confidential and may be introduced as evidence in a subsequent proceeding, except to the extent the terms of the agreement are exempt from disclosure under ORS 192.410 to 192.505, a court has ordered the terms to be confidential under ORS 30.402 or state or federal law requires the terms to be confidential;

(p) The mediator may report the disposition of a mediation to the agency at the conclusion of the mediation so long as the report does not disclose specific confidential mediation communications. The agency or the mediator may use or disclose confidential mediation communications for research, training or educational purposes, subject to the provisions of ORS 36.232(4).

(10) When a mediation is subject to section (7) of this rule, the agency will provide to all parties to the mediation and the mediator a copy of this rule or a citation to the rule and an explanation of where a copy of the rule may be obtained. Violation of this provision does not waive confidentiality or inadmissibility.

Stat. Authority: ORS 36.224, 184.616 & 184.619

Stat. Implemented: ORS 36.224, 36.228, 36.230 & 36.232

Hist.: DOT 3-2007, f. & cert. ef. 3-26-07

731-001-0730

Confidentiality and Inadmissibility of Workplace Interpersonal Dispute Mediation Communications

(1) This rule applies to workplace interpersonal disputes, which are disputes involving the interpersonal relationships between this agency's employees, officials or employees and officials. This rule does not apply to disputes involving the negotiation of labor contracts or matters about which a formal grievance under a labor contract, a tort claim notice or a lawsuit has been filed.

(2) The words and phrases used in this rule have the same meaning as given to them in ORS 36.110 and 36.234.

(3) Nothing in this rule affects any confidentiality created by other law.

(4) To the extent mediation communications would otherwise be compromise negotiations under ORS 40.190 (OEC Rule 408), those mediation communications are not admissible as provided in ORS 40.190 (OEC Rule 408), notwithstanding any provisions to the contrary in section (9) of this rule.

(5) Disclosures by Mediator. A mediator may not disclose or be compelled to disclose mediation communications in a mediation and, if disclosed, such communications may not be introduced into evidence in any subsequent administrative, judicial or arbitration proceeding unless:

(a) All the parties to the mediation and the mediator agree in writing to the disclosure; or

(b) The mediation communication may be disclosed or introduced into evidence in a subsequent proceeding as provided in subsections (c) or (h)–(j) of section (7) of this rule.

(6) Confidentiality and Inadmissibility of Mediation Communications. Except as provided in section (7) of this rule, mediation communications in mediations involving workplace interpersonal disputes are confidential and may not be disclosed to any other person, are not admissible in any subsequent administrative, judicial or arbitration proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent proceeding, or introduced into evidence by the parties or the mediator in any subsequent proceeding so long as:

(a) The parties to the mediation and the agency have agreed in writing to the confidentiality of the mediation; and

(b) The person agreeing to the confidentiality of the mediation on behalf of the agency:

(A) Is neither a party to the dispute nor the mediator; and

(B) Is designated by the agency to authorize confidentiality for the mediation; and

(C) Is at the same or higher level in the agency than any of the parties to the mediation or who is a person with responsibility for human resources or personnel matters in the agency, unless the agency head or member of the governing board is one of the persons involved in the interpersonal dispute, in which case the Governor or the Governor's designee.

(7) Exceptions to confidentiality and inadmissibility.

(a) Any statements, memoranda, work products, documents and other materials, otherwise subject to discovery that were not prepared specifical-

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ly for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding;

(b) Any mediation communications that are public records, as defined in ORS 192.410(4), and were not specifically prepared for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential or privileged under state or federal law;

(c) A mediation communication is not confidential and may be disclosed by any person receiving the communication to the extent that person reasonably believes that disclosing the communication is necessary to prevent the commission of a crime that is likely to result in death or bodily injury to any person. A mediation communication is not confidential and may be disclosed in a subsequent proceeding to the extent its disclosure may further the investigation or prosecution of a felony crime involving physical violence to a person;

(d) The parties to the mediation may agree in writing that all or part of the mediation communications are not confidential or that all or part of the mediation communications may be disclosed and may be introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential, privileged or otherwise prohibited from disclosure under state or federal law;

(e) A party to the mediation may disclose confidential mediation communications to a person if the party's communication with that person is privileged under ORS Chapter 40 or other provision of law. A party to the mediation may disclose confidential mediation communications to a person for the purpose of obtaining advice concerning the subject matter of the mediation, if all the parties agree;

(f) A written mediation communication may be disclosed or introduced as evidence in a subsequent proceeding at the discretion of the party who prepared the communication so long as the communication is not otherwise confidential under state or federal law and does not contain confidential information from the mediator or another party who does not agree to the disclosure;

(g) In any proceeding to enforce, modify or set aside a mediation agreement, a party to the mediation may disclose mediation communications and such communications may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of mediation communications or agreements to persons other than the parties to the agreement;

(h) In an action for damages or other relief between a party to the mediation and a mediator or mediation program, mediation communications are not confidential and may be disclosed and may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of the mediation communications or agreements;

(i) To the extent a mediation communication contains information the substance of which is required to be disclosed by Oregon statute, other than ORS 192.410 to 192.505, that portion of the communication may be disclosed as required by statute;

(j) The mediator may report the disposition of a mediation to the agency at the conclusion of the mediation so long as the report does not disclose specific confidential mediation communications. The agency or the mediator may use or disclose confidential mediation communications for research, training or educational purposes, subject to the provisions of ORS 36.232(4).

(8) The terms of any agreement arising out of the mediation of a workplace interpersonal dispute are confidential so long as the parties and the agency so agree in writing. Any term of an agreement that requires an expenditure of public funds, other than expenditures of \$1,000 or less for employee training, employee counseling or purchases of equipment that remain the property of the agency, may not be made confidential.

(9) When a mediation is subject to section (6) of this rule, the agency will provide to all parties to the mediation and to the mediator a copy of this rule or an explanation of where a copy of the rule may be obtained. Violation of this provision does not waive confidentiality or inadmissibility.

Stat. Authority: ORS 36.224, 184.616 & 184.619

Stat. Implemented: ORS 36.230(4)

Hist.: DOT 3-2007, f. & cert. ef. 3-26-07

Department of Transportation, Motor Carrier Transportation Division Chapter 740

Rule Caption: Adoption and amendment of Federal safety and hazardous materials transportation regulations affecting motor carriers.

Adm. Order No.: MCTD 1-2007

Filed with Sec. of State: 3-26-2007

Certified to be Effective: 4-1-07

Notice Publication Date: 2-1-07

Rules Amended: 740-100-0010, 740-100-0060, 740-100-0070, 740-100-0080, 740-100-0090, 740-100-0100, 740-110-0010

Subject: These rules cover the annual adoption of federal motor carrier safety and hazardous materials transportation regulations. In addition, these rules cover the adoption of international standards related to driver, vehicle and hazardous materials out-of-service violations. The changes are necessary to ensure Oregon's motor carrier safety; hazardous materials; and driver, vehicle and hazardous materials out-of-service requirements are current with national and international standards. Amendments to the drivers' hours of service regulations are needed because the Federal Motor Carrier Safety Administration has determined that current Oregon rules regarding intrastate hours of service are no longer compatible with federal tolerance guidelines. Oregon stands to lose approximately \$2.4 million of Motor Carrier Safety Assistance Program (MCSAP) funds if it fails to amend the incompatible rules. The changes result in an increase from 8 hours to 10 hours the amount of time a driver transporting property in intrastate service must be off-duty before being allowed to drive. The changes also decrease the on-duty hours from 16 to 12 for determining if a driver may qualify to use a time card versus a logbook. The Maximum Fine Schedule adopted under OAR 740-100-0100 is readopted to reflect current national standards.

Rules Coordinator: Brenda Trump—(503) 986-3171

740-100-0010

Adoption of Federal Safety Regulations

(1) Except as provided in section (4) of this rule, the rules and regulations adopted by the United States Department of Transportation contained in **Title 49, Code of Federal Regulations (CFR), Parts 380** (Special Training Requirements), **382** (Controlled Substances and Alcohol Use and Testing), **383** (Commercial Driver's License Standards Requirements and Penalties), **385** (Safety Fitness Procedures), **387** (Minimum Levels of Financial Responsibility for Motor Carriers), **390** (Federal Motor Carrier Safety Regulations: General), **391** (Qualification of Drivers), **392** (Driving of Motor Vehicles), **393** (Parts and Accessories Necessary for Safe Operation), **395** (Hours of Service of Drivers), **396** (Inspection, Repair, and Maintenance), **398** (Transportation of Migrant Workers), **399** (Employee Safety and Health Standards), and all amendments thereto in effect April 1, 2007, are adopted and prescribed by the Department of Transportation (ODOT) to be observed by carriers conducting operations in interstate commerce, subject to ORS Chapter 825.

(2) The provisions of section (1) of this rule as adopted are prescribed by the Department to be observed by carriers conducting operations in intrastate commerce, subject to ORS Chapter 825, except:

(a) The provisions of **Part 387** shall apply to intrastate motor carriers only when transporting hazardous materials, hazardous substances or hazardous wastes;

(b) With reference to **Part 390.21**, external identification requirements do not apply to vehicles with a gross combination weight rating of 26,000 pounds or less and operated exclusively in intrastate private carriage, except those vehicles transporting hazardous materials of a type or quantity requiring placarding or passenger vehicles with a seating capacity of more than 15 passengers including the driver;

(c) The rules in **Part 391.11(b)(1)** regarding the minimum age for a commercial motor vehicle operator do not apply to a driver engaged in intrastate commerce;

(d) The rules in **Part 391** (except **Part 391.11(b)(5)**), Valid Operator's License, and **Part 391.15**, Disqualification of Drivers) do not apply to a driver who is employed by a private carrier and does not transport hazardous materials of a type or quantity requiring the vehicle to be marked or placarded in accordance with **Title 49, CFR, Part 177.823**, and drives a

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motor vehicle with a gross vehicle or gross combination weight rating of 26,000 pounds or less;

(e) Notwithstanding **Parts 391.41 to 391.49 (Subpart E — Physical Qualifications and Examinations)** the Department may, upon receipt of a favorable recommendation from the State Health Division or a licensed health care professional under contract to ODOT, issue a waiver of physical disqualification to a commercial vehicle driver who has met the conditions established by the Department and who is in compliance with motor carrier safety regulations applicable to drivers;

(f) With reference to **Part 395.3**, motor carriers conducting intrastate transportation of property may not require or permit any driver used by it to drive a commercial motor vehicle, nor may any such driver:

(A) Exceed 12 hours driving following ten consecutive hours off-duty;

(B) Drive for any period beyond the 16th hour after coming on-duty following ten consecutive hours off-duty;

(C) Drive for any period following 70 hours on-duty in any seven consecutive days if the employing motor carrier does not operate commercial motor vehicles every day of the week, however, any period of seven consecutive days may end with the beginning of any off-duty period of 34 or more consecutive hours; or

(D) Drive for any period following 80 hours on-duty in any eight consecutive days if the employing motor carrier operates commercial motor vehicles every day of the week, however, any period of eight consecutive days may end with the beginning of any off-duty period of 34 or more consecutive hours.

(g) The provisions of subsection (f) of this section are not applicable to the transportation of hazardous materials of a type or quantity requiring placarding. Motor carriers transporting hazardous materials of a type or quantity requiring placarding must comply with **Part 395**;

(h) Drivers operating utility service vehicles as defined in **Part 395.2** are relieved from the drivers' hours-of-service requirements and restrictions;

(i) The provisions of **Parts 396.17 through 396.23** (Periodic Inspection Requirements), are not applicable to operations conducted wholly in intrastate commerce.

(3) The provisions of **Part 386.83(a)(1)** and **Part 386.84(a)(1)**, related to sanctions for failure to pay civil monetary penalties are adopted for operations conducted in intrastate commerce, and apply to penalties and sanctions found in ORS Chapter 825, pursuant to the provisions of ORS Chapter 183.

(4) The intracity operation exemption adopted by the US Department of Transportation found in **Part 391.62** is not adopted and prescribed.

(5) Wherever reference is made in **Title 49** of the CFR as adopted by this rule to a federal entity, including but not limited to "Federal Highway Administrator," "Regional Director," "Special Agent of the Federal Highway Administration" or the "Federal Motor Carrier Safety Administration," it shall be construed to mean the Oregon Department of Transportation or a person authorized by the Oregon Department of Transportation to act on its behalf.

(6) Copies of the federal regulations referred to in this rule are available from ODOT Motor Carrier Transportation Division or may be accessed on the Federal Motor Carrier Safety Administration website, www.fmcsa.dot.gov.

Stat. Auth.: ORS 823.011, 825.137, 825.210, 825.232 & 825.252
Stats. Implemented: ORS 825.210, 825.250 & 825.252
Hist.: PUC 156, f. 8-6-73, ef. 8-15-73 (Order No. 73-507); PUC 181, f. 12-30-77, ef. 1-15-78 (Order No. 77-896); PUC 4-1979, f. & ef. 9-21-79 (Order No. 79-641); PUC 5-1979, f. & ef. 9-21-79 (Order No. 79-635); PUC 2-1980, f. & ef. 3-27-80 (Order No. 80-179); PUC 3-1980, Part 1, f. & ef. 6-30-80 (Order No. 79-805); Part 2, f. & ef. 6-30-80 (Order No. 80-475); PUC 7-1980, f. & ef. 11-6-80 (Order No. 80-845); Renumbered from 860-035-0010; PUC 12-1981, f. & ef. 12-16-81 (Order No. 81-880); PUC 12-1982(Temp), f. 12-20-82, ef. 1-1-83 (Order No. 82-872); PUC 1-1983, f. & ef. 1-17-83 (Order No. 83-024); PUC 2-1983, f. & ef. 3-1-83 (Order No. 83-117); PUC 13-1984, f. & ef. 7-26-84 (Order No. 84-546); PUC 19-1984, f. & ef. 9-10-84 (Order No. 84-713); PUC 8-1985, f. & ef. 6-10-85 (Order No. 85-499); PUC 17-1986 (Temp), f. & ef. 12-3-86; (Order No. 86-1239); PUC 2-1987 (Temp), f. & ef. 2-25-87 (Order No. 87-248); PUC 4-1987, f. & ef. 6-9-87 (Order No. 87-509); PUC 16-1987(Temp), f. & ef. 12-11-87 (Order No. 87-1244); PUC 4-1988(Temp), f. & ef. 2-12-88 (Order No. 88-161); PUC 6-1988(Temp), f. & ef. 3-9-88 (Order No. 88-818); PUC 14-1988, f. & ef. 7-22-88 (Order No. 88-245); PUC 7-1989, f. & ef. 5-23-89 (Order No. 89-663); PUC 1-1991, f. & ef. 1-11-91 (and corrected 1-31-91) (Order No. 91-20); PUC 6-1992, f. & ef. 2-26-92 (Order No. 92-292); PUC 13-1992(Temp), f. & ef. 9-4-92 (Order No. 92-1303); PUC 10-1993, f. & ef. 6-3-93 (Order No. 93-693 & 93-761); PUC 6-1994, f. & ef. 3-28-94 (Order No. 94-525); PUC 6-1995, f. & ef. 7-13-95 (Order No. 95-562); MCT 3-1996, f. & ef. 3-14-96; Renumbered from 860-065-0010; MCT 4-1996, f. 3-20-96, cert. ef. 4-1-96; MCT 5-1996, f. & ef. 9-17-96; MCT 1-1997, f. 3-24-97, cert. ef. 4-1-97; MCT 2-1997, f. & ef. 5-9-97; MCT 6-1997, f. & ef. 8-26-97; MCT 10-1997, f. & ef. 12-22-97; MCTB 1-1998, f. 3-10-98, cert. ef. 4-1-98; MCTB 2-1998, f. & ef. 8-20-98; MCTB 1-1999, f. & ef. 4-22-99; MCTB 1-2000, f. 3-16-00, cert. ef. 4-1-00; MCTB 2-2001, f. 3-13-01, cert. ef. 4-1-01; MCTB 2-2002, f. & ef. 6-21-02; MCTD 2-2003, f. & ef. 4-21-03; MCTD 6-2003, f. & ef. 11-18-03, cert. ef. 1-1-04; MCTD 2-2005, f. 3-18-05, cert. ef. 4-1-05; MCTD 2-2006, f. 3-17-06, cert. ef. 4-1-06; MCTD 1-2007, f. 3-26-07, cert. ef. 4-1-07

2005(Temp), f. 9-16-05, cert. ef. 10-1-05 thru 3-29-06; MCTD 2-2006, f. 3-17-06, cert. ef. 4-1-06; MCTD 1-2007, f. 3-26-07, cert. ef. 4-1-07

740-100-0060

Operation of Motor Vehicles, Out-of-Service Conditions Prohibited

(1) No motor carrier shall permit or require any person to operate nor shall any person operate a motor vehicle over the public highways of the State of Oregon unless the vehicle is free from each defect listed in OAR 740-100-0070. (**North American Standard Vehicle Out-of-Service Criteria.**)

(2) In addition to the requirements of section (1) of this rule, a vehicle transporting hazardous materials shall be free from each defect listed in OAR 740-100-0080. (**North American Standard Hazardous Material Out-of-Service Criteria.**)

(3) Except as provided in section (4) of this rule, in addition to the requirements of sections (1) and (2) of this rule, no motor carrier shall permit or require the operation of a motor vehicle nor shall any driver operate a motor vehicle in violation of OAR 740-100-0090. (**North American Standard Driver Out-of-Service Criteria.**)

(4) No motor carrier engaged in intrastate transportation shall permit or require the operation of a motor vehicle nor shall any driver operate a motor vehicle in violation of OAR 740-100-0010(2)(f) or (g).

(5) Each defect which exists in each applicable standard shall be deemed a separate and distinct violation of this rule.

Stat. Auth.: ORS 823.011 & 825.232
Stats. Implemented: ORS 825.210 & 825.252
Hist.: PUC 1-1987(Temp), f. & ef. 1-5-87 (Order No. 87-006); PUC 3-1987, f. & ef. 3-24-87 (Order No. 87-359); PUC 7-1989, f. & ef. 5-23-89 (Order No. 89-663); PUC 1-1990, f. & ef. 1-11-91 (Order No. 91-20); PUC 6-1991, f. & ef. 4-9-91 (Order No. 91-455); PUC 6-1995, f. & ef. 7-13-95 (Order No. 95-562); MCT 3-1996, f. & ef. 3-14-96; Renumbered from 860-065-0028; MCT 2-1997, f. & ef. 5-9-97; MCTD 6-2003, f. & 11-18-03, cert. ef. 1-1-04; MCTD 2-2006, f. 3-17-06, cert. ef. 4-1-06; MCTD 1-2007, f. 3-26-07, cert. ef. 4-1-07

740-100-0070

North American Standard Vehicle Out-of-Service Criteria

(1) **Appendix A of the North American Standard Vehicle Out-of-Service Criteria**, published by the Commercial Vehicle Safety Alliance, in effect April 1, 2007, is adopted by and incorporated into this rule. Inspection violations identified in the chart may be subject to one or more of the following:

(a) **Out-of-Service Condition:** When any motor vehicle by reason of its mechanical condition or loading, is determined to be so unsafe as to likely cause an accident or breakdown, or when such conditions would likely contribute to loss of control of the vehicle by the driver, said vehicle shall be placed out-of-service. No motor carrier shall permit or require nor shall any person operate any motor vehicle declared and marked "out-of-service" until all required repairs of violations which resulted in the out-of-service condition have been completed. If, at the discretion of the inspector, it is less hazardous to the public to relocate the vehicle, it shall be towed, transported, or escorted only at the direction of an official authority;

(b) **Other:** Violations other than out-of-service conditions detected during the inspection process will not preclude the completion of the current trip or dispatch. However, such violations must be corrected or repaired prior to redispach.

(2) Copies of **Appendix A** are available from the Commercial Vehicle Safety Alliance at: 1101 17th St NW, Suite 803, Washington, DC 20036.

Stat. Auth.: ORS 823.011 & 825.232
Stats. Implemented: ORS 825.250 & 825.252
Hist.: PUC 3-1986, f. & ef. 4-18-86 (Order No. 86-372); PUC 7-1989, f. & ef. 5-23-89 (Order No. 89-663); PUC 1-1991, f. & ef. 1-11-91 (Order No. 91-20); PUC 6-1991, f. & ef. 4-9-91 (Order No. 91-455); PUC 6-1992, f. & ef. 2-26-92 (Order No. 92-292); PUC 10-1993, f. & ef. 6-3-93 (Order No. 93-693 & 93-761); PUC 15-1993(Temp), f. & ef. 8-19-93 (Order No. 93-1156); PUC 6-1994, f. & ef. 3-28-94 (Order No. 94-525); PUC 6-1995, f. & ef. 7-13-95 (Order No. 95-562); MCT 3-1996, f. & ef. 3-14-96; Renumbered from 860-065-0030; MCT 4-1996, f. 3-20-96, cert. ef. 4-1-96; MCT 1-1997, f. 3-24-97, cert. ef. 4-1-97; MCTB 1-1998, f. 3-10-98, cert. ef. 4-1-98; MCTB 1-1999, f. & ef. 4-22-99; MCTB 1-2000, f. 3-16-00, cert. ef. 4-1-00; MCTB 2-2001, f. 3-13-01, cert. ef. 4-1-01; MCTB 2-2002, f. & ef. 6-21-02; MCTD 2-2003, f. & ef. 4-21-03; MCTD 6-2003, f. & 11-18-03, cert. ef. 1-1-04; MCTD 2-2005, f. 3-18-05, cert. ef. 4-1-05; MCTD 2-2006, f. 3-17-06, cert. ef. 4-1-06; MCTD 1-2007, f. 3-26-07, cert. ef. 4-1-07

740-100-0080

North American Standard Hazardous Material Out-of-Service Criteria

(1) **Appendix A of the North American Standard Vehicle Out-of-Service Criteria**, published by the Commercial Vehicle Safety Alliance, in effect April 1, 2007, is adopted and incorporated in this rule. Inspection violations identified in the chart may be subject to out-of-service action. Condition(s) categorized in this Appendix as "Out-of-Service" shall not be allowed to continue in commerce until the condition(s) is/are corrected and

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the shipment complies with **Title 49, CFR**. If at the discretion of the inspector, it is less hazardous to the public to relocate the vehicle, it shall be towed, transported, or escorted to a safe location only at the direction of an official authority.

(2) Copies of **Appendix A** are available from the Commercial Vehicle Safety Alliance at: 1101 17th St NW, Suite 803, Washington, DC 20036.

Stat. Auth.: ORS 823.011 & 825.232
 Stats. Implemented: ORS 825.250 & 825.258
 Hist.: PUC 3-1986, f. & ef. 4-18-86 (Order No. 86-377); PUC 7-1989, f. & cert. ef. 5-23-89 (Order No. 89-663); PUC 1-1991, f. & cert. ef. 1-11-91 (Order No. 91-20); PUC 6-1991, f. & cert. ef. 4-9-91 (Order No. 91-455); PUC 6-1992, f. & cert. ef. 2-26-92 (Order No. 92-292); PUC 10-1993, f. & cert. ef. 6-3-93 (Order No. 93-693 & 93-761); PUC 15-1993(Temp), f. & cert. ef. 8-19-93 (Order No. 93-1156); PUC 6-1994, f. & cert. ef. 3-28-94 (Order No. 94-525); PUC 6-1995, f. & cert. ef. 7-13-95 (Order No. 95-562); MCT 3-1996, f. & cert. ef. 3-14-96; Renumbered from 860-065-0035; MCT 4-1996, f. 3-20-96, cert. ef. 4-1-96; MCT 1-1997, f. 3-24-97, cert. ef. 4-1-97; MCTB 1-1998, f. 3-10-98, cert. ef. 4-1-98; MCTB 1-1999, f. & cert. ef. 4-22-99; MCTB 1-2000, f. 3-16-00, cert. ef. 4-1-00; MCTB 2-2001, f. 3-13-01, cert. ef. 4-1-01; MCTB 2-2002, f. & cert. ef. 6-21-02; MCTD 2-2003, f. & cert. ef. 4-21-03; MCTD 6-2003, f. & 11-18-03, cert. ef. 1-1-04; MCTD 2-2005, f. 3-18-05, cert. ef. 4-1-05; MCTD 2-2006, f. 3-17-06, cert. ef. 4-1-06; MCTD 1-2007, f. 3-26-07, cert. ef. 4-1-07

740-100-0090

North American Standard Driver Out-of-Service Criteria

(1) **Appendix A** of the **North American Standard Vehicle Out-of-Service Criteria**, published by the Commercial Vehicle Safety Alliance, in effect April 1, 2007, is adopted and incorporated in this rule. Inspection violations identified in the chart may be subject to one or both of the following:

(a) **Out-of-Service Violation:** Drivers with violations under this category shall not operate a commercial motor vehicle for a specified period of time or for some violations until a required condition is met;

(b) **Other:** Violations other than out-of-service violations require no immediate action by the driver or motor carrier. The carrier must certify in accordance with the terms contained on the inspection document and return it to the Department of Transportation within 15 days.

(2) Copies of **Appendix A** are available from the Commercial Vehicle Safety Alliance at: 1101 17th St NW, Suite 803, Washington, DC 20036.

Stat. Auth.: ORS 823.011 & 825.232
 Stats. Implemented: ORS 825.250, 825.252 & 825.260
 Hist.: PUC 7-1989, f. & cert. ef. 5-23-89 (Order No. 89-663); PUC 1-1991, f. & cert. ef. 1-11-91 (Order No. 91-20); PUC 6-1991, f. & cert. ef. 4-9-91 (Order No. 91-455); PUC 6-1992, f. & cert. ef. 2-26-92 (Order No. 92-292); PUC 15-1993(Temp), f. & cert. ef. 8-19-93 (Order No. 93-1156); PUC 6-1994, f. & cert. ef. 3-28-94 (Order No. 94-525); PUC 6-1995, f. & cert. ef. 7-13-95 (Order No. 95-562); MCT 3-1996, f. & cert. ef. 3-14-96; Renumbered from 860-065-0040; MCT 4-1996, f. 3-20-96, cert. ef. 4-1-96; MCT 1-1997, f. 3-24-97, cert. ef. 4-1-97; MCTB 1-1998, f. 3-10-98, cert. ef. 4-1-98; MCTB 1-1999, f. & cert. ef. 4-22-99; MCTB 1-2000, f. 3-16-00, cert. ef. 4-1-00; MCTB 2-2001, f. 3-13-01, cert. ef. 4-1-01; MCTB 2-2002, f. & cert. ef. 6-21-02; MCTD 2-2003, f. & cert. ef. 4-21-03; MCTD 6-2003, f. & 11-18-03, cert. ef. 1-1-04; MCTD 2-2005, f. 3-18-05, cert. ef. 4-1-05; MCTD 2-2006, f. 3-17-06, cert. ef. 4-1-06; MCTD 1-2007, f. 3-26-07, cert. ef. 4-1-07

740-100-0100

Maximum Fine Schedule

(1) **Appendix B, Maximum Fine Schedule**, published by the Commercial Vehicle Safety Alliance, revised July 2006, is adopted and incorporated in this rule.

(2) Except as provided in sections (3) and (4) of this rule, the foundation fine for a violation described in **Appendix B** shall be the lesser of the amount specified in **Appendix B** for One Driver Violation or 40 percent of the maximum fine for a Class A traffic violation established in ORS 153.018.

(3) Violations of OAR 740-100-0040 related to failure to carry traction devices shall have a minimum foundation fine of \$60. Violations of OAR 740-100-0040, related to failure to use traction devices when required, shall be subject to the fine established in section (5) of this rule.

(4) Except as provided in section (3) of this rule, violations of commercial motor carrier safety regulations found in OAR 740-100, 740-105 and 740-100-110, not specifically addressed in **Appendix B** shall carry a foundation penalty equal to the amount for a Group 3 violation contained in **Appendix B**.

(5) In the event that a violation was a substantial contributing factor to an accident or created substantial risk of injury to another person, the foundation fine shall be 60 percent of the maximum fine for a Class A traffic violation.

(6) Unitary assessments and county assessments required by ORS 137.290 and 137.309 are in addition to foundation fines specified in this rule.

(7) Copies of **Appendix B** are available from the Commercial Vehicle Safety Alliance: 1101 17th St. NW, Suite 803, Washington DC 20036.

Stat. Auth.: ORS 153.022, 823.011, 825.252 & 825.990
 Stats. Implemented: ORS 825.252

Hist.: PUC 4-1995, f. & ef. 6-19-95 (Order No. 95-517); MCT 2-1996, f. & cert. ef. 2-16-96; Renumbered from 860-065-0050; MCT 3-1996, f. & cert. ef. 3-14-96; MCTB 1-1998, f. 3-10-98, cert. ef. 4-1-98; MCTB 4-1999(Temp), f. 12-21-99, cert. ef. 1-1-00 thru 6-28-00; MCTB 2-2000, f. & cert. ef. 4-28-00; MCTB 2-2001, f. 3-13-01, cert. ef. 4-1-01; MCTD 2-2005, f. 3-18-05, cert. ef. 4-1-05; MCTD 2-2006, f. 3-17-06, cert. ef. 4-1-06; MCTD 1-2007, f. 3-26-07, cert. ef. 4-1-07

740-110-0010

Adoption of United States Department of Transportation Hazardous Materials Regulations

(1) Any person subject to ORS Chapter 825 who transports a hazardous material and any person subject to ORS 823.061 who causes to be transported a hazardous material shall comply with the rules and regulations governing the transportation of hazardous materials as prescribed by the United States Department of Transportation in **Title 49, Code of Federal Regulations, Part 397** and such portions of **Parts 107-178 and 180** as are applicable, and amendments thereto, in effect on April 1, 2007.

(2) Copies of the federal regulations referred to in this rule are available from ODOT, Motor Carrier Transportation Division or may be accessed on the Federal Motor Carrier Safety Administration website www.fmcsa.dot.gov.

Stat. Auth.: ORS 823.011, 823.061 & 825.258
 Stats. Implemented: ORS 825.258
 Hist.: Refiled in PUC 18, f. 1-21-55, ef. 9-1-54 (Order No. 33203); PUC 98, f. 1-18-61, ef. 1-12-61 (Order No. 37620); PUC 120, f. 10-26-62, ef. 11-15-62 (Order No. 38811); PUC 132, f. 3-29-65, ef. 4-1-65 (Order No. 41035); PUC 135, f. 5-9-66, ef. 5-15-66 (Order No. 42332); PUC 148, f. 7-29-68, ef. 9-1-68 (Order No. 44783); PUC 150, f. 11-7-68, ef. 12-1-68 (Order No. 45141); PUC 156, f. 8-6-73, ef. 8-15-73 (Order No. 73-507); PUC 181, f. 12-30-77, ef. 1-15-78 (Order No. 77-896); PUC 2-1980, f. & ef. 3-27-80 (Order No. 80-179); PUC 3-1980, Part 1, f. & ef. 6-30-80 (Order No. 79-805); PUC 5-1980, f. & ef. 10-13-80 (Order No. 80-758); Renumbered from 860-036-0055; PUC 1-1981, f. & ef. 2-9-81; PUC 12-1981, f. & ef. 12-16-81 (Order No. 81-880); PUC 6-1982, f. & ef. 5-6-82 (Order No. 82-336); PUC 1-1983, f. & ef. 1-17-83 (Order No. 83-024); PUC 1-1984, f. & ef. 2-9-84 (Order No. 84-076); PUC 13-1984, f. & ef. 7-26-84 (Order No. 84-546); PUC 8-1985, f. & ef. 6-10-85 (Order No. 85-499); PUC 7-1986(Temp), f. & ef. 7-25-86 (Order No. 86-736); PUC 13-1986, f. & ef. 10-30-86 (Order No. 86-1106); PUC 7-1989, f. & cert. ef. 5-23-89 (Order No. 89-663); PUC 1-1991, f. & cert. ef. 1-11-91 (Order No. 91-20); PUC 6-1992, f. & cert. ef. 2-26-92 (Order No. 92-292); PUC 10-1993, f. & cert. ef. 6-3-93 (Order No. 93-693 & 93-761); PUC 6-1994, f. & cert. ef. 3-28-94 (Order No. 94-525); PUC 6-1995, f. & cert. ef. 7-13-95 (Order No. 95-562); MCT 1-1996, f. 2-16-96, cert. ef. 4-1-96; Renumbered from 860-066-0055; MCT 3-1996, f. & cert. ef. 3-14-96; MCT 5-1996, f. & cert. ef. 9-17-96; MCT 1-1997, f. 3-24-97, cert. ef. 4-1-97; MCTB 1-1998, f. 3-10-98, cert. ef. 4-1-98; MCTB 1-1999, f. & cert. ef. 4-22-99; MCTB 1-2000, f. 3-16-00, cert. ef. 4-1-00; MCTB 2-2001, f. 3-13-01, cert. ef. 4-1-01; MCTB 2-2002, f. & cert. ef. 6-21-02; MCTD 2-2003, f. & cert. ef. 4-21-03; MCTD 6-2003, f. & 11-18-03, cert. ef. 1-1-04; MCTD 2-2005, f. 3-18-05, cert. ef. 4-1-05; MCTD 2-2006, f. 3-17-06, cert. ef. 4-1-06; MCTD 1-2007, f. 3-26-07, cert. ef. 4-1-07

Department of Transportation, Transportation Safety Division Chapter 737

Rule Caption: Requirements for Traffic Safety Education Courses, Instructors and Equipment.

Adm. Order No.: TSD 1-2007

Filed with Sec. of State: 3-26-2007

Certified to be Effective: 4-1-07

Notice Publication Date: 1-1-07

Rules Adopted: 737-015-0110

Rules Amended: 737-015-0020, 737-015-0030, 737-015-0050, 737-015-0060, 737-015-0070, 737-015-0090, 737-015-0100

Rules Repealed: 737-015-0040, 737-015-0080

Subject: These rules relate to traffic safety education courses, instructors and equipment required for the instruction of persons less than 18 years of age. ODOT's Transportation Safety Division (TSD) is responsible for monitoring the schools and instructors who provide this traffic safety course. The 2005 Oregon Legislature amended ORS 336.805 (HB 2112) increasing the amount reimbursed to public schools and facilities offering a course in traffic safety from \$150 to \$210 per eligible student. OAR 737-015-0090 has been amended to reflect this change. Other rules pertaining to the program have not been updated in six years. These rule amendments clarify and define exactly what is required for an approved driver education provider. The new language updates curriculum concepts and delivery requirements and outcomes of students completing an approved traffic safety course. These rules outline the requirements and qualifications for driver education instructors. These amendments are part of an on-going process to make these rules better for the safety and mobility of young drivers of Oregon choosing to complete an ODOT-TSD approved course. The amendments eliminate inconsistencies in

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state-approved driver education requirements for public and private providers.

Rules Coordinator: Brenda Trump—(503) 986-3171

737-015-0020

Definitions

As used in Division 15 rules, unless the context otherwise requires:

(1) "Approved certification" means any form, sticker, or validation, approved by the Department, that serves as proof of completion of a traffic safety education course.

(2) "Approved provider" is an educational facility or a driving school that provides instruction using a Division-approved curriculum by instructors who have completed a Division-approved instructor course of study:

(a) An educational facility is a public provider; and

(b) A driving school is a private provider. To qualify as an approved provider, the driving school owner, operator or instructor must certify and provide verification annually that an instructor meet all requirements of employment and remain in compliance with OAR 735-160-0003 through 735-160-0130

(3) "Audits" means the Division's audits of approved providers performed on-site to review student, curriculum, and instructor records to ensure that the providers are in compliance with OAR 737-015-0010 through 737-015-0110. An audit may include observation of the instructor during behind-the-wheel and classroom instruction.

(4) "Behind-the-wheel" instruction means the portion of the traffic safety education course that requires the student to be located behind the steering wheel of a motor vehicle or simulated vehicle, operating it either in real or simulated traffic situations, through the direct guidance of a driver education instructor.

(a) Four hours of simulation is equal to one hour of behind the wheel instruction

(b) One hour of operating a motor vehicle is equal to one hour of behind the wheel instruction.

(5) "Classroom instruction" means that portion of traffic safety education instruction that is given in a classroom situation and is not included as a portion of the behind-the-wheel instruction.

(6) "Completing the course" means completing an Oregon Department of Transportation, Transportation Safety Division approved traffic safety education course.

(7) "Concurrent" means the integration of classroom instruction and behind the wheel instruction. No less than four and no more than 10 hours of classroom instruction will be completed before starting behind-the-wheel instruction. The classroom and behind-the-wheel instruction will be well organized and coordinated.

(8) "Curriculum guide" means a document that describes what the students need to learn and provides a guide for instructors as they prepare for instruction. It is a document that assists traffic safety instructors and district coordinators in meeting the needs of the regulations identified in OAR 737-015-0030 and 735-015-0040.

(9) "Department" or "ODOT" means the Oregon Department of Transportation.

(10) "Division" or "TSD" means the Transportation Safety Division of the Oregon Department of Transportation.

(11) "DMV" means the Driver and Motor Vehicle Services Division of the Oregon Department of Transportation.

(12) "Driving school" means a commercial vendor, owner, operator or instructor who teaches traffic safety education directly to teen drivers and the school is certified by DMV under OAR 735-160-0003 through 735-160-0130, relating to Commercial Driver Training Schools.

(13) "Driving school owner, operator or instructor" means a person who is certified by DMV under OAR 735-160-0003 through 735-160-0130, relating to Commercial Driver Training Schools.

(14) "Driving simulator" means an electromechanical device designed to represent the driver's compartment of the automobile and with the use of films or video programs attempts to develop judgment, decision-making skills, behavior response, and manipulative skills essential in learning the driving task.

(15) "Dual control" means an additional brake pedal installed as specified by the manufacturer, for use by the traffic safety education instructor to assist in an emergency when a student driver is at the regular controls during behind-the-wheel instruction. Dual controls consist of a foot brake for both the student driver and the instructor, connected either by mechanical or hydraulic means.

(16) "Educational facility" includes any public school district, education service district, community college district, any facility for the deaf

operated under ORS 346.010, the Hillcrest School of Oregon, MacLaren School for Boys, tribal schools, state and federal schools, public agencies, and any parochial, private- or home-school facility meeting the requirements of OAR 581-045-0535 and ORS 345.505.

(17) "Eligible student" means a student that is at least 15 years of age, who has not graduated from high school or received a GED, and has not reached 18 years of age and has an instruction permit.

(18) "Hours" means clock hours, not including breaks or other time that does not apply to actual instruction.

(19) "Lesson plan" means a written outline of the content and method of instruction. Required elements are specified in OAR 737-015-0030.

(20) "Practice driving observation" means that portion of traffic safety education instruction given in a dual control vehicle as the instructor observes the student driver and engages the back seat passengers in discussion of the student driver operation of the motor vehicle.

(21) "Public school" means a school district, education service district, community college district, any facility for the deaf operated under ORS 346.010, the Hillcrest School of Oregon and the MacLaren School for Boys.

(22) "Scope and sequence" means a written outline that provides a framework for the knowledge, skills, driving behaviors and habits that students are expected to acquire in the classroom and behind-the-wheel portion of a traffic safety education program.

(23) "Simulation" means the portion of the behind-the-wheel traffic safety education course given in a driving simulator.

(24) "Traffic safety education" means a course consisting of classroom instruction, practice driving, and in some cases practice driving observation, all devoted to educating teen student drivers in safe and proper driving practices.

Stat. Auth.: ORS 184.616, 184.619 & 802.345

Stats. Implemented: ORS 336.800, 336.805, 336.810, 802.110, 802.345 & 807.065

Hist.: TSS 1-2000(Temp), f. 2-11-00, cert. ef. 3-1-00 thru 8-27-00; TSS 2-2000, f. 8-10-00, cert. ef. 8-28-00; TSD 1-2007, f. 3-26-07, cert. ef. 4-1-07

737-015-0030

Curriculum Requirements

(1) Each approved provider must appoint a person responsible for ensuring that all driver education requirements are met and to be the contact person with the Division.

(2) Each approved provider must develop a lesson plan that includes:

(a) The title of the lesson or module to be taught;

(b) Prerequisites;

(c) Overall objectives;

(d) Performance objectives;

(e) Materials and resources;

(f) Instructor and student activities;

(g) Time breakdown;

(h) Methods of assessment; and

(i) Assignments.

(3) Each approved provider must adopt written policies that include:

(a) Enrollment criteria;

(b) Student fees and refunds;

(c) Course failures and repeats; and

(d) Minimum and maximum course duration.

(4) Each approved provider must submit in writing, all reportable motor vehicle accidents that involve a driver education motor vehicle to the Division within three working days of the accident.

(5) A traffic safety education program curriculum must include:

(a) Except as provided in sections (10), (11) and (12) of this rule, a minimum of 30 hours of classroom instruction not exceeding six hours per week or three hours per day that includes:

(A) Instructing students about driving on all types of Oregon roads to enable the student to acquire knowledge about driving techniques and experiences and sharing the road with other highway users such as bicycles, motorcycles, pedestrians, trains, cars, trucks, and rail in a positive and courteous manner;

(B) Driver responsibility of automobile maintenance, fuel efficient driving, potential distractions, safety restraint (belt) use, and legal and moral responsibilities;

(C) Preparing and controlling the vehicle;

(D) Identification and proper use of signs, signals, markings, roadway types and variations such as county, city, expressways, freeways, and interstates;

(E) How to enter, use, and exit different types of intersections;

(F) Basic automobile maneuvers and traffic flow;

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(G) Management of time and space using accepted and current practices, including targeting, line of sight/path of travel, model driving habits and reference point concepts;

(H) Defensive driving practices;

(I) Rules of the road;

(J) How the laws of physics and natural laws affect driving;

(K) How physical, emotional, and psychological conditions such as personal attitudinal traits affect driving;

(L) How alcohol and other drugs affect driving; and

(M) Emergency situations and vehicle malfunctions.

(b) A minimum of six hours of behind-the-wheel instruction not exceeding 90 minutes of driving per day per student that includes:

(A) The rules and procedures of operating an automobile;

(B) The visual skills to obtain correct information and make reduced-risk decisions about driving maneuvers;

(C) Vehicle movement in a precise and timely manner to avoid conflict with others;

(D) Pre-drive procedures that include use of vehicle controls, door locks and head restraints, having headlights on at all times and use of safety (belt) restraints;

(E) Basic maneuvers that include starting, stopping, backing, vehicle control, speed control, parking, pulling to and from the curb, right-of-way, and push/pull and hand-over-hand steering;

(F) Complex maneuvers that include entering and exiting an intersection, entering and exiting curves, lane changes, merging, passing, turns in traffic, city driving, and three-point turnabouts; and

(G) Visual skills, including automobile mirror usage, using current and accepted practices, including targeting, line of sight, path of travel, model driving habits, and reference point concepts.

(c) A minimum of six hours of practice driving observation not exceeding three hours of observation per day per student.

(d) Parent, legal guardian, or supervising adult involvement that includes participating in a parent meeting and submitting documentation, in the form of a log or other means, demonstrating to the provider that a minimum of five hours of supervised home practice was conducted prior to the completion of the course. This supervised home practice is not counted as a part of the classroom, behind-the-wheel, and practice driving observation of the provider course.

(e) A skill assessment for each student driver that covers, at a minimum:

(A) Positioning a vehicle based on visual referencing skills, space management, fender judgment and road position control;

(B) Procedures and sequencing for vehicle operations from the simple to the complex skill based on vehicle operation control, vehicle maneuvering, vehicle control options, and vehicle balance;

(C) Processing traffic and vehicle information into speed and position changes based on visual skills, space management, vehicle speed control, and control of the road; and

(D) Precision movements for maintaining vehicle control and balance in expected and unexpected situations based on vehicle speed control, vehicle balance, collision avoidance, traction control, response to mechanical failures and traction loss.

(6) A traffic safety education curriculum guide must be submitted to ODOT-TSD by September 1, 2007 for review and approval and every three years thereafter. If the curriculum guide is submitted before September 1, 2007 the next curriculum will be required three years from the date of the last submittal. A curriculum guide must include the following elements:

(a) Philosophy;

(b) Goals and objectives;

(c) Scope and sequence;

(d) Major instructional activities;

(e) Suggested teaching strategies;

(f) Lists of available materials and resources;

(g) Procedures for student and program evaluation;

(h) A written lesson plan with a coordinated flow chart for each classroom and behind-the-wheel session; and

(i) A written drive route that supports each behind-the-wheel lesson plan with specific driving behaviors to be practiced, directions and strategies to improve student performance and habit development. The drive route cannot duplicate the DMV drive test route.

(7) Behind-the-wheel instruction and practice driving observation may not precede classroom instruction, however the three portions — classroom, behind-the-wheel and practice driving observation — are recommended to be offered concurrently. Beginning September 1, 2008, concurrent instruction is required.

(8) No program will be completed in less than 35 days and no more than 180 days. An extension beyond the 180 days may be provided if there is compelling reason dealing with school, family or medical circumstances and has been agreed upon with provider and student before the completion of the course.

(9) At the end of each program, the provider will issue a Department approved certification to each student that successfully completes the traffic safety education course.

(10) Exception — The classroom portion of a driver education program, required under section (5) (a) of this rule, offered from June through August may be conducted over a shorter period of time and for longer hours. The classroom instruction must be conducted over no less than a three-week period with no more than 10 hours of classroom instruction per week.

(11) Waivers — Waivers may be requested by the approved public or private provider through August 31, 2008 as follows:

(a) A waiver of the three hours per day restriction, required under section (5)(a) of this rule, may be requested from the Division Manager or his or her designee, but no waiver exceeding six hours per week will be granted. At least two months advance notice is necessary prior to the date such waiver is allowed.

(b) A waiver of the minimum of six hours of practice driving observation, required under section (5)(c) of this rule, may be requested from the Division Manager or his or her designee if a particular student and his or her parent, legal guardian or supervising adult requests that the student be given one-on-one instruction.

(12) A waiver request under section (11) of this rule must include:

(a) A compelling reason for the request;

(b) Why the waiver is needed i.e., a survey of parents requesting a non-conforming class structure;

(c) Why granting such a waiver will not adversely affect the learning of the participating student(s); and

(d) Parental support of such scheduling.

Stat. Auth.: ORS 184.616, 184.619 & 802.345

Stats. Implemented: ORS 336.800, 336.805, 336.810, 802.110, 802.345 & 807.065

Hist.: TSS 1-2000(Temp), f. 2-11-00, cert. ef. 3-1-00 thru 8-27-00; TSS 2-2000, f. 8-10-00, cert. ef. 8-28-00; TSD 1-2007, f. 3-26-07, cert. ef. 4-1-07

737-015-0050

Instructional Materials and Equipment

(1) Current traffic safety education instructional materials shall be provided for each student enrolled for classroom instruction, and shall be available to students during the classroom and behind-the-wheel instruction.

(2) Any motor vehicle used by an approved provider, for the behind-the-wheel instruction portion of a traffic safety education course shall:

(a) Be equipped with a dual control;

(b) Be maintained in good mechanical condition;

(c) Meet the safety and equipment standards of the Oregon Vehicle Code;

(d) Be equipped with approved seat belts for the student driver, the instructor and any observing passengers;

(e) Be equipped with a functional heater and defroster;

(f) Be equipped with the following emergency equipment: a fire extinguisher; first aid kit in compliance with OR-OSHA Bloodborne Pathogens Standards; and three flares or three approved reflectors;

(g) Be clearly identified with an appropriate sign or signs stating: "Student Driver" or "Dual Control Car, Driver Education" or "Driver Education Car." Such identification must be clearly visible and readable to pedestrians and other traffic;

(h) Be properly registered in Oregon or an adjacent state;

(i) Be covered by insurance as required by the state of Oregon; and

(j) Be equipped with at least the following mirrors:

(A) One mirror on each side of the vehicle, mounted either inside or out, for the use of the instructor and the student while properly seated;

(B) A rear view mirror for the use of the driver; and

(C) An instructor eye check mirror to monitor eye movements of the student driver.

(D) An instructor rear view mirror.

(3) Headlights must be in use at all times — low or high beam, as appropriate — during behind-the-wheel instruction.

Stat. Auth.: ORS 184.616, 184.619 & 802.345

Stats. Implemented: ORS 336.800, 336.805, 336.810, 802.110, 802.345 & 807.065

Hist.: TSS 1-2000(Temp), f. 2-11-00, cert. ef. 3-1-00 thru 8-27-00; TSS 2-2000, f. 8-10-00, cert. ef. 8-28-00; TSS 2-2001, f. & cert. ef. 8-13-01; TSD 1-2007, f. 3-26-07, cert. ef. 4-1-07

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737-015-0060

Use of Driving Simulators

(1) Not more than one-half of the required hours specified for behind-the-wheel instruction may be given by means of a driving simulator, in accordance with the ratio for driving simulator to behind-the-wheel instruction found in OAR 737-015-0020(4)

(2) Driving simulator instruction may not precede classroom instruction. If offered, simulation must be offered concurrently with classroom instruction beginning September 1, 2008.

(3) An instructor must complete a workshop in driving simulation operation and application before providing instructions on the driving simulator.

(4) Documentation of the completed workshop must be kept in the instructor's file.

Stat. Auth.: ORS 184.616, 184.619 & 802.345

Stats. Implemented: ORS 336.800, 336.805, 336.810, 802.110, 802.345 & 807.065

Hist.: TSS 1-2000(Temp), f. 2-11-00, cert. ef. 3-1-00 thru 8-27-00; TSS 2-2000, f. 8-10-00, cert. ef. 8-28-00; TSD 1-2007, f. 3-26-07, cert. ef. 4-1-07

737-015-0070

Qualifications of an Approved ODOT-TSD Traffic Safety Education Instructor

All of the following qualifications apply to a traffic safety education instructor:

(1) A traffic safety education course instructor must meet all requirements of his or her employer.

(2) A person assigned to provide classroom or behind-the-wheel driving instruction, for the traffic safety education course must certify and provide verification annually to his or her employer that the person holds a valid Oregon driver license or a license issued by a state adjacent to Oregon, if the person is a legal resident of that state. This person must provide a five-year certified court print abstract to the employing provider showing:

(a) Not more than one driver improvement violation within the preceding 12 months or more than two driver improvement violations in the preceding 24 months;

(b) No alcohol or drug related traffic violation, conviction or infraction within the preceding five years; or

(c) No driver's license suspension, cancellation, revocation or denial within the preceding three years.

(3) A person assigned to provide traffic safety education classroom instruction must certify and provide verification annually to his or her employer that they have previously completed a Division-approved course of study for Foundations of traffic safety education and completed the Division-approved classroom course.

(4) A person assigned to provide only traffic safety education behind-the-wheel instruction must certify and provide verification annually to his or her employer that they have previously completed the Division-approved Foundations course and the Division-approved course of study for behind-the-wheel instructor preparation, including an in-car practicum with beginning drivers.

(5) An instructor must have a current first aid/CPR Certification.

(6) An instructor must be re-certified every two years. To qualify, the instructor must, during the previous two years:

(a) Participate in 15 hours of continuing education to improve driver education teaching competency. This professional development training may be obtained through a state agency, college or university or professional education organization. Professional development hours will be accepted for the purpose of enhancing instructional knowledge and skills in support of teaching driver education best practices. Every instructor must maintain a professional development file that includes the agenda, objectives, time schedule and completion certificates for the continuing education;

(b) Provide a minimum of 30 hours of classroom, behind-the-wheel or simulator instruction in a Division-approved program during the re-certification period; and

(c) Retain a current first aid/CPR Certification. This is not included in the 15 hours of continuing education.

(7) A waiver, of the coursework required under section (4) of this rule for behind-the-wheel instruction, may be granted for up to one year by the Division Manager or his or her designee. This person must have prior advanced driver training and must verify successful completion of the required courses for driver education certification.

(8) A certified teacher, unable to complete the coursework as required under section (3) of this rule, may be granted a one-year waiver by the

Division Manager or his or her designee, if the person verifies successful completion of the required courses for driver education certification.

(9) An applicant will be refused approval to provide traffic safety education or a current approval will be suspended or revoked if the applicant or instructor has his or her driver license or privilege suspended or revoked or canceled for any reason or is involved in the DMV Driver Improvement Program or has exceeded two driver improvement violations in a two-year period or has any alcohol or drug related traffic violation, conviction or infraction.

(10) Approval to provide traffic safety education may be granted upon reapplication when the traffic safety education instructor's driver license or privilege in Oregon has been reinstated in full for three years or one year has passed since the last Driver Improvement Program entry on the driving record or five years have passed since an alcohol or drug related traffic violation, conviction or infraction.

(11) Opportunities for reinstatement and appeal are available according to provisions equivalent to those specified in ORS 342.175(4) and 342.180.

Stat. Auth.: ORS 184.616, 184.619 & 802.345

Stats. Implemented: ORS 336.800, 336.805, 336.810, 802.110, 802.345 & 807.065

Hist.: TSS 1-2000(Temp), f. 2-11-00, cert. ef. 3-1-00 thru 8-27-00; Administrative correction 2-17-00; TSS 2-2000, f. 8-10-00, cert. ef. 8-28-00; TSS 1-2001(Temp), f. & cert. ef. 6-14-01 thru 12-10-01; TSS 2-2001, f. & cert. ef. 8-13-01; TSD 1-2007, f. 3-26-07, cert. ef. 4-1-07

737-015-0090

Recordkeeping

(1) To ensure accurate recording and reporting, an approved provider must complete and return all required traffic safety education course recording and reporting forms supplied by the Division before or on the required dates.

(2) The public provider must maintain the following records:

(a) A permanent record for each student who begins, regardless of whether or not the student completes, a traffic safety education course including:

(A) The dates the course was taken;

(B) The final grade achieved, if course is completed;

(C) Verification that the student had a permit on the first day of class;

(D) The student's mailing address;

(E) The student's progress;

(F) A record of home practice;

(G) Time involvement;

(H) Evaluation results; and

(I) Attendance — classroom and behind-the-wheel start and end times and dates.

(b) A permanent record for all instructors, including current and past instructors, who have conducted the classroom or behind-the-wheel portion of a traffic safety course including:

(A) The instructor's driver license number, date(s) of employment; job application or resume; and

(B) Record of the instructor's continuing education; first aid/CPR Certificate; and simulation training, if applicable.

(c) A copy of the curriculum guide that was provided to the Division.

(d) A copy of all accident reports for reportable accidents relating to a driver education motor vehicle owned or operated by the provider.

(e) A copy of written policies required by OAR 737-015-0030, 737-015-0040 and ORS 336.805.

(3) A private provider must maintain the records required in OAR 735-160-0030(2) plus:

(a) A copy of the curriculum guide that was provided to the Division.

(b) A copy of all accident reports for reportable accidents relating to a driver education motor vehicle owned or operated by the provider.

(c) A copy of written policies required by OAR 737-015-0030, 737-015-0040 and ORS 336.805.

(4) For all approved providers records must be retained for five years for instructors and 10 years for all other program records.

Stat. Auth.: ORS 184.616, 184.619 & 802.345

Stats. Implemented: ORS 336.800, 336.805, 336.810, 802.110, 802.345 & 807.065

Hist.: TSS 1-2000(Temp), f. 2-11-00, cert. ef. 3-1-00 thru 8-27-00; TSS 2-2000, f. 8-10-00, cert. ef. 8-28-00; TSD 1-2007, f. 3-26-07, cert. ef. 4-1-07

737-015-0100

Reimbursement for Traffic Safety Education Courses

(1) The ODOT-TSD will reimburse public schools for traffic safety education courses that meet the requirements of OAR 737-015-0010 through 737-015-0110, conducted for students admitted to public schools under ORS 339.115.

(2) The amount of reimbursement will not be greater than the net cost of conducting the course, nor will it exceed \$210 per pupil completing the

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course. If funds available to the ODOT-TSD for the Student Driver Training Fund are not adequate to pay all approved claims in full, public schools will receive a pro rata reimbursement based upon the ratio that the total amount of funds available bears to the total amount of funds required for maximum allowable reimbursement. Calculation for pro rata reimbursement will be as follows: the total amount of funds available in the Student Driver Training Fund will be divided by the statewide total number of students eligible for reimbursement. This calculation will generate a prorated per student amount. Each public school's reimbursement will be determined by multiplying the prorated amount times the number of eligible students claimed by the public school. In no case will the public school receive more than its eligible expenses less tuition received. In the event of a pro rata reimbursement, claims received after the deadline will not be considered for reimbursement at any time.

(3) Accurate and complete records of the cost of conducting a traffic safety education course must be kept, and reports must be submitted to the ODOT-TSD by each public school seeking reimbursement. All student fees must be received by the public provider.

(4) Distribution of funds available in the Student Driver Training Fund will be made annually by the ODOT-TSD Manager based on the reimbursement form submitted by the public school at the end of each fiscal year.

(5) The ODOT-TSD will reimburse costs of traffic safety education courses that comply with OAR 737-015-0010 to 737-015-0110. Allowable costs may include:

(a) Salary for classroom, behind-the-wheel and simulation instructors, or the contracted cost per student;

(b) Motor vehicle expenses, whether leased or owned by the public school, including vehicle insurance and operating expenses (i.e., gas, oil, repairs);

(c) Instructional materials; and

(d) Direct program coordination costs, including administrative costs and contract development and management costs directly relating to the traffic safety education course.

(6) Public schools shall receive reimbursement only for those students who have completed the traffic safety education course prior to issuance of their provisional driver license.

Stat. Auth.: ORS 184.616, 184.619 & 802.345

Stats. Implemented: ORS 336.800, 336.805, 336.810, 802.110, 802.345 & 807.065

Hist.: TSS 1-2000(Temp), f. 2-11-00, cert. ef. 3-1-00 thru 8-27-00; TSS 2-2000, f. 8-10-00,

cert. ef. 8-28-00; TSS 2-2001, f. & cert. ef. 8-13-01; TSD 1-2007, f. 3-26-07, cert. ef. 4-1-07

737-015-0110

Audits and Investigation

(1) The ODOT-TSD may periodically audit all approved providers to determine compliance with laws and rules pertaining to the operation of the approved provider's program and instructor certification requirements. Providers must allow the ODOT-TSD to conduct random audits with prior notice during regular school or business hours:

(a) Periodic audits may include examination of:

(A) Student driver records for which division approved driver training was conducted by the provider regardless of whether the student driver completed or failed to complete the school's driver training program;

(B) Qualifications of traffic safety instructors; and

(C) Other items the ODOT-TSD deems necessary such as classroom and behind-the-wheel instructor observations, vehicle equipment, vehicles and instructional materials to assure that the provider meets requirements for maintaining its approval.

(b) Refusal to permit an audit will result in notice from the ODOT-TSD requiring the provider to cease and desist from classroom and behind-the-wheel instruction and the use of the ODOT-TSD-approved completion seal.

(c) An ODOT-TSD representative will prepare a written report of each audit. A copy of the ODOT-TSD representative's report, including any corrective action, will be sent to the provider.

(d) Providers must correct any deficiency identified by an ODOT-TSD inspector during an on-site audit within 30 calendar days of the date of the audit. A corrective action report must be provided to the ODOT-TSD. If not corrected, public providers will not be eligible for reimbursement. When non-compliance of rules continues the ODOT-TSD may revoke or cancel recognition of the provider and notify DMV.

(2) The ODOT-TSD may investigate any complaint it receives about an approved provider or instructor. The authorized provider or provider's employees must cooperate with the ODOT-TSD during the investigation. If requested by the ODOT-TSD, the approved provider must provide a written response to the complaint within 10 working days by either mail or fac-

simile from the date the ODOT-TSD notifies the provider of the complaint. The ODOT-TSD must prepare a written report of each investigation. A copy of the ODOT-TSD report, including any corrective action, will be sent to the provider. If not corrected, public providers will not be eligible for reimbursement. When non-compliance of rules continues the ODOT-TSD may revoke or cancel recognition of the provider and notify the DMV.

(3) The ODOT-TSD may revoke its approval of a provider or instructor upon providing five days advance written notice when the ODOT-TSD determines, through an audit or investigation, that the safety of students or members of the general public is being endangered because of unsafe practices or use of unsafe equipment.

(4) An approved provider or instructor whose approval has been suspended, revoked, or cancelled is entitled to a contested case hearing as provided in the Oregon Administrative Procedures Act under ORS 183.413 to 183.500.

(5) When ODOT-TSD takes action to suspend, revoke or cancel an approved provider ODOT-TSD will send notice to the approved provider or instructor listed. The notice will be in writing and state that the suspension, revocation, or cancellation will begin either in five calendar days (an immediate suspension or cancellation) or in 30 calendar days from the date on the notice. The notice will be served by first class mail sent to the current address on record with ODOT-TSD.

(6) When ODOT-TSD takes action to suspend, revoke or cancel an instructor approval ODOT-TSD will send notice to the instructor listed on the Instructor Report. The notice will be in writing and state that the suspension, revocation, or cancellation will begin either in five calendar days (for an immediate suspension or cancellation) or in 30 calendar days from the date on the notice. The notice will be served by first class mail sent to the current school address on record with ODOT-TSD.

(7) Except as provided for in section (9) of this rule, a request for a hearing must be submitted in writing to, and received by, the Office of Administrative Hearings within 20 days of the date of the notice. If a hearing request is received in a timely manner the suspension, revocation or cancellation will not go into effect pending the outcome of the hearing, unless the certificate is immediately suspended or cancelled.

(8) If the approval is immediately suspended or cancelled as set forth in subsection (6) and (7) of this section, the request for hearing shall be submitted in writing to, and received by, ODOT-TSD within 90 days of the date of notice of suspension. The suspension or cancellation shall remain in effect pending the outcome of the hearing.

(9) Except as provided in OAR 137-003-0003, when no request for a hearing is received by the deadline, the approved provider or instructor has waived the right to a hearing, ODOT-TSD's file shall constitute the record of the case, and a default order shall be issued by ODOT-TSD.

(10) If a provider or instructor approval has been revoked, the provider or instructor may reapply for an original certificate after a period of revocation of five years and must meet all the requirements for the certificate.

(11) If the provider or instructor certificate is cancelled, the provider or instructor may reapply for an original certificate when they have met all of the requirements.

(12) At the end of a suspension period, ODOT-TSD will reinstate the provider or instructor certificate unless the provider or instructor does not meet the qualification requirements for the approval. If the approval has expired, the provider or instructor must reapply for an original certificate, must meet all the requirements for new certification.

Stat. Auth.: ORS 184.616, 184.619, 802.345

Stats. Implemented: ORS 336.800, 336.805, 336.810, 802.110, 802.345, 807.065

Hist.: TSD 1-2007, f. 3-26-07, cert. ef. 4-1-07

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**Employment Department,
Child Care Division
Chapter 414**

Rule Caption: Amending OAR 414-205, OAR 414-300 and OAR 414-350.

Adm. Order No.: CCD 1-2007(Temp)

Filed with Sec. of State: 3-20-2007

Certified to be Effective: 3-20-07 thru 9-16-07

Notice Publication Date:

Rules Amended: 414-205-0010, 414-205-0020, 414-205-0035, 414-205-0055, 414-300-0005, 414-300-0080, 414-350-0010

Subject: Incorporate name change of partner organization (Professional Development Registry to Oregon Registry), clarify types of registered family applications (new, renew and reopen), clarify train-

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ing requirements for renewing and reopening applicants, delete provision in registered family rules that states we will never disclose identity of complainant because its contrary to public records law.

Rules Coordinator: Lynn M. Nelson—(503) 947-1724

414-205-0010

Definitions

(1) "Caregiver" means any person, including the provider, who cares for the children in the registered family child care home and works directly with the children, providing care, supervision and guidance.

(2) "Child Care" means the care, supervision and guidance on a regular basis of a child, unaccompanied by a parent, guardian or custodian, during a part of the 24 hours of the day, with or without compensation.

(3) "Child Care Child" means any child under 13 years of age, or a child with special needs under the age of 18 who requires a level of care over and above the norm for his/her age, who does not reside in the home and for whom the provider has supervisory responsibility in the temporary absence of the parent.

(4) "CCD" means the Child Care Division of the Employment Department, or the Administrator or staff of the Division.

(5) "Criminal History Registry" means CCD's Registry of individuals who have been approved to work in a child care facility in Oregon pursuant to ORS 657A.030 and OAR 414-061-0000 through 414-061-0120.

(6) "Family" means persons related by blood, marriage, or adoption, or whose functional relationship (e.g., parent(s), custodian(s), guardian(s)) in exercising physical care and custody of the child(ren) is similar to those found in such associations.

(7) "Full-Time Child Care" means care provided to children not yet eligible for the first grade or above. One or more children may fill a full-time space in the home as long as the children are not in care at the same time.

(8) "Infant" means a child who is not yet walking.

(9) "New Application" means a registration application that has been filed by an applicant who has never had an active registration.

(10) "Night Care" means care given to a child who sleeps at the family child care home for all or part of the night.

(11) "Occasional" means infrequently or intermittently, including but not limited to care that is provided during summer or other holiday breaks when children are not attending school, but not to exceed 70 calendar days in a year.

(12) "Oregon Registry" means the voluntary registry at the Oregon Center for Career Development in Childhood Care and Education at Portland State University that documents the training, education and experience of individuals who work in childhood care and education.

(13) "Part-Time Child Care" means care provided to a child who meets the definition of a school-age child and is in care on days and hours school is not in session.

(14) "Preschool-Age Child" means a child 24 months of age to eligible to be enrolled in the first grade and, during the months of summer vacation from school, eligible to be enrolled in the first grade in the next school year.

(15) "Provider" means a resident of the registered family child care home who is responsible for the children in care; is the children's primary caregiver; and the person whose name is on the certificate of registration.

(16) "Registered Family Child Care Home" means the residence of the provider, who has a current Family Child Care Registration at that address and who provides care in the family living quarters.

(17) "Registration" means the document a family child care provider is issued by the Child Care Division to operate a family child care home where care is provided in the family living quarters of the provider's home pursuant to ORS 657A.330 and OAR 414-205-0000 through 414-205-0170. Registration is limited to one provider at one address.

(18) "Renewal Application" means a registration application that has been filed by a currently registered family child care provider who wishes to continue registration.

(19) "Reopen Application" means a registration application that has been filed by an applicant whose registration is expired or closed, including those closures resulting from an address change.

(20) "School-Age Child" means a child eligible to be enrolled in the first grade or above and, during the months of summer vacation from school, a child eligible to be enrolled in the first grade or above in the next school year.

(21) "Serious Complaint" means a complaint filed against:

(a) A registered family child care provider by a person who has alleged that:

(A) Children are in imminent danger;
(B) There are more children in care than allowed by law;
(C) Corporal punishment is being used;
(D) Children are not being supervised;
(E) Multiple or serious fire, health or safety hazards are present in the home;

(F) Extreme unsanitary conditions are present in the home; or

(G) Adults are in the home who are not enrolled in the Child Care Division's Criminal History Registry; or

(b) An individual providing child care, as defined by ORS 657A.250(3), who is not a registered family child care provider by a person who has alleged that there are more children in care than allowed by law.

(22) "Special Needs Child" means a child under the age of 18 who requires a level of care over and above the norm for his/her age due to a physical, developmental, behavioral, mental or medical disability.

(23) "Substitute Caregiver" means a person who acts as the children's primary caregiver in the registered family child care home in the temporary absence of the provider.

(24) "Usable Exit" means an unobstructed door or window through which the provider and the children can evacuate the home in case of a fire or emergency. Doors must be able to be opened from the inside without a key, and window openings must be at least 20 inches wide and 22 inches in height, with a net clear opening of 5 square feet and a sill no more than 48 inches above the floor.

Stat. Auth.: Ch. 858, OL 1999 (SB 2240)

Stats. Implemented: Ch. 858, OL 1999 (SB 2240)

Hist.: CCD 2-1994, f. 7-15-94, cert. ef. 8-15-94; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 3-1999(Temp), f. 10-21-99, cert. ef. 10-23-99 thru 1-1-00; CCD 7-1999, f. 12-29-99, cert. ef. 1-1-00; CCD 1-2000, f. 3-31-00, cert. ef. 4-2-00; CCD 5-2001, f. 11-2-01, cert. ef. 11-4-01; CCD 1-2007(Temp), f. & cert. ef. 3-20-07 thru 9-16-07

414-205-0020

Application for Registration

(1) The applicant must apply for registration on the form(s) supplied by CCD. The original form(s) must be submitted to CCD for processing.

(2) Persons submitting new applications must attend a family child care overview session prior to submitting their application to CCD.

(3) Persons wishing to submit an application must meet the training requirements outlined in OAR 414-205-0055.

(4) An application for registration is required:

- (a) For a new registration;
- (b) For renewing a registration; and
- (c) For reopening a registration.

(5) There is a non-refundable filing fee of \$30 for each application. If the provider submits documentation that the provider's family income is below 100% of the Federal Poverty Level, the fee may be reduced.

(6) To determine if requirements are met, the applicant/provider may be required to supply additional information or permit CCD, a fire marshal, or a public health official to assess the home and/or review child care records.

(7) Providers must satisfactorily complete an on-site health and safety review conducted by CCD prior to issuance of a new, renewal or reopen registration. The review will ensure that the provider is in compliance with the rules related to health, safety and sanitation.

(8) If an application for renewal and payment of the required fee is received by CCD at least 30 days prior to the expiration date of the current registration, the current registration, unless officially revoked, remains in effect until CCD has acted on the application for renewal and has given notice of the action taken.

Stat. Auth. ORS 657A

Stats. Implemented: ORS 657A.260, 657A.330 & 657A.440

Hist.: CCD 2-1994, f. 7-15-94, cert. ef. 8-15-94; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 2-1995(Temp), f. 12-28-95, cert. ef. 1-1-96; CCD 2-1996, f. 3-19-96, cert. ef. 4-1-96; CCD 1-2000, f. 3-31-00, cert. ef. 4-2-00; CCD 5-2001, f. 11-2-01, cert. ef. 11-4-01; CCD 5-2001, f. 11-2-01, cert. ef. 11-4-01; CCD 1-2007(Temp), f. & cert. ef. 3-20-07 thru 9-16-07

414-205-0035

General Requirements

(1) The home in which child care is provided must be the residence of the provider.

(2) Registration is limited to one provider per household.

(3) A registration applies to only the person and address on the certificate of registration and is not transferable to another location or individual.

(4) The registration is valid for a maximum of two years. The registration period begins with the effective date shown on the certificate of registration. A provider may not care for more than three (3) children, other

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than the provider's own children, at any one time prior to receiving a certificate of registration from CCD.

(5) CCD registration records are open to the public on request. However, information protected by state or federal law will not be disclosed.

(6) The name, address, telephone number, and registration status of providers is public information. However, CCD may withhold from the public a provider's address and telephone number if the provider makes a written request documenting that disclosure of the address and/or telephone number would endanger him/her or a family member living in the home (OAR 137-004-0800). The request must be on a form supplied by CCD.

(7) The Certificate of Registration must be posted in the family child care home in an area where it can be viewed by parents.

(8) The provider shall have no other employment, either in or out of the home, during the hours children are in care.

(9) The provider must allow custodial parents or legal guardians of child care children access to the home during the hours their child(ren) are in care.

(10) The provider must comply with state and federal laws related to immunizations, child care restrictable diseases, child safety systems and seat belts in vehicles, bicycle safety, civil rights laws, and the Americans with Disabilities Act.

(11) Any caregiver who has reason to believe that any child has suffered abuse (physical injury, mental injury, neglect that leads to physical harm, sexual abuse and/or exploitation, or threat of harm) must report the information to the State Office of Services to Children and Families or to a law enforcement agency. By statute, this requirement applies 24 hours per day.

(12) The provider must notify parents if there will be a substitute caregiver and the caregiver's name or if the children will be away from the home for any part of the day for visits, field trips, or any other activity off the premises. In the event of an emergency, a good faith effort will be made to notify parents that a substitute will be caring for the children.

(13) If an applicant or a provider provides or wishes to provide adult or child foster care, the foster care licensing agency must grant approval for the applicant to provide both child care and foster care services.

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260

Hist.: CCD 1-2000, f. 3-31-00, cert. ef. 4-2-00; CCD 1-2007(Temp), f. & cert. ef. 3-20-07 thru 9-16-07

414-205-0055

Training Requirements

(1) When a person submits a new application for registration as a family child care provider, the Child Care Division shall, prior to approving the registration, receive evidence from the person that the person has:

(a) Completed the Family Child Care Overview session;

(b) A current certification in first aid and infant and child cardiopulmonary resuscitation;

(c) A current food handler certification pursuant to ORS 624.570; and

(d) Completed two hours of training on child abuse and neglect issues.

(2) When a registered family child care provider submits a renewal application, the Child Care Division shall, prior to approving it, receive evidence from the provider that the provider has:

(a) A current certification in first aid and infant and child cardiopulmonary resuscitation;

(b) A current food handler certification pursuant to ORS 624.570; and

(c) Completed a minimum of eight hours of training during the two years preceding the renewal date. The training must be related to the core knowledge categories in the Oregon Registry. At least four clock hours of the eight hours of training must be in child development or early childhood.

(3) When a person submits a reopen application, the Child Care Division shall, prior to approving it, receive evidence from the individual that the individual has:

(a) A current certification in first aid and infant and child cardiopulmonary resuscitation;

(b) A current food handler certification pursuant to ORS 624.570; and

(c) Documentation that individual has eight hours of training related to the Oregon Registry core knowledge categories during the previous two year license period. If the individual was previously licensed for less than two years, the training requirements will be prorated as follows: two hours of training for each six months of the previous license period.

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260

Hist.: CCD 1-2000, f. 3-31-00, cert. ef. 4-2-00; CCD 5-2001, f. 11-2-01, cert. ef. 11-4-01; CCD 3-2004, f. 7-30-04 cert. ef. 8-1-04; CCD 1-2007(Temp), f. & cert. ef. 3-20-07 thru 9-16-07

414-300-0005

Definitions

The following words and terms, when used in OAR 414-300-0000 through 414-300-0410, have the following meanings:

(1) "Activity Area" means the area of the center that is available, during all the hours of operation, for the children's activities. This area excludes kitchens, hallways, toilet rooms, multi-purpose areas used by all children, lockers, office, storage areas, isolation quarters, staff room, furnace room, and that part of rooms occupied by heating stoves, or stationary equipment not used by children. Additional exclusions may apply for specific age groups.

(2) "Attendance" means children actually present in the center at any given time.

(3) "Capacity" means the total number of children allowed in the center at any one time, based on the available indoor and outdoor square footage, the number of toilets in the center and the number of qualified staff.

(4) "Caregiver" means any person in the child care center who works directly with the children, providing care, supervision, and guidance.

(5) "Certification" means the certification that is issued by CCD to a child care center pursuant to ORS 657A.280.

(6) "Child Care" means the care, supervision, and guidance on a regular basis of a child, unaccompanied by a parent, guardian, or custodian, during a part of the 24 hours of the day, with or without compensation. Child care does not include the care provided:

(a) In the home of the child;

(b) By the child's parent or guardian, or person acting in loco parentis;

(c) By a person related to the child by blood or marriage within the fourth degree as determined by civil law;

(d) On an occasional basis by a person, sponsor, or organization not ordinarily engaged in providing child care; or

(e) By providers of medical services.

(7) "Child Care Area" means that indoor and outdoor area specifically certified for use by the center and includes all activity areas and other areas of the facility used to provide child care, such as kitchen, toilet rooms, offices, storage areas, and rooms used solely for napping or eating. This may be a specific portion or portions of the building and grounds of a larger facility or one or more buildings at the same location.

(8) "Child Care Child" means any child six weeks of age or older and under 13 years of age, or a child with special needs under the age of 18 who requires a level of care over and above the norm for his/her age, for whom the child care center has supervisory responsibility in the temporary absence of the parent.

(9) "Child Care Center" or "Center" means a child care facility that is certified to care for thirteen or more children, or a facility that is certified to care for twelve or fewer children and located in a building constructed as other than a single family dwelling.

(10) "CCD" means the Child Care Division of the Employment Department or the Administrator or staff of the Division.

(11) "Child Care Facility" means any facility that provides child care to children, including a child care center, certified family child care home, and registered family child care home. It includes those known under a descriptive name, such as nursery school, preschool, kindergarten, child play school, before or after school care, or child development center, except those excluded under ORS 657A.250. This term applies to the total child care operation and includes the physical setting, administration, staff, equipment, program, and care of children.

(12) "Comparable group care program" means a program which has the following elements:

(a) Staff are supervised by knowledgeable professionals;

(b) Training of staff is provided or required annually;

(c) Group size is similar to a certified child care facility;

(d) Curriculum is age appropriate; and

(e) The program is not providing uncertified drop-in care.

(13) "Contracted services" means activities (e.g., tumbling, music) provided by an organization or program other than the center, where non-center staff come into the center or the children are transported to another location.

(14) "Criminal History Registry" means CCD's Registry of individuals who have been approved to work in a child care facility in Oregon pursuant to ORS 657A.030 and OAR 414-061-0000 through 414-061-0120.

(15) "Director" means a person who is designated by the operator as director or administrator of the center and who meets the qualifications of director pursuant to OAR 414-300-0080.

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(16) "Drop-in Care" means care provided on an unscheduled, irregular basis, any time of the day or night, exclusively for drop-in children in a child care center.

(17) "Enrollment" means all children registered to attend the center.

(18) "Group" means a specific number of children assigned to specific staff.

(19) "Guidance and discipline" means the on-going process of helping children develop self control and assume responsibility for their own acts.

(20) "Head Teacher" means the person, or persons, who is responsible for the development and implementation of the program of activities for each infant and toddler, preschool age, and school-age program in the center.

(21) "Infant" means a child who is at least six weeks of age but is not yet walking alone.

(22) "Infant and Toddler Age Program" means care and education provided in a center, or part of a center, to children between the ages of six weeks and thirty-six months.

(23) "Night Care" means care given to children who sleep at the child care center for all or part of the night.

(24) "Occasional" means infrequently or sporadically, including but not limited to care that is provided during summer or other holiday breaks when children are not attending school, but not to exceed 70 calendar days in a year.

(25) "Operator" means the person, group, corporation, partnership, governing body, association, or other public or private organization legally responsible for the overall operation of the center and who has the authority to perform the duties necessary to meet certification requirements. If the operator is other than the owner, an individual must be appointed as the operator by the owner.

(26) "Oregon Registry" means the voluntary registry at the Oregon Center for Career Development in Childhood Care and Education at Portland State University that documents the training, education and experience of individuals who work in childhood care and education.

(27) "Outbreak of a communicable disease" means two cases from separate households associated with a suspected common source.

(28) "Owner" means the person, group, corporation, partnership, governing body, association, or other public or private organization which holds the child care center as property and has a major financial stake in the operation of the center. The owner may or may not be active in the operation of the center; the owner may also be the operator.

(29) "Parent" means parent(s), custodian(s), or guardian(s), exercising physical care and legal custody of the child.

(30) "Parent cooperative" means a child care program in which:

- (a) Care is provided by parents on a rotating basis;
- (b) Membership in the cooperative includes parents;
- (c) There are written policies and procedures; and
- (d) A board of directors that includes parents of the children cared for by the cooperative controls the policies and procedures of the program.

(31) "Preschool-Age Child" means a child who is 36 months of age to eligible to be enrolled in the first grade and, during the months of summer vacation from school, eligible to be enrolled in the first grade in the next school year. For purposes of these rules, children attending kindergarten may be considered school-age children.

(32) "Preschool-Age Program" means care and education provided in a center, or part of a center, to children 36 months of age to attending kindergarten.

(33) "Program" means all activities and care provided for the children during their hours of attendance at the center.

(34) "Qualifying Teaching Experience" means:

(a) For infant/toddler and preschool age groups, 1,500 hours, gained with a group of the same age children in at least three-hour blocks, within a 36-month period;

(b) For school-age groups, 600 hours, gained with a group of the same age children in at least three-hour blocks, within a 36-month period. Qualifying teaching experience must be documented. Time spent in a college practicum or practice teaching is considered qualifying teaching experience. The following does not constitute qualifying teaching experience: leader of a scout troop; Sunday school teacher; and coaching.

(35) "Sanitizing" means using a bactericidal treatment that provides enough heat or concentration of chemicals for enough time to reduce the bacterial count, including disease-producing organisms, to a safe level on utensils, equipment, and toys.

(36) "School-Age Child" means a child eligible to be enrolled in the first grade or above and, during the months of summer vacation from

school, a child eligible to be enrolled in the first grade or above in the next school year. For purposes of these rules, children attending kindergarten may be considered school-age children.

(37) "School-Age Program" means care and education provided in a center, part of a center, school or other facility to children attending kindergarten or eligible to be enrolled in the first grade or above and, during the months of summer vacation from school, eligible to be enrolled in the first grade or above in the next school year.

(38) "Serious complaint" means a complaint filed against:

(a) A certified child care center by a person who has alleged that:

- (A) Children are in imminent danger;
- (B) There are more children in care than allowed by certified capacity;
- (C) Corporal punishment is being used;
- (D) Children are not being supervised;
- (E) Multiple or serious fire, health or safety hazards are present in the center;

(F) Extreme unsanitary conditions are present in the center; or
(G) Adults are in the center who are not enrolled in the Criminal History Registry; or

(b) A facility providing child care, as defined ORS 657A.250(3), which is not a certified child care center by a person who has alleged that there are more children in care than allowed by law.

(39) "Site Director/Supervisor" means the person in charge of the facility at a site which is part of a larger multi-site program.

(40) "Site Coordinator" means the person responsible for coordinating over-all management and operation of a number of sites in a multi-site program.

(41) "Special Needs Child" means a child under the age of 18 who requires a level of care over and above the norm for his/her age due to a physical, developmental, behavioral, mental or medical disability.

(42) "Staff" means an individual who is the director, an employee, or a volunteer who is in the center for more than a single activity.

(43) "Substitute Director" means the person in charge of the center during the hours of operation when the director is not on site.

(44) "Supervision" means the act of caring for a child or group of children. This includes awareness of and responsibility for the ongoing activity of each child. It requires physical presence, knowledge of program requirements and children's needs, and accountability for their care and well-being. Supervision also requires that staff be near and have ready access to children in order to intervene when needed.

(45) "Teacher" means a caregiver who plans and implements daily activities for a designated group of children and who meets the qualifications of teacher pursuant to OAR 414-300-0100.

(46) "Teacher Aide" means a caregiver who works under the direct supervision of a teacher and who meets the qualifications of Aide I or Aide II pursuant to OAR 414-300-0110.

(47) "Toddler" means a child who is able to walk alone but is under 36 months of age. "Younger toddler" means a child who is able to walk alone but is under 24 months of age; "older toddler" means a child who is 24 months of age but under 36 months of age.

(48) "Usable Exit" means an unobstructed door or window through which caregivers and children can evacuate the center in case of a fire or emergency. Doors must be able to be opened from the inside without a key, and window openings must be at least 20 inches wide and 22 inches in height, with a net clear opening of 5 square feet and a sill no more than 48 inches above the floor.

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260

Hist.: CSD 21-1988, f. & cert. ef. 9-29-88; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0605; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 4-1999(Temp), f. 10-21-99, cert. ef. 10-23-99 thru 1-1-00; CCD 9-1999, f. 12-29-99, cert. ef. 1-1-00; CCD 4-2001, f. 7-13-01, cert. ef. 7-15-01; CCD 6-2003, f. 12-23-03, cert. ef. 12-28-03; CCD 1-2007(Temp), f. & cert. ef. 3-20-07 thru 9-16-07

414-300-0080

Director — Qualifications and Duties

(1) The director shall:

(a) Be at least 21 years of age; and

(b) Have:

(A) At least one year of training and/or experience in management and supervision of adults; and

(B) Have knowledge of child development for the primary ages served in the center, as evidenced by a combination of professional references, education, experience or training; or

(C) Documentation of attaining at least level four in the Oregon Registry, or

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(c) Have:

(A) One year of training and/or experience in management and supervision of adults OR have knowledge of child development for the primary ages served by the center as evidenced by a combination of professional references, education, experience or training; and

(B) A plan, approved by CCD, that shows how the missing component in (A) above will be addressed and how the program will be operated until the director has obtained the training, experience or knowledge.

(2) The director of the center shall be accountable for:

(a) Administrative functions, including, but not limited to: financial management; maintaining records; budgeting; policy development; ensuring the appropriateness of program activities according to age and developmental levels of children; staff orientation; management and training; maintenance of buildings and grounds; meal planning and preparation; and transportation, if provided; and

(b) Operating the center in compliance with certification requirements (OAR 414-300-0000 through 414-300-0410).

(3) If head teacher qualifications (OAR 414-300-0090) are met by the director, that person may serve as head teacher for the age range of children for which she/he is qualified if she/he works full-time in the center:

(a) If the center is certified for less than 40 children, the director may serve as head teacher and have regular teaching duties, if qualified;

(b) If the center is certified for 40 or more children, the director may serve as head teacher, but shall have no regular teaching duties.

(4) A director responsible for a center certified for fewer than 100 children shall be in the center at least one-third of the hours that the center is in operation. The hours shall be calculated on a weekly basis, except for planned vacations and emergency absences. The time on-site must include time spent directly observing staff and children.

(5) A director responsible for a center certified for more than 100 children can be responsible for only one site. The director shall be in the center at least half of the hours that the center is in operation. The hours shall be calculated on a weekly basis, except for planned vacations and emergency absences. The time on-site must include time spent directly observing staff and children.

(6) The director, or a substitute director, shall be on the premises during all hours of operation.

(7) The substitute director shall:

(a) Meet at least the qualifications of a teacher;

(b) Be familiar with the certification requirements;

(c) Be authorized, able, and available to correct a deficiency that might be an immediate threat to children's health or safety; and

(d) Have on file documentation of an orientation and training in these administrative rules and the functions and duties of a director.

(8) Whenever a director is absent from the center, the name of the substitute director shall be posted in the center, as required in OAR 414-300-0030(l).

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260

Hist.: CSD 21-1988, f. & cert. ef. 9-29-88; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0632; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-1995; CCD 4-2001, f. 7-13-01, cert. ef. 7-15-01; CCD 1-2007(Temp), f. & cert. ef. 3-20-07 thru 9-16-07

414-350-0010

Definitions

The following words and terms, when used in OAR 414-350-0000 through 414-350-0400, have the following meanings:

(1) "Activity Area" means the area of the home that is available, during all the hours of operation, for the children's activities. This area excludes the food preparation area of the kitchen, bathrooms, storage areas, and those parts of rooms occupied by heating stoves, furniture and stationary equipment not used by children.

(2) "Attendance" means children actually present in the home at any given time.

(3) "Capacity" means the total number of children allowed in the certified family child care home at any one time, based on the available square footage, the ages of the children to be served and the total number of staff.

(4) "Caregiver" means any person, including the provider, who cares for the children in the certified family child care home and works directly with the children, providing care, supervision and guidance.

(5) "Certification" means the certification that is issued by CCD to a certified family child care home pursuant to ORS 657A.280.

(6) "Certified Family Child Care Home" or "Home" means: a child care facility located in a building constructed as a single family dwelling that has certification to care for a maximum of 16 children at any one time.

(7) "Child Care" means the care, supervision, and guidance on a regular basis of a child, unaccompanied by a parent, guardian, or custodian,

during a part of the 24 hours of the day, with or without compensation. Child care does not include the care provided:

(a) In the home of the child;

(b) By the child's parent or guardian, or person acting in loco parentis;

(c) By a person related to the child by blood or marriage within the fourth degree as determined by civil law;

(d) On an occasional basis by a person, sponsor, or organization not ordinarily engaged in providing child care;

(e) By providers of medical services; or

(f) By a person who is a member of the child's extended family, as determined by the division on a case-by-case basis.

(8) "Child Care Child" means any child six weeks of age or older and under 13 years of age, or a child with special needs under the age of 18 who requires a level of care over and above the norm for his/her age, and for whom the provider has supervisory responsibility in the temporary absence of the parent.

(9) "CCD" means the Child Care Division of the Employment Department or the Administrator or staff of the Division.

(10) "Child Care Facility" means any facility that provides child care to children, including a child care center, certified family child care home, and registered family child care home. It includes those known under a descriptive name, such as nursery school, preschool, kindergarten, child play school, before and after school care, or child development center, except those excluded under ORS 657A.250. This term applies to the total child care operation. It includes the physical setting, equipment, staff, provider, program, and care of children.

(11) "Criminal History Registry" means CCD's Registry of individuals who have been approved to work in a child care facility in Oregon pursuant to ORS 657A.030 and OAR 414-061-0000 through 414-061-0120.

(12) "Enrollment" means all children registered to attend the certified family child care home.

(13) "Guidance and Discipline" means the on-going process of helping children develop self control and assume responsibility for their own acts.

(14) "Infant" means a child who is at least 6 weeks of age but is not yet walking alone.

(15) "Night Care" means care given to children who sleep at the home for all or part of the night.

(16) "Occasional" means infrequently or sporadically, including but not limited to care that is provided during summer or other holiday breaks when children are not attending school, but not to exceed 70 calendar days in a year.

(17) "Operator" means the person responsible for the overall operation of the home and who has the authority to perform the duties necessary to meet certification requirements. In a certified family child care home, the operator is the provider.

(18) "Oregon Registry" means the voluntary registry at the Oregon Center for Career Development in Childhood Care and Education at Portland State University that documents the training, education and experience of individuals who work in childhood care and education.

(19) "Owner" means the person who holds the certified family child care business as property and has a major financial stake in the operation of the home.

(20) "Parent" means parent(s), custodian(s), or guardian(s) exercising physical care and legal custody of the child.

(21) "Potentially hazardous food" means any food or beverage containing milk or milk products, eggs, meat, fish, shellfish, poultry, cooked rice, beans or pasta, and all other previously cooked foods, including leftovers.

(22) "Pre-school Age Child" means a child 36 months of age to eligible to be enrolled in the first grade and, during the months of summer vacation from school, eligible to be enrolled in the first grade in the next school year.

(23) "Program" means all activities and care provided for the children during their hours of attendance at the certified family child care home.

(24) "Provider" means the person in the certified family child care home who is responsible for the children in care, is the children's primary caregiver, and in whose name the certification is issued. In a certified family child care home, the provider is the operator.

(25) "Qualifying Teaching Experience" means 1,500 hours, gained in at least three-hour blocks, within a 36-month period, with a group of children in an on-going group setting. Such a setting includes a kindergarten, preschool, child care center, certified or registered family child care home, Head Start program, or equivalent. Qualifying teaching experience must be

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documented. Time spent in a college practicum or practice teaching is considered qualifying teaching experience. The following does not constitute qualifying teaching experience: leader of a scout troop; Sunday school teacher; and coaching.

(26) "Sanitizing" means using a bactericidal treatment that provides enough heat or concentration of chemicals for enough time to reduce the bacterial count, including disease-producing organisms, to a safe level on utensils, equipment, and toys.

(27) "School-Age Child" means a child eligible to be enrolled in the first grade or above and, during the months of summer vacation from school, a child eligible to be enrolled in the first grade or above in the next school year.

(28) "Serious complaint" means a complaint filed against a certified child care home by a person who has alleged that:

- (a) Children are in imminent danger;
- (b) There are more children in care than allowed by certified capacity;
- (c) Corporal punishment is being used;
- (d) Children are not being supervised;
- (e) Multiple or serious fire, health or safety hazards are present in the home;
- (f) Extreme unsanitary conditions are present in the home; or
- (g) Adults are in the home who are not enrolled in the Criminal History Registry.

(29) "Special Needs Child" means a child under the age of 18 who requires a level of care over and above the norm for his/her age due to a physical, developmental, behavioral, mental or medical disability.

(30) "Substitute Caregiver" means a person who acts as the children's primary caregiver in the certified family child care home in the temporary absence of the provider.

(31) "Supervision" means the act of caring for a child or group of children. This includes awareness of and responsibility for the ongoing activity of each child. It requires a caregiver to be within sight and/or sound of the children, knowledge of children's needs, and accountability for children's care and well-being. Supervision also requires that staff be near and have ready access to children in order to intervene when needed.

(32) "Toddler" means a child who is able to walk alone but is under 36 months of age. "Younger toddler" means a child who is able to walk alone but is under 24 months of age; "older toddler" means a child who is at least 24 months of age but under 36 months of age.

(33) "Useable Exit" means an unobstructed door or window through which caregivers and children can evacuate the home in case of a fire or emergency. Doors must be able to be opened from the inside without a key, and window openings must be at least 20 inches wide and 22 inches in height, with a net clear opening of 5 square feet and a sill no more than 48 inches above the floor.

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260

Hist.: CSD 12-1988, f. 6-29-88, cert. ef. 7-1-88; CSD 2-1989, f. & cert. ef. 1-25-89; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0705; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 5-1999(Temp), f. 10-21-99, cert. ef. 10-23-99 thru 1-1-00; CCD 10-1999, f. 12-29-99, cert. ef. 1-1-00; CCD 3-2002, f. 10-14-02, cert. ef. 10-15-02; CCD 6-2003, f. 12-23-03, cert. ef. 12-28-03; CCD 7-2003, f. 12-23-03, cert. ef. 12-28-03; CCD 3-2004, f. 7-30-04 cert. ef. 8-1-04; CCD 6-2005(Temp), f. 12-29-05, cert. ef. 1-1-06 thru 6-29-06; CCD 3-2006, f. & cert. ef. 6-13-06; CCD 1-2007(Temp), f. & cert. ef. 3-20-07 thru 9-16-07

Oregon Department of Education Chapter 581

Rule Caption: Establishes state assessment requirements for school year 2006–2007, limited to English and mathematics.

Adm. Order No.: ODE 9-2007(Temp)

Filed with Sec. of State: 3-22-2007

Certified to be Effective: 3-22-07 thru 9-16-07

Notice Publication Date:

Rules Adopted: 581-022-1109

Subject: Contractor providing online assessments is not able to offer assessments under terms of the contract for the remainder of school year 2006–2007. Department of Education has determined that paper and pencil assessments will be given in place of online assessments to meet current school year requirements. To minimize the impact on schools and districts of implementing paper and pencil assessments upon short notice, this proposed rule will limit assessments to those currently required under federal law, English and mathematics.

Rules Coordinator: Paula Merritt—(503) 947-5746

581-022-1109

Oregon Statewide Assessments — School Year 2006–2007 (TEMP)

Notwithstanding OAR 581-022-1110(4) regarding the administration of statewide assessments, schools and school districts are only required to administer state assessments in English and mathematics for school year 2006–2007. Schools and school districts are not required to administer assessments for science for school year 2006–2007.

Stat. Auth.: ORS 326.051

Stats. Implemented: ORS 329.485

Hist.: ODE 9-2007(Temp), f. & cert. ef. 3-22-07 thru 9-16-07

Oregon Health Licensing Agency Chapter 331

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

Adm. Order No.: HLA 1-2007

Filed with Sec. of State: 3-30-2007

Certified to be Effective: 4-1-07

Notice Publication Date: 3-1-07

Rules Amended: 331-715-0030

Subject: 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, an require compliance with the Centers for Disease Control and Prevention Standard Precautions.

Rules Coordinator: Patricia C. Allbritton—(503) 378-8667, ext. 4322

331-715-0030

Professional Standards

(1) Respiratory care practitioners must comply with the prevailing community standards for professional conduct. The Board recognizes and adopts the American Association of Respiratory Care (AARC) Statement of Ethics and Professional Conduct effective December 1994 and Role Model Statement for Respiratory Care Practitioners effective March 1990 as its professional standards model. A copy of these documents are on file at the agency for review.

(2) At minimum, practitioners shall be subject to directives and policies established by the medical facilities, businesses or agencies by which they are employed or regulated.

(3) Respiratory care practitioners must comply with the following safety and infection control requirements:

(a) All devices or items that come into direct contact with a client shall be cleaned, sanitized or disinfected according to the manufacturer's instructions or Centers for Disease Control and Prevention (CDC) Standard Precautions;

(b) All items that come in direct contact with the client's skin that do not require disinfecting shall be clean;

(c) All items that come in direct contact with the client's skin that cannot be cleaned or disinfected shall be disposed of in a covered waste receptacle immediately after use;

(d) All disinfecting solutions and agents shall be kept at adequate strengths to maintain effectiveness, be free of foreign material and be available for immediate use at all times unless equipment is prepackaged and pre-sterilized;

(e) All high-level and low-level disinfecting agents shall be EPA registered. High-level disinfectant means a chemical agent which has demonstrated tuberculocidal activity. Low-level disinfectant means a chemical agent which has demonstrated bactericidal, germicidal, fungicidal and limited virucidal activity;

(f) Before use, disposable pre-packed products and sterilized reusable instruments shall be stored in clean, sterilized containers that can be closed between treatments to maintain effective sterilization of the instrument until removed from the container.

(4) Respiratory care practitioners shall observe and follow the Standard Precautions adopted by the CDC as defined in Oregon Administrative Rule 437 division 2, subdivision Z, OAR 331-705-0050(16), and the CDC Standard Precautions for public service workers regarding personal protection equipment and disposal of blood or bodily fluid contaminated articles, tools and equipment when providing services to patients.

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(5) Practitioners shall not work under the influence of alcohol or any drugs, including prescription medications, which may impair performance, and shall seek professional assistance through a diversion program if necessary to achieve and maintain freedom from substance abuse.

Stat. Auth.: ORS 676.605, 676.615 & 688.830

Stats. Implemented: ORS 676.605, 676.615 & 688.830

Hist.: HDLB 1-1997(Temp), f. 12-19-97, cert. ef. 12-22-97 thru 6-19-98; HDLP 2-1998, f. & cert. ef. 6-15-98; HLO 4-2004, f. 6-29-04, cert. ef. 7-1-04; HLA 1-2007, f. 3-30-07, cert. ef. 4-1-07

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

Adm. Order No.: HLA 2-2007

Filed with Sec. of State: 3-30-2007

Certified to be Effective: 4-1-07

Notice Publication Date: 3-1-07

Rules Adopted: 331-565-0085

Rules Amended: 331-505-0010, 331-550-0000, 331-555-0010, 331-565-0030, 331-565-0060, 331-575-0040

Subject: 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 bases on specific circumstances.

Adopts a new rule for licensing a “mobile facility to recognize the diversity of venues where tattooing services are provided. The proposed rules are in response to requests received 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.

Rules Coordinator: Patricia C. Allbritton—(503) 378-8667 ext 4322

331-505-0010

Fees

(1) Applicants and licensees are subject to the provisions of OAR 331-010-0010 and 331-010-0020 regarding the payment of fees, penalties and charges.

(2) Fees established by the Oregon Health Licensing Agency are as follows:

(a) APPLICATION:

- (A) Practitioner license: \$100;
- (B) Electrology facility license: \$50;
- (C) Tattooing facility license: \$100
- (D) Demonstration permit: \$25
- (E) Temporary facility Permit: \$25.

(b) PRACTITIONER LICENSE:

(A) Initial issuance and renewal of electrologist license: \$125;

(B) Initial issuance and renewal of permanent coloring or tattooing license: \$175.

(c) FACILITY LICENSE:

(A) Initial issuance and renewal of electrology facility license: \$150;

(B) Initial issuance and renewal of permanent coloring, tattooing facility or mobile facility license: \$250;

(d) EXAMINATION:

- (A) Electrology — written: \$50;
- (B) Electrology — practical: \$100;
- (C) Permanent Coloring or Tattooing — written: \$50;
- (D) Permanent Coloring or Tattooing — skills assessment: \$100.

(e) PERMITS:

- (A) Demonstration permit: \$50;
- (B) Temporary facility permit: \$50.

(f) OTHER FEES:

- (A) Late fee: \$10;
- (B) Reactivation fee: \$50;

(C) Annual renewal for suspended license: \$50;

(D) Duplicate license: \$25.

Stat. Auth.: ORS 676.605, 676.615 & 690.415

Stats. Implemented: ORS 676.605, 676.615 & 690.415

Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HD 4-1991, f. 3-15-91, cert. ef. 4-1-91; HD 24-1993, f. 12-30-93, cert. ef. 1-1-94; OHD 14-1998, f. 12-9-98, cert. ef. 12-15-98; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0155; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04; HLO 8-2004(Temp), f. & cert. ef. 8-20-04 thru 2-16-05; HLO 9-2004, f. 10-25-04, cert. ef. 11-1-04; HLA 2-2007, f. & cert. ef. 3-30-07, cert. ef. 4-1-07

331-550-0000

Permanent Coloring and Tattooing Definitions

In addition to definitions listed in OAR 331-505-0000, the following terms apply as used in OAR 331, divisions 550 through 590.

(1) “Access” means immediate unrestricted use or availability, easy to approach or enter.

(2) “Completed procedure” means, for the purposes of determining qualification for licensure under OAR 331-555-0010; a tattoo which has been finished on a live human being, including any touchups or additional work following initial healing, and the client is released from service, as follows:

(a) Figurative tattooing includes outlining and shading, use of different size/configuration of needles, a new design on a live human being;

(b) Cosmetic tattooing includes eyeliner, eyebrows, lip liner, full lip color, repigmentation or camouflage but does not include beauty marks.

(3) “Direct supervision” means the teacher is present and actively involved in direct oversight and training of students who are completing the training requirements of OAR 331-555-0010.

(4) “Instruments” means devices, tools and implements used in permanent coloring and tattooing services.

(5) “Needle” means the implement used to insert dyes or pigments into the dermis of the skin during permanent coloring or tattooing procedures.

(6) “Needle bar” means the metal or plastic device used to attach the needle to a tattoo machine.

(7) “Practical” means one-on-one training under the direct supervision of a teacher in the application of permanent coloring or tattooing.

(8) “Repigmentation” means recoloration of the skin:

(a) After dermabrasion, chemical peels, removal or resolution of birthmarks, vitiligo or other skin conditions which result in the loss of melanin to the skin;

(b) Scarring caused by surgical procedures, such as face lifts, mole or wart removal, cauterization, etc.;

(c) Burn grafts and other skin irregularities caused by burns or photo damage;

(d) Mastectomy, i.e. recreation of an areola or nipple; or

(e) Blotchy pigmentation requiring camouflage.

(9) “Theory” means all forms of relevant study, which do not involve the application of permanent makeup or tattoos on human skin. Theory may include but is not limited to review of videos or written matter, attendance at lectures, or application of tattoos or permanent makeup on materials other than human skin.

Stat. Auth.: ORS 676.615 & 690.405(9)

Stats. Implemented: ORS 676.615 & 690.405

Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HD 4-1991, f. 3-15-91, cert. ef. 4-1-91; HD 24-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0020; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04; HLA 2-2007, f. & cert. ef. 3-30-07, cert. ef. 4-1-07

331-555-0010

Approved Course of Study

(1) To be approved by the Oregon Health Licensing Agency, a course of study shall include at least 360 hours of instruction. The course shall include at least 210 hours of theory and at least 150 hours of practical work. This practical work must include as a minimum 50 completed procedures.

(2) All practical applications performed during training in the subject areas listed in subsection (3) of this rule shall be counted toward meeting the minimum 150 hours of practical tattooing experience.

(3) The agency’s approved course of study shall include, but is not limited to, the following areas:

(a) Needles and needle bars: 20 hours of theory;

(b) Tattoo machines and equivalent equipment: 20 hours of theory;

(c) Equipment/Supplies: 20 hours of theory;

(d) Safety, Infection Control and Sterilization: 40 hours of theory;

(e) Basic color theory and pigments: 10 hours of theory;

(f) Design, art and placement: 10 hours of theory;

(g) Skin: 20 hours of theory;

(h) Client services 20 hours of theory;

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(i) Business operations, including exposure control plan and federal regulations: 40 hours of theory;

(j) Oregon Laws and Rules: 10 hours of theory training.

(4) As part of the approved course of study, all hours of theory must be completed prior to practical work being performed on the general public.

(5) Training shall meet minimum objectives listed in OAR 331-555-0010 and shall be conducted under the direct supervision and authority of an Oregon licensed permanent coloring technician and tattoo artist, registered as a teacher by the Department of Education, Private Career Schools.

(6) A registered teacher shall provide direct supervision of practical training on a one-to-one student/teacher ratio as defined in OAR 331-550-0000 for students performing practical training while the student is working on the general public. The Department of Education, Private Career Schools may waive the one-to-one student/teacher ratio in certain circumstances.

(7) Arrangements for the time, place and cost of education and training shall be arranged between the applicant and the school providing the training.

Stat. Auth.: ORS 690.405 & 690.410

Stats. Implemented: ORS 690.405 & 690.410

Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HD 24-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0030; HDLP 2-1999, f. & cert. ef. 7-1-99; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04, Renumbered from 331-555-0020; HLA 2-2007, f. & cert. ef. 3-30-07, cert. ef. 4-1-07

331-565-0030

Facility License Requirements

(1) A facility shall meet the requirements for a new facility (refer to OAR 331-565-0020) and submit a new facility application and required fees when any of the following conditions exist:

(a) A facility is purchased from the current or previous owner, partnership or corporation. Facility licenses are not transferable from person-to-person or from business-to-business;

(b) There is a change in the legal ownership, partnership or holding of a facility regulated under ORS 690 and OAR 331, such as:

(A) A partner(s) or co-owner(s) is added; or

(B) A partner(s) or co-owner(s) is removed, including change in ownership status due to death of facility owner(s).

(c) An existing facility moves or relocates to a new physical address. Facility licenses are not transferable from location-to-location unless the facility is licensed as a mobile facility under OAR 331-565-0085.

(2) Facility owners closing their facilities shall:

(a) Submit written notice to the agency within five business days of a facility closure, indicating whether the closure is permanent or of a temporary duration. Notice of temporary facility closure shall specify the anticipated date of resuming business operations;

(b) If notice of a permanent facility closure was submitted, and the license holder (same owner) reopens the facility while the license is still in renewable or active status, the facility owner shall submit notice to the agency prior to reopening the facility and resuming business operations/services.

Stat. Auth.: ORS 676.615, 690.360 & 690.405

Stats. Implemented: ORS 676.615, 690.360 & 690.405

Hist.: HD 24-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0062; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04; HLA 2-2007, f. & cert. ef. 3-30-07, cert. ef. 4-1-07

331-565-0060

Practicing at Location Other Than Named Place(s) of Business

(1) Licensees shall not practice at any location other than the place or places of business listed with the agency. However, licensees may provide services outside the premises of a licensed facility on persons residing in a health care facility or persons confined to their residence through medical disability or restriction.

(2) All licensees who perform services at approved locations as listed in subsection (1) of this rule, or at more than one business location shall carry their license with them and post it while working.

(3) Licensees working in a mobile facility in accordance with OAR 331-565-0085 must comply with provisions of this rule.

Stat. Auth.: ORS 676.615, 690.390 & 690.405(9)

Stats. Implemented: ORS 676.615, 690.390 & 690.405(9)

Hist.: HD 16-1988, f. & cert. ef. 7-15-88; HD 24-1993, f. 12-30-93, cert. ef. 1-1-94; HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99, Renumbered from 333-305-0185; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04; HLA 2-2007, f. & cert. ef. 3-30-07, cert. ef. 4-1-07

331-565-0085

Mobile Facility License

(1) "Mobile Facility License" means an authorization issued under ORS 690.380 to operate a facility outside of or away from a permanent physical location within an approved enclosed transportable vehicle, such as recreational vehicles or trailers, which has the ability to transport the business operation to multiple locations in the State of Oregon during specific approved periods of time.

(2) A mobile facility license holder is subject to and must comply with all requirements of OAR 331, divisions 565, 575, 580 and 585, unless otherwise specified in subsection (6) of this rule.

(3) To be granted a mobile facility license, a person must submit a mobile facility application to the agency, on an approved form prescribed by the agency, pay the required application and license fees, and meet requirements of OAR 331-565-0020. Applicants must provide satisfactory evidence of the following information:

(a) The make, model, year and license plate number of the vehicle that will be designated as the mobile facility;

(b) A permanent mailing address for the mobile facility license applicant or license holder;

(4) A mobile facility license holder must comply with the following requirements:

(a) Submit written notification to the agency on a prescribed Mobile Facility Service Location form for each new physical location where services will be provided. The notification form must be received by the agency before the first day of operation at the new physical location;

(b) The Mobile Facility Service Location form will be provided by the agency and may be submitted by regular United States Postal Service or by electronic mail to OHLA.info@state.or.us or in person at the office;

(c) The mobile facility must remain stationary while services are being provided to clients;

(d) The mobile facility shall not operate at any physical location for more than 15 consecutive days in one calendar month.

(5) To be eligible to renew a mobile facility license, the license holder must comply with provision of OAR 331-565-0020 and 331-030-0010, and must submit to the agency a minimum of one physical location change on a Mobile Facility Service Location form during the previous year where services were provided.

(6) The mobile facility license is not subject to the provisions of OAR 331-565-0030(1)(c) or 331-565-0060(1).

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

Stats. Implemented: PRS 676.605, 676.615, 690.380

Hist.: HLA 2-2007, f. & cert. ef. 3-30-07, cert. ef. 4-1-07

331-575-0040

Communicable and Blood Borne Diseases

Licensees must observe the Centers for Disease Control and Prevention (CDC) Standard Precautions as defined in Oregon Administrative Rule 437-002-0360(25), and 29 CFR 1910.1030 standards, when providing services to consumers. CDC Standard Precautions describe an approach to infection control that assumes exposure to all human blood and specified human body fluids are infectious for HIV, HBV, and other blood borne pathogens. Precautions to reduce the likelihood of exposure include hand washing, gloving, using personal protective equipment, preventing injury, ensuring proper handling and disposal of needles and other sharp instruments and of products or equipment contaminated with blood and body fluids.

Stat. Auth.: ORS 676.605, 676.615 & 690.390

Stats. Implemented: ORS 676.605, 676.615 & 690.390

Hist.: HDLP 1-1999, f. 1-26-99, cert. ef. 2-1-99; HLO 5-2004, f. 6-29-04, cert. ef. 7-1-04; HLA 2-2007, f. & cert. ef. 3-30-07, cert. ef. 4-1-07

Oregon Liquor Control Commission

Chapter 845

Rule Caption: Amend rule which adopts most current Attorney General's Model Rules of Procedure.

Adm. Order No.: OLCC 4-2007

Filed with Sec. of State: 3-22-2007

Certified to be Effective: 4-1-07

Notice Publication Date:

Rules Amended: 845-001-0007

Subject: This rule adopts the Attorney General's Model Rules of Procedure in their entirety. We are amending the effective date of the Model Rules we are adopting to reflect the most current version of

ADMINISTRATIVE RULES

the Attorney General's Model Rules of Procedure, effective January 1, 2006.

Rules Coordinator: Jennifer Huntsman—(503) 872-5004

845-001-0007

Attorney General's Model Rules of Procedure

The Commission adopts, by reference, the Attorney General's Model Rules of Procedure, effective January 1, 2006. The Commission's supplemental rules for contested cases are in division 3 of this chapter.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the office of the Attorney General or the agency.]

Stat. Auth.: ORS 471.030 & 471.730(1) & (5)

Stats. Implemented: ORS 183.341(1)

Hist.: LCC 10-1986, f. 6-4-86, ef. 7-1-86; OLCC 4-1989, f. 4-28-89, cert. ef. 7-1-89; OLCC 9-1992, f. 10-7-92, cert. ef. 12-1-92; OLCC 1-1994, f. & cert. ef. 5-2-94; OLCC 9-1995, f. 12-4-95, cert. ef. 1-1-96; OLCC 3-1999, f. 2-16-99, cert. ef. 3-1-99; OLCC 8-2001, f. 8-15-01, cert. ef. 9-1-01; OLCC 10-2004, f. 10-15-04 cert. ef. 11-1-04; OLCC 4-2007, f. 3-22-07, cert. ef. 4-1-07

Rule Caption: Amend 2 rules in Division 6 to make minor house-keeping changes.

Adm. Order No.: OLCC 5-2007

Filed with Sec. of State: 3-22-2007

Certified to be Effective: 4-1-07

Notice Publication Date: 1-1-07

Rules Amended: 845-006-0345, 845-006-0482

Subject: OAR 845-006-0345 Prohibited Conduct:

This rule describes the types of licensee and permittee conduct specifically prohibited by the Commission. We intend to make housekeeping-type amendments to the rule, including: amending the Statutes Implemented section to accurately and completely cite all Oregon Revised Statutes which this rule implements; and correcting a reference in section (9) to the underlying statute.

OAR 845-006-0482 Closure of Premises for Private Uses:

This rule describes requirements when Limited On-Premises Sales licensees and Full On-Premises Sales licensees close all or part of their licensed premises for private uses. We intend to make house-keeping-type amendments to this rule, including: removing language regarding the "5-day" opening requirement from section (2) which was discontinued with the repeal of OAR 945-006-0427, effective May 1, 2006; incorporating the remainder of section (2) and all of section (3), both of which specify notice requirements, into section (1) in order to simplify and clarify the rule language; removing section (7) which contains expired language applying to dispenser licenses; and amending the Statutes Implemented section to accurately and completely cite all Oregon Revised Statutes which this rule implements.

Rules Coordinator: Jennifer Huntsman—(503) 872-5004

845-006-0345

Prohibited Conduct

(1) Drinking on Duty: No licensee, permittee, employee or agent will drink or be under the influence of intoxicants while on duty. "On duty" means from the beginning of a work shift that involves the sale or service of alcoholic beverages, checking identification or controlling conduct on the premises, to the end of the shift including coffee and meal breaks. "A work shift that involves the sale and service of alcoholic beverages" includes supervising those who sell or serve, check identification or control the premises.

(2) No licensee or permittee will fail to call the police when a Commission regulatory employee directs the licensee or permittee to call.

(3) Evidence: No licensee or permittee will:

(a) Destroy, damage, alter, remove, or conceal potential evidence, or attempt to do so;

(b) Refuse to give a Commission regulatory employee or police officer this evidence when the employee or officer lawfully requests it; or

(c) Ask or encourage another person to do subsections (a) or (b) of this section.

(4) Access to Premises:

(a) No licensee or permittee will deny entrance to the licensed premises during regular business hours to a Commission regulatory employee or police officer who enters or wants to enter to conduct reasonable search to ensure compliance with alcoholic beverage law. Once the regulatory employee or police officer is on the licensed premises, no licensee or per-

mittee will ask the regulatory employee or officer to leave until the regulatory employee or officer has had an opportunity to conduct a reasonable search to ensure compliance with the alcoholic beverage laws;

(b) Examination of premises that are or appear closed occurs only when there is reason to believe an alcoholic beverage law violation is occurring. No licensee or permittee will refuse or fail to promptly admit a Commission regulatory employee or police officer to the licensed premises when the regulatory employee or officer identifies him/herself and asks to enter to conduct a reasonable search to ensure compliance with the alcoholic beverage laws.

(5) Open Containers: No licensee or permittee will permit a person to take an open container of alcoholic beverages from the licensed premises, except as ORS 471.178, 471.200 and 471.175 allow.

(6) Liquor on Premises: No licensee or permittee will have or permit any alcoholic liquor on the licensed premises which the license does not allow the licensee to sell or serve.

(7) Drive-up Window: No licensee or permittee who sells alcoholic beverages for off-premises consumption will sell or deliver any alcoholic beverages through a drive-up window. This prohibition does not apply to licenses permitting distilled spirits by the drink which were in existence and operating with a food service drive-up window prior to November 1, 1998.

(8) Liquor as a Prize: Except as allowed in ORS 471.408, no licensee or permittee will give or permit any alcoholic beverage as a prize, premium, or consideration for any lottery, contest, game of chance or skill, or any competition of any kind on the licensed premises.

(9) "Good Faith Effort": ORS 471.315(1)(a)(G), and 471.412(2) prohibit a licensee or permittee from knowingly allowing a visibly intoxicated person to drink alcoholic beverages. A licensee or permittee who makes a good faith effort to remove the alcoholic beverage does not violate these statutes:

(a) As used in ORS 471.412(2) and this rule, "good faith effort" means:

(A) Placing a hand on the drink and trying to remove it; or

(B) Making a verbal request for the drink, if the server has reason to believe that touching the patron's drink could cause a disturbance.

(b) The Commission will issue letters of reprimand for the first three violations of this section within a two-year period. A fourth violation within a two-year period is a Category III violation assessed at the fourth level (cancellation).

(10) No Limited On-Premises Sales licensee, or the licensee's agent or employee, shall sell or otherwise provide a keg of malt beverages to go off-premises from any area where the Commission allows minor patronage. Violation of this section is a Category III violation.

(11) Promotions. Prohibited practices include:

(a) The sale, offer or service to any person of an unlimited number of alcoholic beverage(s) during any set period of time for a fixed price;

(b) Temporary price reductions on alcoholic beverages after 12:00 midnight;

(c) Conducting, operating, organizing, or promoting any "drinking contest" or "drinking game" that is designed to increase consumption at an extraordinary speed, or in increased quantities, or in a more potent form.

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

Stats. Implemented: ORS 471.030, 471.040, 471.175, 471.178, 471.200, 471.315(1)(g), 471.408, 471.412, 471.408, 471.412, 471.675, 471.730

Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 6-2001, f. 8-15-01, cert. ef. 9-1-01; OLCC 4-2003, f. 3-31-03 cert. ef. 4-1-03; OLCC 5-2007, f. 3-22-07, cert. ef. 4-1-07

845-006-0482

Closure of Premises for Private Uses

(1) Limited On-Premises Sales licensees and Full On-Premises Sales licensees may close all or part of the licensed business for private use at any time. The licensee must give notice of such closures as provided in this rule:

(a) A Full On-Premises Sales licensee licensed as a commercial establishment as authorized by ORS 471.175(2)(c) must notify the Commission in writing at least 48 hours before full closure of the licensed premises for private use. Partial closure of the licensed premises does not require notification to the Commission except as section (1)(b) of this rule requires;

(b) All Limited On-Premises Sales licensees and Full On-Premises Sales licensees must notify the Commission in writing prior to the event if any private use not approved at the time of licensing will restrict the general public more than once per week from areas that were approved for patronage by the general public.

(2) Closure for private use does not excuse a Full On-premises Sales licensee from compliance with the food service rules of the Commission.

ADMINISTRATIVE RULES

(3) Whenever any licensee closes the licensed premises or a part of it to the public for private use, at least one entry normally used by the public must remain unlocked to allow Commission inspectors unrestricted access.

(4) Examples of private uses are: banquets, conferences, meetings and parties.

Stat. Auth.: ORS 471, including 471.030, 471.040, 471.730(1) & (5)
Stats. Implemented: ORS 471.030, 471.175, 471.178 & 471.730(1) & (5)
Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 5-2007, f. 3-22-07, cert. ef. 4-1-07

Oregon Patient Safety Commission Chapter 325

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

Adm. Order No.: PSC 2-2007

Filed with Sec. of State: 4-10-2007

Certified to be Effective: 4-10-07

Notice Publication Date: 3-1-07

Rules Adopted: 325-010-0000

Rules Amended: 325-010-0001, 325-010-0005, 325-010-0010, 325-010-0015, 325-010-0020, 325-010-0025, 325-010-0030, 325-010-0035, 325-010-0040, 325-010-0045, 325-010-0050, 325-010-0055, 325-010-0060

Subject: 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).

Rules Coordinator: Jim Dameron—(503) 224-9226

325-010-0000

Applicability of Rules

OAR 325-010-0001 to 0060 are made retroactive to February 2, 2006.
Stat. Auth: ORS 686, 182.456 - 182.472, OL 2003 Sec. 4,6,9
Stats. Implemented: ORS 442.820 - 442.835
Hist.: PSC 3-2006(Temp), f. & cert. ef. 10-25-06 thru 4-22-07; PSC 2-2007, f. & cert. ef. 4-10-07

325-010-0001

Definitions

As used in OAR 325-010-0001 to 325-010-0060:

(1) “**Commission**” means the Oregon Patient Safety Commission.

(2) “**Event Report**” means the form designated by the Commission to be used by Hospital Participants for the reporting of Reportable Hospital Serious Adverse Events.

(3) “**Hospital Participant**” means a hospital that has volunteered to participate in the Oregon Patient Safety Reporting Program. A hospital pharmacy is considered to be part of the hospital.

(4) “**Oregon Patient Safety Reporting Program**” means the Patient Safety Reporting Program, as defined in Oregon Laws 2003, Chapter 686, Section 4, and operated by the Commission.

(5) “**Participant**” means an entity that reports Patient Safety Data to a Patient Safety Reporting Program, and any agent, employee, consultant, representative, volunteer or medical staff member of the entity.

(6) “**Patient Safety Activities**” include but are not limited to:

(a) The collection and analysis of Patient Safety Data by a Participant;

(b) The collection and analysis of Patient Safety Data by the Oregon Patient Safety Commission established in Oregon Laws 2003, Chapter 686 and ORS 442.820;

(c) The utilization of Patient Safety Data by Participants;

(d) The utilization of Patient Safety Data by the Oregon Patient Safety Commission to improve the quality of care with respect to patient safety and to provide assistance to health care providers to minimize patient risk; and

(e) Oral and written communication regarding Patient Safety Data among two or more Participants with the intent of making a disclosure to or preparing a report to be submitted to a Patient Safety Reporting Program.

(7) “**Patient Safety Data**” means oral communication or written reports, data, records, memoranda, analyses, deliberative work, statements, root cause analyses or action plans that are collected or developed to improve patient safety or health care quality that:

(a) Are prepared by a Participant for the purpose of reporting Patient Safety Data voluntarily to a Patient Safety Reporting Program, or that are communicated among two or more Participants with the intent of making a disclosure to or preparing a report to be submitted to a Patient Safety Reporting Program; or

(b) Are created by or at the direction of the Patient Safety Reporting Program, including communication, reports, notes or records created in the course of an investigation undertaken at the direction of the Oregon Patient Safety Commission.

(8) “**Reportable Serious Adverse Event**” for the purposes of OAR 325-010-0001 to 325-010-0060 means any unanticipated, usually preventable consequence of patient care that results in patient death or serious physical injury, including the events described in Appendix A. **Appendix A** is incorporated by reference.

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

Stat. Auth: ORS 686, 182.456 - 182.472, OL 2003 Sec. 4,6,9

Stats. Implemented: ORS 442.820 - 442.835

Hist.: PSC 2-2006, f. & cert. ef. 2-6-06; PSC 3-2006(Temp), f. & cert. ef. 10-25-06 thru 4-22-07; PSC 2-2007, f. & cert. ef. 4-10-07

325-010-0005

Enrollment in the Oregon Patient Safety Reporting Program

(1) Participation in the Oregon Patient Safety Reporting Program is voluntary. Hospital Participants are entitled to the benefits and subject to the obligations set forth in these administrative rules.

(2) Interested hospitals may apply for participation in the Oregon Patient Safety Reporting Program by completing the Commission's registration form and submitting the applicable annual fee. The registration form must include the name of a designated contact person.

(3) In agreeing to participate a hospital must affirm that it is willing to fully share requested Patient Safety Data with the Commission. This statement must be co-signed by the hospital's Chief Executive Officer, Chairperson of the Board of Directors, and the Director of Quality Management, or their equivalents.

(4) Upon enrolling in the Oregon Patient Safety Reporting Program, a Hospital Participant must have adopted policies and procedures describing patient safety activities, including how it triages adverse events; how it investigates adverse events, including root cause analysis protocols; and how it provides notice of adverse events to a patient and/or family member. The Hospital Participant must provide copies to the Commission upon request.

(5) Within 30 calendar days of receipt and acceptance of the registration form and fee the Commission will issue a certificate establishing a Hospital Participant's enrollment in the Oregon Patient Safety Reporting Program. The Hospital Participant should conspicuously post the certificate in an area where patients are admitted.

(6) The Commission will issue a press release on a regular basis which will provide a list of Hospital Participants to the public.

Stat. Auth: ORS 686, 182.456 - 182.472, OL 2003 Sec. 4,6,9

Stats. Implemented: ORS 442.820 - 442.835

Hist.: PSC 2-2006, f. & cert. ef. 2-6-06; PSC 3-2006(Temp), f. & cert. ef. 10-25-06 thru 4-22-07; PSC 2-2007, f. & cert. ef. 4-10-07

325-010-0010

Annual Hospital Participant Fee

(1) A Hospital Participant must pay an annual fee, as follows:

(a) \$1,000 for a hospital with 3,000 or fewer patient discharges per year.

(b) \$3,500 for a hospital with 3,001 to 10,000 patient discharges per year.

(c) \$8,500 for a hospital with more than 10,000 patient discharges per year.

(2) Initial fees will be assessed at the time of enrollment in the Oregon Patient Safety Reporting Program and will expire on December 31 following the date of issue. Annual Hospital Participant fees will be due by December 31 for the next year's enrollment. A delinquent renewal fee of up to 25% of the renewal fee may be assessed against a Hospital Participant submitting fees postmarked after December 31st.

(3) No participation fees will be refunded due to withdrawal or termination from the Oregon Patient Safety Reporting Program.

Stat. Auth: ORS 686, 182.456 - 182.472, OL 2003 Sec. 4,6,9

ADMINISTRATIVE RULES

Stats. Implemented: ORS 442.820 - 442.835
Hist.: PSC 2-2006, f. & cert. ef. 2-6-06; PSC 3-2006(Temp), f. & cert. ef. 10-25-06 thru 4-22-07; PSC 2-2007, f. & cert. ef. 4-10-07

Hist.: PSC 2-2006, f. & cert. ef. 2-6-06; PSC 3-2006(Temp), f. & cert. ef. 10-25-06 thru 4-22-07; PSC 2-2007, f. & cert. ef. 4-10-07

325-010-0015

Termination of Participation

(1) The Commission's reporting program relies on voluntary reporting. However, the Commission is responsible for ensuring that those who choose to participate also comply with the standards established by the Commission.

(2) Participation requirements include the reporting of all Reportable Serious Adverse Events; fully completing Event Reports; creating and implementing acceptable action plans; and providing written disclosure to patients or families following a Reportable Serious Adverse Event.

(3) If the Commission believes a Hospital Participant is not meeting its participation requirements, the Commission must provide the Hospital Participant with a written notice explaining why. The Hospital Participant will have 30 calendar days to respond and come into compliance.

(4) The Commission may deny, suspend or revoke a Hospital Participant's status when the Commission finds that there has been a substantial failure to comply with the provisions of participation.

(5) Upon written notification by the Commission of revocation, suspension, or denial of a Hospital Participant enrollment in the Oregon Patient Safety Reporting Program, a Hospital Participant may request a hearing. Hearings will be held in accordance with ORS 183.310 to 183.470.

Stat. Auth: ORS 686, 182.456 - 182.472, OL 2003 Sec. 4,6,9
Stats. Implemented: ORS 442.820 - 442.835
Hist.: PSC 2-2006, f. & cert. ef. 2-6-06; PSC 3-2006(Temp), f. & cert. ef. 10-25-06 thru 4-22-07; PSC 2-2007, f. & cert. ef. 4-10-07

325-010-0020

Re-Issue of Suspended or Revoked Participation Certificate

The Commission may re-issue a participation certificate that has been suspended or revoked if the Commission determines that the Hospital applying for re-enrollment meets the provisions of participation.

Stat. Auth: ORS 686, 182.456 - 182.472, OL 2003 Sec. 4,6,9
Stats. Implemented: ORS 442.820 - 442.835
Hist.: PSC 2-2006, f. & cert. ef. 2-6-06; PSC 3-2006(Temp), f. & cert. ef. 10-25-06 thru 4-22-07; PSC 2-2007, f. & cert. ef. 4-10-07

325-010-0025

Reporting Serious Adverse Events

(1) The Commission will provide an Event Report form to be used by Hospital Participants for reporting Reportable Serious Adverse Events. The Event Report will include: a summary description of the event; an overview of the Hospital Participant's complete, thorough and credible root cause analysis for that event; information about plans to implement improvements to reduce risk. The meaning of terms "complete," "thorough," and "credible" are explained in OAR 325-010-0035.

(2) Hospital Participants must use the Event Report form when reporting Serious Adverse Events to the Commission.

(3) Hospital Participants must submit a completed Event Report to the Commission within 45 calendar days of discovery of a Reportable Serious Adverse Event.

(4) If a Hospital Participant believes the Commission should immediately issue an alert to all Oregon hospitals based on a specific Reportable Serious Adverse Event, the Hospital Participant should provide an initial report to the Commission within 3 business days of discovery of the event, or sooner. The Hospital Participant and Commission will work together to identify information to include in the alert.

Stat. Auth: ORS 686, 182.456 - 182.472, OL 2003 Sec. 4,6,9
Stats. Implemented: ORS 442.820 - 442.835
Hist.: PSC 2-2006, f. & cert. ef. 2-6-06; PSC 3-2006(Temp), f. & cert. ef. 10-25-06 thru 4-22-07; PSC 2-2007, f. & cert. ef. 4-10-07

325-010-0030

Hospital Reporting of Less Serious Adverse Events or Close Calls

(1) In addition to Reportable Serious Adverse Events, Participating Hospitals are also encouraged to report less serious adverse events or close calls. Participating Hospitals should do so when they believe other organizations will benefit from the information.

(2) To report such events, Hospital Participants should use the appropriate sections of the Event Report form. Hospital Participants will not be required to complete detailed root cause analysis for these less serious events or close calls.

(3) Hospital Participants are not required by the Commission to provide written disclosure of less serious adverse events or close calls to patients or their personal representatives.

Stat. Auth: ORS 686, 182.456 - 182.472, OL 2003 Sec. 4,6,9
Stats. Implemented: ORS 442.820 - 442.835

325-010-0035

Commission Review of Reports

(1) When the Commission receives an Event Report from a Hospital Participant, the Commission will determine whether that Event Report is complete, thorough, credible and acceptable. The definitions for the terms *thorough*, *credible* and *acceptable* can be found in the Joint Commission on Accreditation of Health Care Organization's Sentinel Event Policy and Procedures, June 2005, and are adopted by reference. In general:

(a) A report is *complete* if it contains all the information requested in the Event Report, or explains, to the Commission's satisfaction, why that information is not available or not necessary to provide;

(b) A report is *thorough* if the root cause analysis includes an analysis of all relevant systems issues and shows evidence of an inquiry into all appropriate areas;

(c) A report is *credible* if it shows evidence that the investigation of the Reportable Hospital Serious Adverse Event included participation by leadership within the organization and was internally consistent; and

(d) A report is *acceptable* if all the above standards are met and the action plans clearly describe meaningful improvement strategies designed to minimize risk.

(2) If the Commission believes that an Event Report received from a Hospital Participant is incomplete or unacceptable in some manner, it will inform the Hospital Participant's contact person within 10 business days of receipt of the Event Report.

(3) On an annual basis, the Commission will query Hospital Participants regarding the status of action plans identified in their Event Reports.

Stat. Auth: ORS 686, 182.456 - 182.472, OL 2003 Sec. 4,6,9
Stats. Implemented: ORS 442.820 - 442.835
Hist.: PSC 2-2006, f. & cert. ef. 2-6-06; PSC 3-2006(Temp), f. & cert. ef. 10-25-06 thru 4-22-07; PSC 2-2007, f. & cert. ef. 4-10-07

325-010-0040

Public Health Officer Certification

(1) At least annually, the Commission will request that the Public Health Officer certify the completeness, credibility, and thoroughness of each Hospital Participant's reporting during the applicable period.

(2) The Commission will request that the Public Health Officer develop independent and objective standards to evaluate the overall integrity of the Patient Safety Reporting Program. On an annual basis the Commission will request that the Public Health Officer use those standards to certify the Oregon Patient Safety Reporting Program.

(3) The Commission will provide information to the Public Health Officer to assist the Public Health Officer in completing the certification processes listed in (1) and (2) of this rule, consistent with OAR 325-010-0055.

Stat. Auth: ORS 686, 182.456 - 182.472, OL 2003 Sec. 4,6,9
Stats. Implemented: ORS 442.820 - 442.835
Hist.: PSC 2-2006, f. & cert. ef. 2-6-06; PSC 3-2006(Temp), f. & cert. ef. 10-25-06 thru 4-22-07; PSC 2-2007, f. & cert. ef. 4-10-07

325-010-0045

Patient Notification Of Reportable Serious Adverse Events

(1) After a Reportable Serious Adverse Event occurs, a Hospital Participant must provide written notification to each affected patient, or, if necessary, to the patient's personal representative. Notification must be timely and should be consistent with the Hospital Participant's internal communication and disclosure policies.

(2) As provided in Oregon Laws 2003, Chapter 686, Section 4(4), notice provided under this subsection may not be construed as an admission of liability in a civil action.

Stat. Auth: ORS 686, 182.456 - 182.472, OL 2003 Sec. 4,6,9
Stats. Implemented: ORS 442.820 - 442.835
Hist.: PSC 2-2006, f. & cert. ef. 2-6-06; PSC 3-2006(Temp), f. & cert. ef. 10-25-06 thru 4-22-07; PSC 2-2007, f. & cert. ef. 4-10-07

325-010-0050

Extensions And Waivers

(1) The Commission may grant an extension of any time requirement stipulated in these rules if the Hospital Participant provides justification that the delay is due to factors beyond its control or that the delay will not adversely affect the purposes of the Commission. A Hospital Participant requesting a waiver must submit a written request to the Commission prior to the deadline for the required action. Facsimile requests are acceptable.

ADMINISTRATIVE RULES

(2) The Commission may grant a waiver of any other provision of these rules if the Hospital Participant provides justification that granting the waiver will not adversely affect the purposes of the Commission.

Stat. Auth: ORS 686, 182.456 - 182.472, OL 2003 Sec. 4,6,9
Stats. Implemented: ORS 442.820 - 442.835
Hist.: PSC 2-2006, f. & cert. ef. 2-6-06; PSC 3-2006(Temp), f. & cert. ef. 10-25-06 thru 4-22-07; PSC 2-2007, f. & cert. ef. 4-10-07

325-010-0055

Protection Of Patient Safety Data

(1) The Commission is subject to all the confidentiality provisions set forth in Oregon Laws 2003, Chapter 686, Sections 1, 4 to 6, 8 to 10, 12, and in ORS 442.820 to 442.835.

(2) The Commission will maintain the confidentiality of all Patient Safety Data that identifies or could be reasonably used to identify a Hospital Participant or an individual who is receiving or has received health care from the Hospital Participant.

(3) Before it takes receipt of any confidential Patient Safety Data, the Commission will have in place appropriate safeguards and security measures to ensure the technical integrity and physical safety of such data.

(4) Pursuant to ORS 442.820(4), meetings or portions of meetings where the Oregon Patient Safety Commission Board of Directors, or subcommittees or advisory committees consider information that identifies a participant or patient are not subject to the Oregon Public Meetings Law, ORS 192.610 to 192.690.

Stat. Auth: ORS 686, 182.456 - 182.472, OL 2003 Sec. 4,6,9
Stats. Implemented: ORS 442.820 - 442.835
Hist.: PSC 2-2006, f. & cert. ef. 2-6-06; PSC 3-2006(Temp), f. & cert. ef. 10-25-06 thru 4-22-07; PSC 2-2007, f. & cert. ef. 4-10-07

325-010-0060

Commission's Use Of Patient Safety Data

(1) The Commission will create a standing committee on best practices in patient safety. This committee will advise the Commission on effective methods for making use of and sharing information gathered from the Commission's review of Event Reports.

(2) At least quarterly, the Commission will provide Hospital Participants with patient safety quality improvement information derived from Patient Safety Data.

(3) During the second quarter of each year, the Commission will publish a report to the public summarizing Patient Safety Data for the preceding calendar year. This report will use aggregate, de-identified data from the program and will describe statewide adverse event patterns and best practices to avoid the occurrence or minimize the effects of adverse events.

(4) The Commission will maintain an easily accessible and well-publicized website to share patient safety information directly with consumers.

(5) The Commission, within its resource limitations, will provide technical assistance to Hospital Participants, including but not limited to recommendations and advice regarding methodology, communication, dissemination of information, data collection, security and confidentiality.

(6) The Commission will work with representatives of organizations participating in the Oregon Patient Safety Reporting Program and with other interested parties to develop recommendations for continued improvements in the collection and utilization of Patient Safety Data.

Stat. Auth: ORS 686, 182.456 - 182.472, OL 2003 Sec. 4,6,9
Stats. Implemented: ORS 442.820 - 442.835
Hist.: PSC 2-2006, f. & cert. ef. 2-6-06; PSC 3-2006(Temp), f. & cert. ef. 10-25-06 thru 4-22-07; PSC 2-2007, f. & cert. ef. 4-10-07

Oregon Public Employees Retirement System Chapter 459

Rule Caption: Update OPSRP Pension Program disability rules to reflect consistent use of terminology.

Adm. Order No.: PERS 7-2007

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

Certified to be Effective: 4-4-07

Notice Publication Date: 2-1-07

Rules Amended: 459-076-0001, 459-076-0020, 459-076-0050, 459-076-0060

Subject: These rules currently use the terms "allowance," "disability allowance," "disability retirement allowance," and "disability retirement benefit" when referring to an OPSRP Pension Program disability benefit. These terms are being changed for accuracy and consistency in terminology within the Division 76 rules.

Rules Coordinator: Daniel Rivas—(503) 603-7713

459-076-0001

Definitions

The words and phrases used in this division have the same meaning given them in ORS Chapter 238A and OAR 459-070-0001. Additional terms are defined as follows unless the context requires otherwise.

(1) Any work for which qualified: A job, not necessarily the last or usual job, which the applicant for disability benefits:

(a) Is physically and psychologically capable of performing; and

(b) Has, or may obtain with reasonable training, the knowledge, skills and abilities, to perform the job.

(2) Certified vocational consultant: A person who satisfies the criteria set forth under either of the following:

(a) A Master's Degree in vocational rehabilitation, and one year of experience in performing vocation evaluations or developing individualized return-to-work plans; or a Bachelor's Degree and two years of such experience. All degrees must have been earned at an accredited institution; or

(b) Accredited as a Certified Rehabilitation Counselor (CRC) by the Commission on Rehabilitation Counselor Certification; as a Certified Insurance Rehabilitation Specialist (CIRS) by the Certified Insurance Rehabilitation Specialists Commission; or a Certified Vocational Evaluation Specialist (CVE) or a Certified Work Adjustment Specialist (CWA) by the Commission on Certification of Work Adjustment and Vocational Evaluation specialists.

(3) Confidential information: Information of a personal nature such that disclosure would constitute an unreasonable invasion of privacy as defined by state law.

(4) Date of disability: The day an active member ceased to work because of injury or disease.

(5) Effective date of disability benefit: The first of the month following the later of:

(a) The last day the member worked for a participating employer;

(b) The last day the member was on paid leave; or

(c) The last day the member received any salary or paid leave benefits from a participating employer, exclusive of the cash pay-off for accrued vacation or compensatory time, as long as that payment is made within the 31 days after the member separates from PERS covered employment.

(6) Extended duration: A period of not less than 90 consecutive calendar days unless the disability is expected to result in the death of the disabled member in less than 90 days.

(7) Independent medical exam: An exam or exams conducted by a physician chosen by PERS for purposes other than for treatment which results in the issuance of a report or reports based on those exams, giving an opinion regarding the claimed injury or disease.

(8) Material contributing cause: The efficient, dominant, and proximate cause of the disability, without which the member would not be disabled.

(9) Monthly salary: Salary as defined in ORS 238A.005(16) that is earned in the last full calendar month of employment:

(a) Retroactive payments or payments made due to clerical errors, paid in accordance with ORS 238A.005(16)(b)(E), are allocated to the period the salary was earned or should have been earned.;

(b) Payments of salary paid within 31 days of separation are allocated to the period the salary was earned and should be considered as paid on the last date of employment.

(10) Monthly salary received: The salary paid, as defined in section (9) of this rule, for the last full calendar month of employment prior to date of disability.

(11) Normal retirement age: The age at which a member can retire without a reduced benefit as set forth under ORS 238A.160.

(12) Other income: Includes, but is not limited to:

(a) Salary or wages received as an employee;

(b) Self-employment income from:

(A) Services industry;

(B) Sales;

(C) Assembly or manufacturing;

(D) Consulting;

(E) Property management;

(F) Hobby income; or

(G) Book advances.

(c) "Other income" does not include:

(A) Investment income;

(B) Rent; and

(C) Royalties.

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(13) Physician: A medical doctor, a doctor of osteopathy, a doctor of oral surgery, a chiropractic doctor, a naturopathic doctor, or a doctor of psychology practicing only within the purview of their license issued by the designated authority of a state.

(14) Periodic review: A review of a member receiving a disability benefit to determine whether or not a continued benefit is warranted.

(15) Performance of duty: Mental or physical incapacitation arising out of and in the course of duty and is not intentionally self-inflicted. The injury or disease must be initially caused, aggravated or accelerated to cause incapacitation by the performance of the member's duties in the employment of a participating public employer. The job must be the material contributing cause of the injury or disease. Performance of duty includes whatever an employee may be directed, required or reasonably expected to do in connection with his or her employment, and not solely the duties peculiar to his or her position.

(16) Pre-existing condition: A condition that was not sustained in actual performance of duty with the current employer.

(17) Protected health information: Health information created or received by a health care provider, health plan, or health care clearinghouse, where an individual has a reasonable belief that the information can identify the individual, which relates to:

(a) The past, present, or future physical or mental health of an individual;

(b) The provision of health care to an individual; or

(c) The past, present, or future payment for the provision of health care to an individual.

(18) Qualifying position: One or more positions with a participating employer, in a participating class, which requires performance of 600 or more hours in a calendar year.

(19) Separation from all service: The date a member terminates from employment such that an employee/employer relationship no longer exists; the last day worked (physically on the job), the last day of paid leave, or the last day of an official leave of absence, whichever is the later.

(20) Similar in compensation: Salary or income, excluding overtime, equaling at least 80 percent of the monthly salary, as defined in section (9) of this rule.

(21) Similar location: A position in the same general area of the applicant's residence or last employment location.

(22) Vocational evaluation: An evaluation conducted by a certified vocational consultant, to determine the ability of an applicant to perform any work for which they are qualified.

(23) Work related stress: Conditions or disabilities resulting from, but not limited to:

(a) Change of employment duties;

(b) Conflicts with supervisors;

(c) Actual or perceived threat of loss of a job, demotion, or disciplinary action;

(d) Relationships with supervisors, coworkers, or the public;

(e) Specific or general job dissatisfaction;

(f) Work load pressures;

(g) Subjective perceptions of employment conditions or environment;

(h) Loss of job or demotion for whatever reason;

(i) Fear of exposure to chemicals, radiation biohazards, or other perceived hazards;

(j) Objective or subjective stresses of employment; or

(k) Personnel decisions.

Stat. Auth.: ORS 238A.450

Stats. Implemented: ORS 238A.235

Hist.: PERS 16-2005, f. & cert. ef. 10-3-05; PERS 7-2007, f. & cert. ef. 4-4-07

459-076-0020

Application Required

(1) No disability benefit will be paid unless the member files a timely and complete application with PERS:

(a) An inactive member who was disabled due to injury or disease while the applicant was an active member and is not separated from membership, must file an application for a disability benefit within five calendar years of the last day worked; even though the member may continue on a paid leave or on an official leave of absence without pay. The disabling condition must have arisen while the applicant was an active member and be continuous from the date the member last worked to the date the application is filed;

(b) Members who become disabled due to injury or disease after the date of separation from all service entitling the member to active membership in the system, are not eligible for a disability benefit under ORS Chapter 238A.

(2) Applications will be made on forms prescribed by PERS. PERS may require the member to provide any information that PERS considers necessary to determine the applicant's eligibility for a disability benefit.

(3) Application must be made by a member or the member's authorized representative. A representative must submit to PERS written proof of the representative's authority; such as, a power of attorney, guardianship or conservatorship appointment.

(4) A member may make application immediately after the last day worked even though the member is on a paid leave or on an official leave of absence without pay. No application will be accepted that predates the last day the member was actually on the job.

(5) In determining the effective date of a disability benefit PERS may allow up to 60 months of benefits retroactive from the date the application is filed with PERS, but in no case earlier than the first day of the month following the date of termination.

(6) Upon the filing of an application for a disability benefit, PERS will notify the applicant's current or most recent employer of the filing. Additionally, PERS may request of an employer information pertaining to current or previous employment.

(7) When making application for a PERS disability benefit, PERS will request the applicant authorize any physician, health practitioner, hospital, clinic, pharmacy, employer, employment agency, or government agency to release and disclose to PERS, or independent physicians and vocational consultants retained by PERS, any information within their records or knowledge, including that information otherwise protected under federal or state law, regarding the applicant's health and employment which PERS determines relates to the applicant's claim of disability and inability to perform any work for which qualified.

(8) When filing an application for disability benefit, if the applicant wishes to authorize release and disclosure of protected health information, as defined in OAR 459-015-0001(17), the applicant must complete and sign a consent form which specifically authorizes the release and disclosure of such information.

(a) This authorization is voluntary. Because PERS is not a covered entity as defined in 45 CFR Parts 160 and 164, the protected health information is not subject to federal and state health information privacy laws, but is protected under Oregon State Public Record disclosure laws.

(b) This authorization may be revoked in writing at any time, except to the extent the entities named on the authorization form(s) have taken action in reliance of the authorization.

(c) If the applicant refuses to give or revokes authorization to disclose to PERS medical information that PERS determines it needs to evaluate the application, eligibility for a disability benefit may be affected.

Stat. Auth.: ORS 238A.450 & 45 CFR Parts 160 & 164

Stats. Implemented: ORS 238A.235

Hist.: PERS 16-2005, f. & cert. ef. 10-3-05; PERS 7-2007, f. & cert. ef. 4-4-07

459-076-0050

Periodic Reviews

(1) Members receiving a disability benefit are subject to periodic reviews of their disabled status until the member reaches normal retirement age or staff determines that periodic reviews are no longer warranted.

(2) Periodic reviews will be used to determine that continued disability benefits are warranted. In recommending the continuance or discontinuance of a disability benefit, for the original approved disability or a new medical condition, PERS will follow the criteria established under OAR 459-076-0010.

(3) For a duty disability, the periodic review will not revisit the original determination that the injury or disease was duty caused, unless there is evidence of misrepresentation or fraud.

(4) PERS will establish review dates for each member subject to a periodic review depending on type of disability, extent of disability, and medical reports unique to each individual case:

(a) The reviews may be medical or vocational in nature, or both;

(b) Upon review, PERS may accept or require:

(A) New treating or consulting physician or specialist reports;

(B) Updated physician or specialist reports;

(C) Independent medical or vocational examinations; or

(D) Employment and wage information, including but not limited to, tax returns or information from the State Employment Department.

(c) PERS may immediately discontinue the disability benefit of any person who refuses to provide current medical evidence or refuses to submit to an examination:

(A) If the disability claim is discontinued, the staff shall issue an Intent to Discontinue letter by regular and certified mail, return receipt requested. The discontinuation letter shall advise the applicant that addi-

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tional information to substantiate the claim, or a request for an extension of 30 days to present additional information, may be submitted to the staff in writing within 30 days of the date of the Intent to Discontinue letter;

(B) Following the issuance of an Intent to Discontinue letter, staff will review any additional information which is submitted within 30 days:

(i) If the additional information results in a recommendation to approve the application, staff shall resubmit the application to the Director, or the Director's designee, with the recommendation;

(ii) If the additional information does not result in a recommendation to approve the application, PERS will issue a final discontinuation letter by regular and certified mail, return receipt requested.

(C) If no additional information is received within 30 days, PERS will issue a final discontinuation letter by regular and certified mail, return receipt requested;

(D) The final discontinuation letter will provide the applicant with notification of the right to request a contested case hearing as provided for in OAR 459-015-0030 and 459-001-0035.

(5) The member has the burden to prove continuing eligibility for a disability benefit.

(6) In recommending the continuance or discontinuance of a disability benefit, PERS shall follow the criteria established under OAR 459-076-0010.

(7) The Director, or Director's designee, is hereby authorized to approve or deny the continuance of a disability benefit.

Stat. Auth.: ORS 238A.450
Stats. Implemented: ORS 23A8.235
Hist.: PERS 16-2005, f. & cert. ef. 10-3-05; PERS 7-2007, f. & cert. ef. 4-4-07

459-076-0060

Reduction Due to Workers' Compensation Payment

(1) The total payments received by an OPSRP member receiving both OPSRP disability benefits and payments from Workers' Compensation may not exceed 75 percent of the member's monthly salary as of the date the member becomes disabled. Other disability-related income, such as Social Security and/or private disability insurance plan payments will not affect the amount of OPSRP disability benefits.

(2) A member's disability benefit will be offset by any gross monthly workers' compensation payment paid in a calendar month on account of temporary total disability or permanent total disability under the provisions of ORS Chapter 656; regardless of whether the condition on which the workers' compensation claim is based is related to the condition on which the OPSRP disability benefit claim is based:

(a) A monthly workers' compensation payment includes:

- (A) Weekly gross payments;
- (B) Semi-monthly gross payments;
- (C) Monthly gross payments; and

(D) That portion of a lump sum payment of a workers' compensation disability claim that is expressly designated as compensation for temporary total disability or permanent total disability.

(b) A monthly workers' compensation payment does not include:

- (A) Payments for medical services;
- (B) Payments for vocational training;
- (C) Reemployment assistance payments; and

(D) Any payment based on an employee's waiver of all rights to, and includes no payment for, a temporary total disability or a permanent total disability claim.

(c) The workers' compensation payment will be considered paid on the date that payment is issued, and will not be allocated to any period other than the month payment is issued.

(3) In the event a member is eligible to receive an OPSRP disability benefit, PERS will request of the Workers' Compensation Division, or any other public or private workers' compensation insurance company, documentation of the portion of a lump sum settlement that is made on account of a temporary total disability or a permanent total disability.

(4) The disability benefit of a member will be reduced by the amount by which the combined monthly benefits payable from both PERS and any monthly workers' compensation payment on account of temporary total disability or permanent total disability exceed 75 percent of the monthly salary of the member on the date of disability.

(5) In determining whether the combined monthly benefits exceed 75 percent of the monthly salary of the member on the date of disability, cost-of-living adjustments will not be considered.

(6) A member who is eligible to receive a disability benefit must report immediately to PERS the receipt or the award of any monthly workers' compensation payment as described in section (2)(a) of this rule.

(7) In the event a member receives one or more monthly workers' compensation payment(s) while also receiving a disability benefit as described in OAR 459-076-0015, but PERS is not notified of the workers' compensation payment until after making one or more disability benefit payments:

(a) PERS will recalculate the disability benefit, taking the monthly workers' compensation payments into account; and

(b) PERS will invoice the member for, or recover under ORS 238.715, any overpayment of OPSRP disability benefits.

Stat. Auth.: ORS 238.715 & 238A.450
Stats. Implemented: ORS 238A.235

Hist.: PERS 16-2005, f. & cert. ef. 10-3-05; PERS 7-2007, f. & cert. ef. 4-4-07

Oregon State Marine Board Chapter 250

Rule Caption: These rules establish the requirements of providers to offer Internet boat safety courses online.

Adm. Order No.: OSMB 2-2007

Filed with Sec. of State: 3-21-2007

Certified to be Effective: 3-21-07

Notice Publication Date: 2-1-07

Rules Adopted: 250-018-0110

Rules Amended: 250-018-0010, 250-018-0020, 250-018-0040, 250-018-0050, 250-018-0060, 250-018-0080, 250-018-0090

Rules Repealed: 250-018-0110(T), 250-018-0010(T), 250-018-0020(T), 250-018-0040(T), 250-018-0050(T), 250-018-0060(T), 250-018-0080(T), 250-018-0090(T)

Subject: These rules amend regulations governing the Mandatory Boater Education Program and establish criteria for Internet courses.

Rules Coordinator: June LeTarte—(503) 378-2617

250-018-0010

Definitions

As used in this Division the following definitions apply:

(1) "Approved Course Provider" is any individual or organization who instructs or provides a National Association of State Boating Law Administrators (NASBLA) approved boating safety classroom or internet course and who has been approved by the Oregon State Marine Board.

(2) "Boater Education Card" is the boating safety certificate required by ORS 830.086 and 830.094. This document, issued by the Marine Board, certifies that the person named on the card has established proof of competency and is authorized to operate a boat in Oregon under ORS 830.082 to 830.096.

(3) "Boating Safety Course" is any NASBLA approved course of instruction that is offered by an approved course provider and concludes with an examination containing at least 50 questions including a minimum of 10 specific questions about Oregon boating laws.

(4) "Correspondence Course and Self Test" means a boating safety course and examination provided by the Marine Board that is taken at home without a proctor. After, January 1, 2001, this correspondence course and self test will satisfy minimum standard of boating safety education competency only for those individuals who have qualified for hardship status.

(5) "Direct Supervision" occurs when a person maintains close visual and verbal contact with, provides adequate direction to, and can immediately assume control of a motorboat from the operator of a motorboat. A person who is water skiing, or is in the cabin of a boat is not considered to be in direct supervision. Direct supervision is referred to in ORS 830.090 and 830.088.

(6) "Dockside Safety Checklist" is a document provided by the Marine Board that consists of selected facts about Oregon boating laws that a rental or livery agent is required to present to renters/operators of motorboats and must be read and checked by the renter or operator of the motorboat before a motorboat can be rented and operated.

(7) "Equivalency Exam" is a comprehensive written examination created by the Marine Board containing at least 75 questions including a minimum of 15 specific questions about Oregon boating laws. The equivalency exam is intended to provide experienced boat operators the opportunity to meet the minimum standard of boating safety education competency without having to take a boating safety course.

(8) "Hardship" means a situation or condition that prevents an individual from attending a boating safety course or taking an equivalency exam in person within a reasonable amount of time or within reasonably close proximity to the individual's place of residence. The situation or condition must also keep the individual from taking an approved Internet

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course. A hardship situation may allow an individual to utilize a correspondence course and self test provided by the Marine Board to meet the minimum standard of boating safety education competency. An individual must submit a written request for hardship status. The Marine Board director or his designee has the authority to grant or deny hardship status.

(9) "Internet Course" is any NASBLA approved course of instruction that is offered through the Internet by an approved course provider and concludes with an examination containing at least 75 questions including a minimum of 15 specific questions about Oregon boating laws.

(10) "Minimum Standard of Boating Safety Education Competency" means a standard of proficiency established by the Marine Board based on the standards set by NASBLA that determines whether an applicant for a boater education card has met or exceeded the requirements of a boating safety course, equivalency exam, Internet course, or correspondence course and self test.

(11) "Proctor" is an individual who is a member of the U. S. Coast Guard Auxiliary, U.S. Power Squadron, Marine Patrol, or other public safety organization or whose organization has been approved by the Marine Board to administer an equivalency exam. A "proctor" may also be a public official such as a librarian or community college instructor who has been approved by the Marine Board to administer an equivalency exam.

(12) "Proof of Competency" is a document verifying that an individual has achieved the minimum standard for boating safety education competency as determined by the Marine Board.

(13) "Temporary Boater Education Card" is a document issued by the Marine Board or an approved course provider allowing the bearer to operate a motorboat in Oregon for a period of time not to exceed 60 days as provided in ORS 830.082 to 830.096.

Stat. Auth.: ORS 830.110

Stats. Implemented: ORS 830.082 - 830.096

Hist.: OSMB 6-2000, f. & cert. ef. 10-30-00; OSMB 10-2001, f. & cert. ef. 10-29-01; OSMB 3-2003, f. & cert. ef. 3-31-03; OSMB 1-2007(Temp), f. & cert. ef. 1-9-07 thru 6-30-07; OSMB 2-2007, f. & cert. ef. 3-21-07

250-018-0020

Minimum Standards for Boating Safety Education Competency

(1) A person required to possess a boater education card in order to operate a motorboat in Oregon must meet the minimum standard for boating safety education competency as set by the Marine Board.

(2) The minimum standards for boating safety education competency required by the Marine Board are:

(a) Successful completion of a boating safety course in person and a passing score of at least 70 percent on a written test administered at the conclusion of the course by the instructor or a proctor; or

(b) A score of at least 70 percent on a proctored equivalency exam. Individuals may take the equivalency exam no more than once within any 30-day period; or

(c) A score of at least 80 percent on a correspondence course and self test provided by the Marine Board to individuals qualifying for hardship status; or

(d) A score of at least 80 percent on a self-test associated with a boating safety course offered over the Internet. For an Internet course to meet Marine Board standards, it must be NASBLA approved and contain at least 75 questions with at least 15 of the questions Oregon specific. Questions must be pulled randomly from a database of a 180 questions minimum, and questions must address each of the key areas of general boat information, national and Oregon specific boating laws, boat operation, preparation and trailering, legal requirements and boating emergencies; or

(e) Possession of a certificate, card, or other official document issued by another state or Canada that is equivalent to Oregon's boater education card as determined by the Marine Board; or

(f) Satisfactory completion of Marine Safety Law Enforcement Academy; or

(g) U.S. Coast Guard certification as Crewman or Coxswain or similar classification within other branches of the armed forces.

(3) Suitable evidence of achieving the minimum standard for boating safety education competency or "proof of competency" documents must contain the name of the individual applying for the boater education card and be signed or otherwise certified by the issuing organization. Proof of competency documents include:

(a) A certificate of completion issued by the U.S. Power Squadrons, U.S. Coast Guard Auxiliary, Marine Board or other approved course provider; or

(b) A certificate, card, or other official document issued by a proctor stating that the individual passed the equivalency exam with a score of 70 percent or better; or

(c) A certificate, card, or other official document issued by another state or Canada that is equivalent to Oregon's boater education card; or

(d) A U.S. Coast Guard operator's license either valid or expired. The following designations will be accepted: First Class Pilot; Master of Steam or Motor or Auxiliary Sail Vessels of not more than 25, 50, 100, 150, 200, 500, 1600 or any gross tons; Mate of Steam or Motor or Auxiliary Sail Vessels of not more than 25, 50, 100, 150, 200, 500, 1600 or any gross tons; Operator of Uninspected Towing Vessels Commercial Assistance Towing; Operator of Uninspected Passenger Vessels; or

(e) A certificate of completion or other official record or document stating that the individual successfully completed the Oregon Marine Safety Law Enforcement Academy; or

(f) A letter from the unit Commanding Officer/Officer in Charge stating that the individual has achieved certification as a U.S. Coast Guard Crewman or Coxswain or similar classification within other branches of the armed forces; or

(g) In the event the original document establishing proof of competency is not available, a signed statement from an approved-course provider of a boating safety course stating that the individual has successfully completed a boating safety course or equivalency exam will be accepted by the Marine Board.

(4) Correspondence course and self tests taken after January 1, 2001, except as stated in (2)(c), will not meet Marine Board standards.

Stat. Auth.: ORS 830.110

Stats. Implemented: ORS 830.082 - 830.096

Hist.: OSMB 6-2000, f. & cert. ef. 10-30-00; OSMB 10-2001, f. & cert. ef. 10-29-01; OSMB 1-2007(Temp), f. & cert. ef. 1-9-07 thru 6-30-07; OSMB 2-2007, f. & cert. ef. 3-21-07

250-018-0040

Replacement Boater Education Card

(1) A person may apply for a replacement boater education card from the Marine Board if:

- (a) They legally change their name; or
- (b) The card is lost, stolen or destroyed; or
- (c) Misinformation is printed on the card.

(2) To obtain a replacement boater education card, an applicant must provide the Marine Board with:

(a) A completed application on a form provided by the Marine Board which includes an affidavit signed by the applicant stating the circumstances that led to the replacement of the original boater education card; and

(b) A \$8 fee for a replacement card paid-in-full in a manner determined by the Marine Board and stated on the application form.

Stat. Auth.: ORS 830.110

Stats. Implemented: ORS 830.082 - 830.096

Hist.: OSMB 6-2000, f. & cert. ef. 10-30-00; OSMB 1-2007(Temp), f. & cert. ef. 1-9-07 thru 6-30-07; OSMB 2-2007, f. & cert. ef. 3-21-07

250-018-0050

Temporary Boater Education Card

(1) The registered owner of a new motorboat who is otherwise required to possess a boater education card may use the temporary certificate of number issued by the Marine Board or its authorized agent as a temporary education card and may operate the new motorboat for no more than 60 days from the date of registration provided the temporary certificate of number is on board.

(2) A person who is required to possess a boater education card may use an original proof of competency (Certificate of Completion) as a temporary card and may operate a boat for no more than 60 days from date of issue provided the original proof of competency is on board.

(3) A person residing in Oregon who is otherwise required to possess a boater education card and has received a certificate, card, or other official document issued by another state or Canada that is equivalent to Oregon's boater education card may use that document as a temporary card and may operate a boat in Oregon for no more than 60 days from date of residency provided the document is on board.

(4) A person who legally rents a motorboat and is otherwise required to possess a boater education card may use the required dockside checklist as a temporary education card and may operate the rental motorboat in Oregon for the term of the rental agreement but not longer than 60 days.

Stat. Auth.: ORS 830.110

Stats. Implemented: ORS 830.082 - 830.096

Hist.: OSMB 6-2000, f. & cert. ef. 10-30-00; OSMB 1-2007(Temp), f. & cert. ef. 1-9-07 thru 6-30-07; OSMB 2-2007, f. & cert. ef. 3-21-07

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250-018-0060

Dockside Checklist

(1) Beginning May 1, 2002 any person who provides a motorboat for rent in Oregon must require that the renter or operator of the rental motorboat show proof of possession of a boater education card before renting the person a motorboat.

(2) If the renter or operator of the rented motorboat does not possess a boater education card, the rental agent must provide the renter or operator of the craft with a dockside checklist provided by the Marine Board.

(3) The renter or operator of a rental motorboat must review and mark the dockside checklist in the presence of the rental agent before they may operate the rental motorboat.

(4) The renter or operator of the rental motorboat must retain the dockside checklist on board when operating the boat.

(5) It is not required that every person who will operate the rented motorboat complete the checklist. A person over the age of 16 may operate the rented motorboat if they are accompanied and directly supervised by a person over the age of 16 (18 for personal watercraft) who is carrying a boater education card or proof of completing the dockside safety checklist.

Stat. Auth.: ORS 830.110

Stats. Implemented: ORS 830.082 - 830.096

Hist.: OSMB 6-2000, f. & cert. ef. 10-30-00; OSMB 3-2003, f. & cert. ef. 3-31-03; OSMB 1-2007(Temp), f. & cert. ef. 1-9-07 thru 6-30-07; OSMB 2-2007, f. & cert. ef. 3-21-07

250-018-0080

Exemptions

(1) ORS 830.092 states that non-resident boaters will be exempt from carrying a card if operating in Oregon waters for less than 60 days. This exemption will apply only to non-residents age 12 and older. No one age 11 and under, whether a resident of this state or not, may operate a power boat of any horsepower after January 1, 2003.

(2) In addition to the exemptions granted in ORS 830.092:

(a) A person operating a seaplane with a valid license issued by the Federal Aviation Administration (FAA) and a seaplane endorsement is not required to carry a boater education card. Seaplane pilots must possess a boater education card to operate a recreational boat;

(b) A person operating a motorboat in an authorized competitive marine event on a course authorized by the Marine Board, or engaged in practicing for a competitive power boat race on a course authorized by the Marine Board is not required to carry a boater education card.

Stat. Auth.: ORS 830.110

Stats. Implemented: ORS 830.082 - 830.096

Hist.: OSMB 6-2000, f. & cert. ef. 10-30-00; OSMB 10-2001, f. & cert. ef. 10-29-01; OSMB 3-2003, f. & cert. ef. 3-31-03; OSMB 1-2007(Temp), f. & cert. ef. 1-9-07 thru 6-30-07; OSMB 2-2007, f. & cert. ef. 3-21-07

250-018-0090

Fees

(1) The Boater Education Card fee is \$10.

(2) The Replacement Card fee is \$8. The fee is waived if replacement is necessary because of a Marine Board error. The same number will be assigned on any replacement card as was assigned on the original.

(3) Fees paid to the Marine Board for a boater education card or replacement are not refundable.

(4) Active duty marine officers will not have to pay the \$10 fee for the boater education card. Non-active marine officers will have to pay the \$10 fee.

(5) An approved course provider acting under the authority of the Marine Board may charge a reasonable fee to recover costs associated with providing a boating safety course or equivalency exam.

(6) The Agency of the State Marine Board may charge a reasonable fee to recover the cost of providing educational materials used in safe boating courses. The fee schedule for materials shall be approved by the five members of the Marine Board who have been appointed by the Governor of the State of Oregon.

Stat. Auth.: ORS 830.110

Stats. Implemented: ORS 830.082 - 830.096

Hist.: OSMB 6-2000, f. & cert. ef. 10-30-00; OSMB 10-2001, f. & cert. ef. 10-29-01; OSMB 1-2007(Temp), f. & cert. ef. 1-9-07 thru 6-30-07; OSMB 2-2007, f. & cert. ef. 3-21-07

250-018-0110

Approved Internet Course Providers

(1) Individuals and organizations who would like to provide an approved boating safety Internet course must apply to the Marine Board to become an approved Internet course provider. To apply, each Internet course provider must, in the following order:

(a) Obtain NASBLA approval prior to Oregon state approval;

(b) Complete and submit, for Marine Board review and approval, the Marine Board Internet Course provider application and boating safety course.

(2) To meet the Marine Board's Internet standards, Internet course providers must:

(a) Be approved by NASBLA and have a signed Course Provider Contract with NASBLA;

(b) Meet the Oregon Internet Approval Standards provided by the Marine Board;

(c) Write state-specific information consistent with NASBLA Standard #8. A link to the Marine Board website will not be accepted;

(d) Provide 45 state-specific questions in accordance to NASBLA Testing Standards #1, #2, #3 and #4.

(3) An Internet course provider who offers boaters the option to obtain the Boater Education Card online must:

(a) Provide the Marine Board compatible electronic data files, as specified by the Marine Board, containing data of individuals who are eligible for their boater education card. Files will be transmitted once weekly on a day to be determined by the Marine Board. The files must contain specified information: name, date of birth, address, phone number, hair color, eye color, and gender;

(b) Provide the Marine Board weekly deposits, with deposit day and account number to be determined by the Marine Board;

(c) Provide the Marine Board accounting section weekly reports indicating the cost of the card for each application and the total amount to be paid to the Marine Board;

(d) Provide the students information regarding security measures that are in place for financial transactions before personal information is exchanged online. All transactions must follow industry security standards.

(4) All promotion materials and products to be used by the Internet course provider to promote their website must be approved by the Marine Board before publishing and distribution to the public.

(5) An Internet course provider may charge a testing fee. The fee amount is at the discretion of the Internet course provider. However, the testing fee must be clearly communicated to the test-taker prior to testing on the Internet course provider's website.

(6) The Marine Board may, upon evidence, place any approved Internet course provider on probation for a period for up to 24 months or remove an approved Internet course from the Marine Board website for any of the following reasons:

(a) Making false statements, misusing, or misrepresenting the Marine Board, its staff, or policies and procedures;

(b) Misinforming boaters in advertising, marketing, or publishing efforts;

(c) Generating and providing their own Boater Education Cards for the State of Oregon.

Stat. Auth.: ORS 830.110

Stats. Implemented: ORS 830.082 - ORS 830.096

Hist.: OSMB 1-2007(Temp), f. & cert. ef. 1-9-07 thru 6-30-07; OSMB 2-2007, f. & cert. ef. 3-21-07

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Rule Caption: This rule provides Charter Vessel licensing reciprocity between Washington/Oregon.

Adm. Order No.: OSMB 3-2007

Filed with Sec. of State: 3-21-2007

Certified to be Effective: 3-21-07

Notice Publication Date: 6-1-06

Rules Adopted: 250-015-0006

Subject: This rule provides licensing reciprocity between Washington and Oregon for charter vessels operating on the Columbia River.

Rules Coordinator: June LeTarte—(503) 378-2617

250-015-0006

Reciprocity Provisions for Charter Vessels on the Columbia River

(1) The purpose of this rule is to implement reciprocity between Oregon and Washington regarding the licensing of charter vessels on the Columbia River downstream of the bridge at Longview, Washington. Reciprocity avoids the conflict, confusion and difficulty of attempting to find the exact location of the state boundary in or on the waters of the Columbia River when carrying passengers for hire for angling, sightseeing or other recreational purposes on licensed charter vessels.

(2) Under ORS 830.435(3) an Ocean Charter Vessel License is in lieu of registration under Chapter 704 for carrying passengers for hire for

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angling, sightseeing or other recreational purposes in any navigable waters of Oregon, including the Columbia River.

(3) ORS 830.435(2) provides authority for the State Marine Board to adopt rules allowing persons with a license or registration issued by the State of Washington to engage in the business of carrying passengers for hire for angling, sightseeing or other recreational purposes in Oregon ocean waters south of Cape Falcon or in the Columbia River, if the State of Washington adopts provisions that allow vessels with an Oregon ocean charter vessel license to engage in these activities in Washington ocean waters south of Leadbetter Point and in the Columbia River.

(4) The Revised Code of Washington RCW 77.65.010(3) provides authority for reciprocity between Washington charter boat licenses and equivalent Oregon licenses on the Columbia River, if the director of the Washington Department of Fish and Wildlife identifies what Oregon licenses are equivalent to a Washington charter boat license, and if Oregon recognizes as valid the equivalent Washington license.

(5) The Washington Department of Fish and Wildlife has identified an Oregon ocean charter vessel license issued under ORS 830.435 as equivalent to a Washington charter license issued under RCW 77.65.150 in the concurrent waters of the Columbia River downstream of the bridge at Longview.

(6) The State Marine Board finds that a Washington charter boat license is equivalent to an Oregon Ocean Charter Vessel license and is valid for the carrying of passengers for hire for angling, sightseeing or other recreational purposes in Oregon waters on the Columbia River downstream of the bridge at Longview.

(7.) The reciprocity provisions of this rule and the reciprocity provisions adopted by the State of Washington, do not authorize the launching, pick-up or discharge of passengers for any purpose in a state other than the state where the charter vessel is licensed.

Stat. Auth.: ORS 830.110
Stats. Implemented: ORS 704.025 and ORS 830.435
Hist.: OSMB 3-2007, f. & cert. ef. 3-21-07

Parks and Recreation Department Chapter 736

Rule Caption: Revise the language on the required historic plaque. Old language does not accurately reflect intent of program.

Adm. Order No.: PRD 3-2007

Filed with Sec. of State: 4-13-2007

Certified to be Effective: 4-13-07

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. Plaques meeting these requirements will be offered for purchase from the SHPO at the time the property is certified for "Special Assessment Program." Failure to comply with this requirement 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.

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 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. Plaques meeting these requirements will be offered for purchase from the SHPO at the time the property is certified for Special Assessment. Failure to comply with this requirement 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.

(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

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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; PRD 3-2007, f. & cert. ef. 4-13-07

Rule Caption: ATV Rule Changes as required by 2005 Senate Bill 68.

Adm. Order No.: PRD 4-2007

Filed with Sec. of State: 4-13-2007

Certified to be Effective: 4-13-07

Notice Publication Date: 11-1-06

Rules Adopted: 736-004-0062

Rules Amended: 736-004-0005, 736-004-0010, 736-004-0015, 736-004-0020, 736-004-0025, 736-004-0030, 736-004-0045, 736-004-0060, 736-004-0065, 736-004-0070, 736-004-0080, 736-004-0085

Rules Repealed: 736-004-0040, 736-004-0050

Subject: The rules codify procedures necessary to implement SB 68, which prohibits the operation of Class I All-Terrain Vehicles (ATV's or quads) on the ocean shore unless issued a permit from OPRD. SB 68 states that OPRD may issue permits, without charge, for individuals with disabilities, emergency aid workers, biologists, wildlife monitors, or other natural resources workers.

Chapter 736, Division 4 rules, relating to the ATV program, required some "housekeeping" for readability purposes and easier implementation.

Rules Coordinator: Pamela Berger—(503) 986-0719

736-004-0005

Purpose of Rule

This rule establishes the procedures and requirements used by the Oregon Parks and Recreation Department (OPRD) when allocating ATV Account Fund monies to public and privately owned land managers, ATV clubs and organizations.

Stat. Auth.: ORS 390.180, 390.585

Stats. Implemented: ORS 390.180

Hist.: PRD 5-2000, f. 5-3-00, cert. ef. 5-5-00; PRD 4-2007, f. & cert. ef. 4-13-07

736-004-0010

Statutory Authority and Procedure

ORS 390.585 authorizes the Oregon Parks and Recreation Department to adopt rules and establish procedures to be used when OPRD allocates ATV Account Fund money to public and privately owned land managers, ATV clubs and organizations.

Stat. Auth.: ORS 390.180, 390.585

Stats. Implemented: ORS 390.180

Hist.: PRD 5-2000, f. 5-3-00, cert. ef. 5-5-00; PRD 4-2007, f. & cert. ef. 4-13-07

736-004-0015

Definitions

For purposes of OAR 736-004-0005 through 736-004-0045, the following definitions shall apply:

(1) "Acquisition" means the gaining of real property rights for public use by donation or purchase, including but not limited to, fee title or easements.

(2) "ATV" means All-Terrain Vehicles as defined in ORS 801.190-801.194, also called OHV.

(3) "ATV-AAC" means the All-Terrain Vehicle Account Allocation Committee appointed by the commission to advise OPRD on the allocation of ATV funds.

(4) "ATV Grant Instruction Manual" means a manual prepared by the OPRD containing state and federal policies, procedures and instructions to assist current and potential Project Sponsors.

(5) "ATV Account Fund" means those funds derived from ATV operating permit sales and a percentage of unrefunded gasoline tax dollars related to ATV use. ATV Account Fund is also called "ATV grant funds."

(6) "ATV Operating Permit Agent" means a person, business or government agency to whom OPRD consigns ATV operating permits and decals for sale as a service to the general public.

(7) "Commission" means the Oregon Parks and Recreation Commission.

(8) "Conversion" means any real property acquisition or development that is later wholly or in part converted to another use other than its intended and stated use as described in the Grant Application and the Grant Agreement.

(9) "Development" means the planning, design, construction and improvement of ATV recreational facilities, trails, and riding areas.

(10) "Director" means the director of the Oregon Parks and Recreation Department.

(11) "First Aid and Police Services" means law enforcement and medical services performed by certified personnel and the necessary items to perform these duties.

(12) "Grant Agreement" means the agreement between the Oregon Parks and Recreation Department and the Project Sponsor describing the terms and conditions of the project and its associated grant of funds.

(13) "Grant Application" means the form and its format as developed by the OPRD that the Project Sponsor uses to request ATV Grant funds.

(14) "Maintenance and Operations" means the preservation, rehabilitation, restoration, and upkeep of the facilities, riding areas, and equipment including the purchase of equipment necessary to perform these functions.

(15) "OHV" means Off Highway Vehicle, also called ATV.

(16) "Operating Permit" means a permit (decals) issued through the OPRD and which is permanently affixed to the vehicle. The permit authorizes the use of All Terrain Vehicles on trails and within designated areas authorized by the appropriate authorities.

(17) "Operator Permit" means a permit (certificate) issued to operators (drivers) of Class I and Class III ATV's upon their successful completion of an approved safety education course.

(18) "OPRD" means the Oregon Parks and Recreation Department.

(19) "Personal Property" means tangible property other than land: movable property including but not limited to items such as ATV vehicles, trail repair equipment, or other movable property purchased through the ATV Grant Program.

(20) "Planning" means the research, design, engineering, environmental, and site survey of ATV recreation areas, trails, or facilities.

(21) "Project Authorization" means the Grant Agreement that authorizes the project as signed by the Director and the Project Sponsor.

(22) "Project Sponsor" means the recipient of the grant funds and the responsible party for implementation of the project.

(23) "Real Property" means immovable property: land together with all the property on it that cannot be moved, together with any attached rights.

(24) "Safety Education" means training, programs, or media, with information for the public regarding specific ATV facilities, safe riding, environmental ethics, or any combination thereof.

(25) "Sustainability" means using, developing, protecting, and managing the resource in a manner that enables people to meet current and future generation needs from the multiple perspective of environmental, economic, and community objectives.

Stat. Auth.: ORS 390.180, 390.585

Stats. Implemented: ORS 390.180

Hist.: PRD 5-2000, f. 5-3-00, cert. ef. 5-5-00; PRD 4-2007, f. & cert. ef. 4-13-07

736-004-0020

Apportionment of Monies

(1) Monies in the All-Terrain Vehicle Account shall be used for the following purposes:

(a) Planning, promotion and implementation of a statewide ATV program including, but not limited to, acquisition, development and maintenance of ATV recreation areas;

(b) Education and safety training for ATV trainers and operators;

(c) Law enforcement and emergency services;

(d) Costs of instigating, developing and promoting new programs for ATV users and advising the public of areas available for all-terrain vehicle use;

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(e) Costs of coordinating between all-terrain vehicle user groups and the managers of public and private lands;

(f) Costs of providing consultation and guidance to ATV user programs; and

(g) Costs of administration of the ATV programs, including, but not limited to staff support requested by the ATV-AAC.

(2) The ATV-AAC will review ATV project applications and recommended the allocation of ATV Account Funds to the commission.

(3) The ATV-AAC will review the budget for the ATV Account Fund each biennium. The ATV-AAC will recommend budget priorities to the commission.

Stat. Auth.: ORS 390.180, 390.585,

Stats. Implemented: ORS 390.180, 390.560

Hist.: PRD 5-2000, f. 5-3-00, cert. ef. 5-5-00; PRD 4-2007, f. & cert. ef. 4-13-07

736-004-0025

Application Eligibility and Requirements

(1) Eligibility for funding assistance:

(a) Public agencies: Federal land managers, state agencies, and local governments that have the responsibility, or are capable of, providing a service to ATV users.

(b) Private land owners or managers: Private land owners or managers who offer public off highway vehicle recreation opportunities and will provide open public ATV recreation for a minimum prescribed period of daily or seasonal time and who will maintain the opportunity for a prescribed period of time as determined by OPRD.

(c) Clubs and non-profit organizations: ATV clubs and non-profit organizations that are registered with the State of Oregon for a minimum of three consecutive years.

(2) ATV Projects or components not eligible for funding:

(a) Generally overtime is not eligible for funding except for an identified emergency situation.

(b) Overhead items such as office or building rent, insurance, depreciation and other fixed costs associated with the normal everyday operation of a business, agency or group.

(c) ATV projects that have no way to measure completion or specific intent are not eligible.

(d) Portions of projects completed prior to an ATV agreement or after the expiration of an ATV agreement. Requests for time extensions must be made in writing to the OPRD in a timely manner prior to the expiration date of an ATV agreement.

(e) ATV projects that do not meet the long-range goals or are not in the best interest of ATV recreation.

(f) Vehicle or other personal property usage unrelated to the scope of the ATV project.

(3) Requirements for Match:

(a) The minimum match required for eligible ATV projects is 20 percent of the total project cost.

(b) Match may include, but is not limited to, cash funds, labor, either force account or volunteer, materials, and equipment.

(c) Grants from other sources may be used as match provided the sponsor can certify the funds will be available within 120 days from the beginning date of the ATV project agreement.

(d) Eligible volunteer labor will require a log that includes the volunteer's name, date volunteer performed work, location volunteer performed work, the hours worked, and at what hourly rate of compensation was used for their contribution of labor.

(4) Conversions:

(a) All real property acquisitions or easements shall be retained and used for the project's intended and stated use as described in both the Grant Application and the Grant Agreement. (b). The director has authority to disapprove conversion requests, reject proposed substitutions, or both.

(c) The project sponsor shall submit requests for conversions to the OPRD in writing. The OPRD will consider the request if the following prerequisites are met:

(A) All practical alternatives to a conversion have been evaluated and rejected on a sound basis.

(B) The project sponsor has established the fair market value of the property to be converted and the property proposed for substitution is of at least equal fair market value as established by a state approved appraisal (prepared in accordance with uniform Federal appraisal standards) excluding the value of structures or facilities that will not directly enhance its ATV recreation utility.

(C) The project sponsor proposes a replacement property that is of reasonably equivalent usefulness and location as that being converted.

(d) If the project sponsor is unable to provide replacement property within 24 months of either the approved request for conversion or after the fact of conversion, the project sponsor shall pay the OPRD a current amount equal to the OPRD's original percentage of contribution to the project. As an example, if the OPRD provided an original grant of 80 percent for the project's acquisition costs, the Project Sponsor will be required to reimburse the OPRD 80 percent of the real property's value at the time of conversion or discovery of conversion, whichever is later.

(e) In the case of development, rehabilitation, and equipment purchases, the project sponsor shall operate the improvements or equipment for its established useful life. Guidelines established by the IRS will be used to define useful life per each item. If the facility is closed, service is terminated and the facility or equipment has not reached its useful life, it will be made available to other agencies or organizations. If a facility is closed, service is terminated, or land is closed, or the facility or equipment has not reached its useful life, a percentage of the allocated funds will be returned to the OPRD equal to the percentage of useful life remaining in the funded facility or equipment.

Stat. Auth.: ORS 390.180, 390.585

Stats. Implemented: ORS 390.180

Hist.: PRD 5-2000, f. 5-3-00, cert. ef. 5-5-00; PRD 4-2007, f. & cert. ef. 4-13-07

736-004-0030

Project Administration

(1) Applications:

(a) An ATV grant application is required for consideration of ATV funding.

(b) Information regarding application deadlines and public meetings will be provided through available media sources and on the OPRD — ATV website.

(c) Applicants must submit applications by published deadlines.

(d) Applications will be reviewed by the ATV-AAC.

(e) The ATV-AAC will recommend ATV project funding to the commission.

(2) Agreements:

(a) OPRD will require an ATV Grant Agreement to authorize an ATV project.

(b) A project sponsor may not begin work on an ATV project without a fully signed ATV Grant Agreement between OPRD and the project sponsor.

(3) If funds are not available to fully fund a project or partial funding has been recommended by the ATV-AAC, the sponsor will be given the option of reducing the scope of the project.

(4) OPRD may cancel an ATV Grant Agreement if the project sponsor has not made progress on a project within 6 months of project authorization.

Stat. Auth.: ORS 390.180, 390.585

Stats. Implemented: ORS 390.180

Hist.: PRD 5-2000, f. 5-3-00, cert. ef. 5-5-00; PRD 4-2007, f. & cert. ef. 4-13-07

736-004-0045

ATV Operating Permit Agent Application and Privileges

(1) To become an ATV Operating Permit Agent an applicant shall:

(a) Submit an application in a form provided by OPRD to become an ATV Operating Permit Agent;

(b) Submit a surety bond in an amount determined by OPRD when 250 or more permits are to be ordered at a time.

(c) Enter into an OPRD agreement to be designated as an ATV Operating Permit Agent.

(2) OPRD may consign ATV operating permits to an ATV Operating Permit Agent without prepayment.

(3) OPRD will establish by policy an amount the ATV Operating Permit Agent may retain for each permit issued in addition to the regular costs of the permit, to cover the agent's costs to handle the permits.

(4) ATV Operating Permit Agents shall legibly complete each ATV operating permit with the required information.

(5) OPRD may cancel an agent's authority to act as an ATV Operating Permit Agent at any time.

Stat. Auth.: ORS 390.180, 390.585

Stats. Implemented: ORS 390.180

Hist.: PRD 8-2000, f. & cert. ef. 6-2-00; PRD 4-2007, f. & cert. ef. 4-13-07

736-004-0060

All-Terrain Vehicle Off-Road Operating Permit

(1) An all-terrain vehicle (ATV) off-road operating permit shall be in the form of a decal to be placed on the vehicle as determined in OAR 736-004-0065. All ATV off-road operating permits shall contain:

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- (a) The distinctive number or characters assigned by OPRD to the vehicle;
 - (b) The word "Oregon"; and
 - (c) The expiration date on the decal.
- (2) The application for an ATV off-road operating permit shall be in a form as prescribed by OPRD.
- (3) To replace a permit that is lost, destroyed, mutilated or needs to be replaced for any reason, the owner must:
- (a) Apply for a new permit in the same manner as for an original permit; and
 - (b) Pay the current fee for a permit.
- Stat. Auth.: ORS 390.180, 390.585
Stats. Implemented: ORS 390.180
Hist.: PRD 8-2000, f. & cert. ef. 6-2-00; PRD 4-2007, f. & cert. ef. 4-13-07

736-004-0062

Ocean Shores Operating Permit

- (1) A person may not operate a Class I all-terrain vehicle on the ocean shore unless the person obtains an Ocean Shores Operating Permit from OPRD.
- (2) The operator must, in addition to the Ocean Shores Operating Permit hold a current operator permit issued under ORS 390.570 and the vehicle has a current operating permit issued under ORS 390.580.
- (3) The Ocean Shores Operating Permit is to be used only to meet the transportation needs of:
- (a) Individuals with disabilities, as defined by ORS 174.107; or who have proof of motor vehicle disabled placard, or both.
 - (b) Emergency response or emergency aid workers during the course of their work; or
 - (c) Biologists, wildlife monitors, or other natural resources workers during the course of their work.
- (4) Except for subsections (3)(b) and (c) the Ocean Shores Operating Permit only allows the operator to ride in those ocean shore areas where and when other authorized motorized vehicles are allowed.
- Stat. Auth.: ORS 390.180, 390.585
Stats. Implemented: ORS 390.729
Hist.: PRD 4-2007, f. & cert. ef. 4-13-07

736-004-0065

Placement of ATV Off-Road Operating Permit

- An ATV off-road operating permit shall be in the form of a decal to be permanently affixed to the vehicle for which it is issued, and be clearly visible. Placement of the permit shall be as follows:
- (1) For quads, three-wheelers, or vehicles of a similar design, the permit shall be displayed on the right-hand side of the vehicle in a visible location;
- (2) For jeeps, pickups, passenger cars and similar vehicles, the permit shall be displayed in a manner that makes it visible from the rear of the vehicle, such as on the bumper or in the rear window;
- (3) On sandrail vehicles (dune buggies) the permit shall be displayed in the middle of the rear rollbar and be visible from the rear of the vehicle; and
- (4) For vehicles that are similar in design to motorcycles and where it is not possible to display the permit as required in sections (2) or (3) of this rule, the permit shall be displayed:
- (a) On the front fork tube, on the opposite side of the vehicle from the brake, or in a location that is visible while the rider is on the vehicle; and
 - (b) Be positioned either horizontally or vertically.
- Stat. Auth.: ORS 390.180, 390.585
Stats. Implemented: ORS 390.180
Hist.: PRD 8-2000, f. & cert. ef. 6-2-00; PRD 4-2007, f. & cert. ef. 4-13-07

736-004-0070

Reciprocity for Out-of-State Permits

- An ATV operating permit that is issued in another state shall be honored in the State of Oregon if the issuing state also honors an Oregon ATV operating permit. The ATV must have a resident state ATV operating permit or a State of Oregon ATV operating permit if registration is not required in their home state to operate the ATV on designated ATV areas.
- Stat. Auth.: ORS 390.180, 390.585
Stats. Implemented: ORS 390.180
Hist.: PRD 8-2000, f. & cert. ef. 6-2-00; PRD 4-2007, f. & cert. ef. 4-13-07

736-004-0080

Safety and Education

- (1) The OPRD may contract with public or private local and state organizations to provide ATV safety and other educational programs and instructors. The organizations must meet minimum qualifications as established by the OPRD:

- (a) Lesson plans and instructors shall be approved by OPRD;
 - (b) Courses may include:
 - (A) Classroom discussion and hands-on instruction;
 - (B) Emphasis on the responsible use and operation of ATV's to protect the environment; and
 - (C) Information on Oregon laws and rules concerning ATV use, operator requirements, operator permit requirements, rules of operation, responsible and ethical use, safety requirements and associated penalties.
 - (c) Course completion certificates will be issued to those persons who successfully complete the safety education course.
- Stat. Auth.: ORS 390.570 & 390.575
Stats. Implemented: ORS 390.570 & 390.575
Hist.: PRD 2-2001, f. & cert. ef. 2-23-01; PRD 4-2007, f. & cert. ef. 4-13-07

736-004-0085

ATV Operator Permits

- (1) The Oregon Parks and Recreation Department shall issue and mail a Class I or Class III ATV operator permit to persons who have successfully completed an approved safety education course and have been issued a course completion card.
- (2) A Class I or Class III ATV operator permit shall include:
- (a) The operators name and address;
 - (b) The operators date of birth; and
 - (c) The date the safety education course was completed.
- (3) The ATV course completion card shall be considered a temporary operator permit until the permanent ATV operator permit is issued by the OPRD.
- (a) An ATV course completion card issued to an out-of-state resident who has completed an approved safety education course will meet the requirements of an operator permit in Oregon.
- (4) When an ATV operator permit is lost, mutilated, or destroyed, the OPRD will issue a duplicate permit. The operator must submit a written request to the OPRD explaining why the duplicate permit is needed.
- (5) In accordance with ORS 821.174, when a person's driving privileges are suspended or revoked, an ATV operator permit is invalid and the person may not operate a Class I or Class III all-terrain vehicle.
- Stat. Auth.: ORS 390.570 & 390.575
Stats. Implemented: ORS 390.570, 390.575 & 821.174
Hist.: PRD 2-2001, f. & cert. ef. 2-23-01; PRD 4-2007, f. & cert. ef. 4-13-07

Racing Commission
Chapter 462

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

Adm. Order No.: RC 3-2007

Filed with Sec. of State: 3-29-2007

Certified to be Effective: 7-1-07

Notice Publication Date: 3-1-07

Rules Adopted: 462-220-0090

Rules Amended: 462-210-0030, 462-220-0030, 462-220-0070

Subject: 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—(971) 673-0208

462-210-0030

Establishing An Account

- (1) An established account is necessary to place account wagers. An account may be established at either an account wagering center or by mail to a race meet licensee:
- (a) For establishing the account with an account wagering center an application form must be signed or otherwise authorized in a manner acceptable to the commission and include:
- (A) The applicant's full legal name;
 - (B) Principal residence address;
 - (C) Telephone number;
 - (D) Social security number;
 - (E) Proper identification or certification demonstrating that the applicant is at least 18 years of age; and
 - (F) Any other information required by the commission.
- (b) Each application submitted will be subject to electronic verification with respect to name, principal residence address, date of birth and Social Security number by either a national, independent, individual reference service company or another technology which meets or exceeds the

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reliability, security, accuracy, privacy and timeliness provided by individual reference service companies. If there is a discrepancy between the application submitted and the information provided by the electronic verification described above or if no information on the applicant is available from such electronic verification, another individual reference service may be accessed or another technology meeting the requirements described above may be used to verify the information provided. If these measures prove unsatisfactory, then the applicant will be contacted by the account wagering center and given instructions as to how to resolve the matter;

(c) All account holder identities must be verified via electronic means or copies of other documents before a wager can occur.

(2) In establishing an account a minimum deposit of \$50 is required.

(3) Each account shall have a unique identifying account number. The identifying account number may be changed at any time by the account wagering center provided the account wagering center informs the account holder in writing prior to the change.

(4) The applicant shall supply the account wagering center with an alpha-numeric code, to be used as a secure personal identification code when the account holder is placing an account wager. The account holder has the right to change this code at any time.

(5) The account wagering center may not establish an account for any person whose principal residence address is not within the State of Oregon. The principal residence address shall be established by reliance on the information submitted on the application form provided and certified by the applicant.

(6) The holder of the account shall receive at the time the account is approved:

(a) Unique account identification number;

(b) Copy of the account wagering rules and such other information and material that is pertinent to the operation of the account; and

(c) Such other information as the account wagering center or commission may deem appropriate.

(7) The account wagering center shall accept accounts in the name of a natural person only.

(8) The account is nontransferable between natural persons.

(9) The account wagering center may close or refuse to open an account for what it deems good and sufficient reason, and shall order an account closed if it is determined that information that was used to open an account was false, or that the account has been used in violation of these rules.

Stat. Auth.: ORS 462.270(3) & 462.700

Stats. Implemented: ORS 462.142

Hist.: RC 3-2000, f. 3-27-00, cert. ef. 5-1-00; RC 1-2002, f. & cert. ef. 1-3-02; RC 3-2007, f. 3-29-07, cert. ef. 7-1-07

462-220-0030

Approval of the License for a Hub Operation

(1) Prior to operating a hub the entity must apply for and be granted a license from the commission to conduct simulcasting and pari-mutuel wagering in accordance with ORS 462.725 and these rules as a "Multi-Jurisdictional Simulcasting and Interactive Wagering Totalizator Hub."

(2) An applicant for a "Multi-Jurisdictional Simulcasting and Interactive Wagering Totalizator Hub" license must provide the following information as part of the application:

(a) The applicant's legal name;

(b) If the applicant is a corporation, the names, addresses, dates of birth of its shareholders, directors and officers; if a shareholder is a corporation the date of incorporation, the place of incorporation and the names, addresses, and dates of birth of its shareholders, directors and officers must be provided;

(c) If the applicant is a partnership the names, addresses, dates of birth of the partners; if a partner is a corporation the date of incorporation, the place of incorporation and the names, addresses, and dates of birth of its share holders must be provided;

(d) If the applicant is a corporation ultimately owned by a not-for-profit entity without any shareholders, or is a publicly traded corporation, the information required in subsection (2)(b) and (2)(c) of this rule shall be required from the directors of the membership organization, or the directors and officers of the publicly traded corporation, in lieu of the shareholders;

(e) The names of the race tracks the applicant, or its agent, has contracts with that allow the applicant to provide the simulcast signals and pari-mutuel wagering on the product;

(f) Financial information from the applicant that demonstrates whether the applicant has the financial resources to install and operate a hub;

(g) A detailed budget showing anticipated revenue, expenditures and cash flows by month, from the hub's operation during the license period;

(h) The number of days that the applicant is planning to operate the hub during the fiscal year in which they are seeking to be licensed;

(i) A list of all hub personnel containing the name, position, job location, license number and expiration date. All current gaming licenses should be listed, regardless of jurisdiction;

(j) A chart illustrating the organizational structure, including reporting lines;

(k) A list of all states where the hub is operating; and

(l) Documentation of proper filing that the Hub applicant and/or parent company is registered to do business in the state of Oregon.

(3) As part of the application for licensure as a hub, the applicant shall submit a detailed plan of operations in a format and containing such information as required by the commission. At a minimum, the operating plan shall address the following issues:

(a) The manner in which the proposed simulcasting and wagering system will operate;

(b) The requirements for a "qualified subscriber based service" or "closed loop subscriber based system" set out in OAR 462-220-0010(2);

(c) Programs for responsible wagering;

(d) Mitigation for the effects of account wagering on the source market in Oregon. In addition to the source market mitigation plan as outlined in the application, more detailed source market information shall be provided by the hub at the commission's request. Source market fees shall be paid statewide on Oregon accounts. Accounts must be available to Oregon residents if a hub is licensed in Oregon. In event that an Oregon track is a content provider and an Oregon hub is not given access to content by track, that factor may be considered by the commission in determining the amount of source market fee to be paid by the hub;

(e) If an Oregon track and an Oregon hub have not reached an agreement prior to the commission's consideration of the hub's annual license application as a result of either party failing to negotiate in good faith, the commission may impose disciplinary action against the offending party.

(f) The requirements for accounts established and operated for persons whose principal residence is outside of the state of Oregon. The commission may require changes in a proposed plan of operations as a condition of granting a license. No subsequent changes in the system's operation may occur unless ordered by the commission or until approval is obtained from the commission after it receives a written request.

(4) The commission may conduct investigations or inspections or request additional information from the applicant as it deems appropriate in determining whether to approve the license application.

(5) The fee of \$200 per day that the hub is scheduled to operate must accompany the application. If the license is denied by the commission the fee will be refunded less the amount equal to the amount that the commission expended in conducting investigations and inspections which was in excess of the expenses that would have otherwise been incurred by the commission.

(6) To ensure that the funds of an applicant's account holders will be properly held and maintained by the applicant:

(a) The applicant must provide evidence to the commission that the applicant has established an account with an FDIC insured bank in which all funds of its account holders will be deposited (the Bank Account):

(A) No hub shall use the funds deposited in the Bank Account for any purpose except to facilitate the wagering activities and other instructions or agreements of account holders. The funds of an account holder held in the Bank Account shall remain the property of the account holder for all purposes until wagered by the account holder or otherwise withdrawn or used in accordance with the account holder's instruction or agreement;

(B) The hub shall maintain a record of each deposit, withdrawal or other use of funds held in the Bank Account for each account holder (the Customer Record);

(C) Any account holder, who claims that any credit or debit to his or her Customer Record is incorrect or who claims that any deposit, withdrawal or use of the account holder's funds is incorrect, may file a claim with the commission. The commission shall investigate all claims and provide the hub with an opportunity to respond to such claim. The hub may submit any information, documentation or other evidence supporting its position with respect to the claim. If the commission determines that the Customer Record is incorrect or that any deposit, withdrawal or use of an account holder's funds was incorrect, the hub shall have 10 days to correct same as instructed by the commission. Such correction may require the hub to correct the Customer Record for the account holder, to deposit addition-

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al funds into the Bank Account for the account holder, to remit funds directly to the account holder, or any combination thereof.

(b) The applicant must provide a \$50,000 irrevocable bond, letter of credit, or other security instrument to the commission, in a form acceptable to the commission, which designates the commission as the beneficiary thereof (the Security Instrument). The Security Instrument shall permit the commission to make draws to cover such amounts as the commission finds is necessary. For example, if a hub fails to deposit funds into the Bank Account for an account holder or to remit funds directly to the account holder, as described in subsection 6(a)(C) above, within 10 days of the commission's decision, the commission may draw down on or take other appropriate action against the Security Instrument to ensure the account holder is immediately made whole.

(7) An applicant licensed under this section may enter into such agreements, as for what it deems good and sufficient reasons, that are necessary to promote, advertise and further the sport of racing or that may be necessary for the effective operation of interstate account wagering, including, without limitation, television production and telecommunications services.

(8) An applicant must maintain an operational presence within the State of Oregon. A call center for customer wagering, a sub-contract with an existing call center for customer wagering, or a business office is required. In addition, totalizer equipment must be located in Oregon.

(9) An applicant with a customer call center not located in Oregon must provide the following to the commission:

- (a) Access to customer call monitoring and electronic wagering data;
- (b) On site regulatory visits of the call center by authorized commission staff; and

(c) Reimbursement to the commission for expenses associated with out-of-state regulatory visits.

Stat. Auth.: ORS 462.270(3) & 462.725

Stats. Implemented: ORS 462.725

Hist.: RC 3-2000, f. 3-27-00, cert. ef. 5-1-00; RC 3-2007, f. 3-29-07, cert. ef. 7-1-07

462-220-0070

Powers of the Commission to Review and Audit Records; Reporting Requirements

(1) The commission, or its staff, will be given unrestricted access, for review and audit, to all records and financial information of the hub operator, including all account information. This information will be made available to the commission or commission staff, by the hub operator, at the hub location, upon notice from the commission or commission staff, at all reasonable times to the extent such disclosure is not expressly prohibited by law. Commission access to and use of information concerning wager transactions and account wagering customers shall be considered proprietary and shall not be disclosed publicly except as may be required by law. This shall not prevent the sharing of this information for investigative purposes.

(2) The following reports shall be submitted to the Commission:

(a) Wagering Center Closure: A report signed by the hub's managing employee must be filed with the commission within forty-eight (48) hours whenever the account wagering center is closed during normal operating hours;

(b) Transmission Failure: A report signed by the hub's managing employee must be filed with the commission within forty-eight (48) hours whenever wagers are not transmitted to, received by, or otherwise accepted by a racetrack for any reason. The financial implication of such failure should be detailed in this report;

(c) Irregularities or wrong doings: All licensees shall report any known or suspected rules violations by any person involving account wagering immediately to the commission and cooperate in subsequent investigations.

(3) Miscellaneous. The following reports shall be available for inspection by the commission upon request:

- (a) Affiliate account wagering handle;
 - (b) Reports for taxation purposes;
 - (c) Customer Complaints;
 - (d) List of inactive accounts;
 - (e) List of Excluded Persons;
 - (f) List of account holders, set out by jurisdiction;
 - (g) Log of all system accesses and adjustments to the master file; and
 - (h) List of all deposits, withdrawals, wagers and winning payouts.
- (4) The commission may require the hub operator to annually submit audited financial statements.

Stat. Auth.: ORS 462.270(3) & 462.725

Stats. Implemented: ORS 462.725

Hist.: RC 3-2000, f. 3-27-00, cert. ef. 5-1-00; RC 3-2007, f. 3-29-07, cert. ef. 7-1-07

462-220-0090

Enforcement

All proceedings against an applicant for or a licensed hub shall be before the commission.

Stat. Auth.: ORS 462.270(3) & 462.725

Stats. Implemented: ORS 462.405

Hist.: RC 3-2007, f. 3-29-07, cert. ef. 7-1-07

**Real Estate Agency
Chapter 863**

Rule Caption: Real estate license transfers, broker responsibility, broker termination, inactive licenses, renewals, examinations and license reactivation.

Adm. Order No.: REA 2-2007(Temp)

Filed with Sec. of State: 3-21-2007

Certified to be Effective: 3-21-07 thru 9-16-07

Notice Publication Date:

Rules Adopted: 863-015-0064

Rules Amended: 863-015-0020, 863-015-0030, 863-015-0050, 863-015-0065

Subject: The temporary rules reflect sever statutory changes to ORS Chapter 696 in HB 2906 Legislative Session that repealed a number of provisions and transferred these provisions to rule. The rules clarify and streamline the procedures for transferring a real estate license from a sending broker to a receiving broker, the procedure for a sending broker to terminate the relationship with a real estate broker associated with the principal broker; the responsibilities of the principal broker; and the procedures for reactivation of a license and conform rules to new technology implemented by the Agency.

Rules Coordinator: Laurie Skillman—(503) 378-4170, ext. 237

863-015-0020

Licensing; Examinations

(1) In addition to any other licensing eligibility requirements, a license applicant is required to pass a real estate examination that shall include subject matter determined by the Board and published in the Agency's *Real Estate License and Examination Information* booklet.

(2) An applicant may apply for an examination whether or not the Agency has completed the processing of the applicant's fingerprint card and background check, or has received documentation on the applicant's licensing educational courses; however, an applicant shall not be considered for a license until the Agency has completed such processing and review.

(3) All applicants for a real estate broker's license shall be required to pass a real estate broker examination.

(4) After July 1, 2002, a real estate licensee who was licensed as a salesperson as of June 30, 2002 shall be required to pass a written real estate broker examination, in order to be licensed as a principal real estate broker or to conduct professional real estate activity as a sole practitioner.

(5) All applicants for a real estate property manager's license shall be required to pass a property manager examination.

(6) An applicant shall apply for an examination by submitting to the Agency:

- (a) An Agency-approved license examination application form; and
- (b) An examination application fee under ORS 696.270(1).

(7) If a real estate license has not been active for two or more consecutive years, prior to application for reactivation of such license under 863-015-0065, the licensee shall apply for a reactivation examination by submitting to the Agency:

(a) An Agency-approved license reactivation examination application form; and

- (b) An examination application fee under ORS 696.270(1).

(8) Examination fees are not refundable if an applicant:

- (a) Fails to appear for a scheduled examination;
- (b) Fails to cancel or reschedule an examination appointment at least two business days prior to the appointment; or
- (c) Fails to pass an examination.

(9) If an applicant for a real estate broker license examination passes both the national portion and the state portion of an examination, but is not issued a license within one year from the date of the examination:

- (a) The applicant is no longer qualified for the license on the basis of the examination; and

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(b) The applicant must reapply for the examination under section (6) of this rule.

(10) An applicant who passes only one portion of a license examination must pass the remaining portion within twelve months from the date of the examination in order to be qualified for a license on this basis of the examination.

(11) In lieu of the national portion of the examination required in this rule, the board may accept an applicant's passing results of the national portion of a broker examination taken in another state if:

(a) The examination was taken after November 1, 1973 and the license issued as a result of that examination has not been expired for more than one year; or

(b) The broker exam was taken within the 12 months prior to the date the application and required forms and fees are received in the Agency's office; and

(c) The applicant provides the Agency with the applicant's certified license history from the state where such examination was taken.

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

Stat. Auth.: ORS 696.385, 696.425 & 183.335

Stats. Implemented: ORS 696.020, 696.022 & 696.425

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 3-2004, f. 4-28-04, cert. ef. 5-3-04; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05; REA 2-2005(Temp), f. 6-9-05, cert. ef. 7-1-05 thru 12-26-05; Administrative correction 1-20-06; REA 2-2007(Temp), f. & cert. ef. 3-21-07 thru 9-16-07

863-015-0030

License Issue, Term, Form and Inspection

(1) The Agency shall issue a real estate license to an applicant after determination that the applicant meets the license requirements under ORS 696.022 and 696.790, including fingerprinting and background check, examination, coursework, experience, and upon actual receipt by the Agency of:

(a) The license application form required under OAR 863-015-0010;

(b) Payment of fees under ORS 696.270.

(2) A licensee is authorized to engage in professional real estate activities allowed for that license under ORS Chapter 696 and OAR chapter 863 from the date the license is issued until the license expires, becomes inactive, or is revoked, surrendered or suspended.

(3) A licensee may hold only one license at any time.

(4) The license expiration date shall be the last day of the month of a licensee's birth month.

(5) Beginning July 1, 2002, the term of a license issued or renewed is not more than 24 months plus the number of days between the date the license is issued or renewed and the last day of the month of the licensee's birth month.

(6) The license issued by the Agency shall include:

(a) The name of the licensee;

(b) The license number, effective date and expiration date;

(c) The name under which the licensee conducts business or the registered business name;

(d) The licensee's business address;

(e) The seal of the Real Estate Agency; and

(f) Any other information the Agency deems appropriate.

(7) Each license shall be available for inspection in the licensee's principal place of business. If a licensee is associated with a principal real estate broker, the principal broker shall make the license available for inspection in the licensee's principal place of business, which is:

(a) The principal broker's principal place of business; or

(b) A branch office.

Stat. Auth.: ORS 696.385 & 183.335

Stats. Implemented: ORS 696.020 & 696.022

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2003(Temp), f. 2-27-03, cert. ef. 2-28-03 thru 8-27-03; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05; REA 2-2007(Temp), f. & cert. ef. 3-21-07 thru 9-16-07

863-015-0050

Licensing; Renewal

(1) An active real estate license may be renewed for the term prescribed in OAR 863-015-0030 upon receipt by the Agency of:

(a) The renewal fee under ORS 696.270(3); and

(b) An Agency-approved renewal application form that includes certification that the licensee met the real estate continuing education renewal requirements under OAR 863-015-0055.

(2) An inactive real estate license may be renewed for the term prescribed in OAR 863-015-0030, and will retain an inactive status, upon actual receipt by the Agency of:

(a) The renewal fee under ORS 696.270(3); and

(b) An agency-approved renewal application form.

(3) A real estate license expires if a licensee fails to renew the license on or before the expiration date of the license and a real estate licensee may not engage in any professional real estate activity during the period a license is expired.

(4) For purposes of sections (5) and (6) of this rule, an expired license will retain the status of expired during the period from expiration to renewal.

(5) For a period of one calendar year following expiration of an active license, the licensee may renew the license for the term prescribed in section (7) of this rule and change from expired to active status upon receipt by the Agency of:

(a) The renewal fee under ORS 696.270(3); and

(b) A late fee under ORS 696.270(10); and

(c) An Agency-approved renewal application form that includes certification that the licensee met the real estate continuing education renewal requirements under OAR 863-015-0055.

(6) For a period of one calendar year following expiration of an inactive license, the licensee may renew the license for the term prescribed in section (7) and change from expired to inactive status upon actual receipt by the Agency of:

(a) The renewal fee under ORS 696.270(3); and

(b) A late fee under ORS 696.270(10); and

(c) An Agency-approved renewal application form.

(7) A license that is renewed under section (5) or (6) of this rule expires two years from the date of the original expiration date.

(8) A real estate license that has expired for more than one year may not be renewed and the former licensee must reapply and meet all licensing qualifications and pass examinations required of new license applicants.

(9) A license may not be renewed if it is surrendered, suspended or revoked.

Stat. Auth.: ORS 696.385 & 183.335

Stats. Implemented: ORS 696.020 & 696.022

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 3-2004, f. 4-28-04 cert. ef. 5-3-04; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05; REA 2-2007(Temp), f. & cert. ef. 3-21-07 thru 9-16-07

863-015-0064

Transfer of Real Estate License; Responsibility of Principal Broker; Authority to Use Registered Business Name

(1) In addition to the definitions in ORS 696.010 and OAR 863-015-0120, as used in this rule:

(a) "Authorized licensee" means a licensee who has authority over the use of a registered business name;

(b) "License transfer form" means a completed and signed Agency-approved form:

(A) Transferring a real estate broker license to a receiving principal broker in order to become associated with the receiving principal broker; or

(B) Authorizing a real estate licensee to use a registered business name to conduct professional real estate activity.

(c) "Sending principal broker" means the principal real estate broker with whom an active real estate broker license is associated prior to the transfer of the license;

(d) "Receiving principal broker" means the principal real estate broker with whom an active real estate broker license will be associated after the transfer of the license.

(2) A license transfer form shall include and the licensee shall provide:

(a) The name, mailing address, and license number of the licensee who is transferring the license or documenting the authorized use of a registered business name;

(b) The current status of the license, whether active or inactive;

(c) If the real estate broker is associated with a sending principal broker, certification that the real estate broker provided written notice of the transfer to the sending principal broker, and that such notice was provided on a date prior to the date the transfer form is submitted to the Agency, including:

(A) The date of personal service of such notice; or

(B) The date a certified letter was delivered by the post office to the address of the sending principal broker;

(d) If the form is used to authorize use of a different registered business name, certification that the licensee provided written notice of such change to the authorized licensee for the current registered business name, and that such notice was provided on a date prior to the date the license transfer form is submitted to the Agency, including:

(A) The date of personal service of such notice; or

(B) The date a certified letter was delivered to the address of the authorized licensee;

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(e) If applicable, the registered business name, street address and registered business name identification number, of the receiving principal broker;

(f) If applicable, the street address, registered business name identification number, and the registered business name under which the real estate licensee will be authorized to conduct professional real estate activity;

(g) The name, license number, telephone number, date and signature of the receiving broker or authorized licensee.

(3) The Agency shall transfer the license of an active real estate broker associated with a sending principal broker to a receiving principal broker upon actual receipt by the Agency of:

- (a) A license transfer form; and
- (b) Payment of a transfer fee in ORS 696.270(7).

(4) The Agency shall transfer the license of an active sole practitioner, principal real estate broker or property manager to a receiving principal broker upon actual receipt by the Agency of:

- (a) A license transfer form; and
- (b) Payment of a transfer fee in ORS 696.270(7).

(5) The Agency shall transfer the license of an inactive real estate licensee, who has been inactive for a period of 30 days or less, to a receiving principal broker upon actual receipt by the Agency of:

- (a) A license transfer form; and
- (b) Payment of a transfer fee in ORS 696.270(7).

(6) The Agency shall change a real estate license category at the time the license is transferred under sections (4) and (5) of this rule, and not require the payment of a fee for the change of license category, upon actual receipt by the Agency of:

- (a) A license transfer form;
- (b) Payment of a transfer fee in ORS 696.270(7); and
- (c) An Agency-approved form to change the license category.

(7) A principal real estate broker with whom a licensee is associated remains responsible for the professional real estate activity of the licensee until actual receipt by the Agency of:

- (a) The licensee's real estate license;
- (b) An Agency-approved form submitted by the principal real estate broker terminating the relationship with the licensee under OAR 863-015-0065; or

(c) A license transfer form and fee.

(8) If a principal real estate broker with whom a real estate broker is associated voluntarily gives the license to the real estate broker named in the license, the principal real estate broker remains responsible for any subsequent professional real estate activity of the licensee until actual receipt by the Agency of:

- (a) The licensee's real estate license;
- (b) An Agency-approved form submitted by the principal real estate broker terminating the relationship with the licensee under OAR 863-015-0065; or

(c) A license transfer form and fee.

(9) The Agency shall document the registered business name under which a real estate licensee is authorized to conduct professional real estate activity upon actual receipt by the Agency of:

- (a) A license transfer form; and
- (b) Payment of a transfer fee in ORS 696.270(7).

Stat. Auth.: ORS 696.385 & 183.335
Stats. Implemented: ORS 696.020 & 696.022
Hist.: REA 2-2007(Temp), f. & cert. ef. 3-21-07 thru 9-16-07

863-015-0065

Inactive License; Change License Status to Active; Change License Category; Reactivation of License

(1) A real estate licensee whose license is on inactive status may not engage in professional real estate activity and the commissioner may reprimand, suspend, revoke or impose a civil penalty against an inactive licensee under ORS 696.301.

(2) An active real estate license shall be changed to inactive license status upon actual receipt by the Agency of:

- (a) The license; or
- (b) A request by the licensee to change the license status to inactive, submitted on an Agency-approved form.

(3) The Agency shall change the status of an active real estate broker who is associated with a principal real estate broker, to inactive status upon actual receipt by the Agency of:

- (a) The real estate broker license, submitted by the licensee;
- (b) The real estate broker license, submitted by the principal real estate broker; or

(c) An Agency-approved form, submitted by the principal real estate broker, terminating the relationship with the real estate broker and, if applicable, certifying the real estate broker named in the license removed such license from the principal real estate broker's possession without permission.

(4) An inactive real estate licensee may renew such license under OAR 863-0015-0050.

(5) For a period of 30 days following the inactivation of a real estate broker license, the licensee may change such license status from inactive to active and transfer the real estate broker license to a principal real estate broker under the provision in OAR 863-015-0064.

(6) Except as provided in section (7) of this rule, for a period of 30 days following the inactivation of a real estate license, the licensee may change such license category to an active sole practitioner or active principal real estate broker only if the licensee is qualified for such licenses and the licensee submits to the Agency:

(a) An Agency-approved application form to change license category to a sole practitioner or principal real estate broker and change license status to active; and

(b) A license transfer form under OAR 863-015-0064, if applicable; and

(c) Payment of the transfer fee in ORS 696.270(7); and

(7) If the licensee under section (6) of this rule is changing license category to a principal real estate broker and has never been licensed as a principal real estate broker, the licensee must submit to the Agency:

- (a) An Agency-approved broker license application form; and
- (b) The licensing fee under ORS 696.270(2).

(8) If a license has not been on active status for two or more consecutive years, prior to application for reactivation of such license under section (9) and (10) of this rule:

- (a) The licensee shall submit to the Agency:
 - (A) An application for licensing reactivation examination; and
 - (B) Payment of the examination fee in ORS 696.270(1); and
- (b) The licensee must pass the reactivation examination.

(9) After the 30-day period specified in sections (5) and (6) of this rule, and subject to the examination requirements in section (8) of this rule, a licensee may only change the license status from inactive to active by submitting to the Agency:

- (a) An application for license reactivation; and
- (b) Payment of the reactivation fee in ORS 696.270(9)

(10) Subject to the examination requirements in section (8) of this rule, if an inactive licensee renews a license and maintains inactive status under section (4) of this rule, the licensee may, within 60 days of the date of renewal, change the license status to active by submitting to the Agency:

(a) An Agency-approved application for license reactivation that includes certification that the licensee met the real estate continuing education requirements under OAR 863-015-0055.

(b) Payment of amount of the active renewal fee in ORS 696.270(3) less the amount of the inactive renewal fee in 696.270(8) already paid by the licensee.

(11) The change of license status, transfer or change of license category under section (5) and (6) of this rule, or the reactivation of a license under sections (9) and (10) of this rule are effective upon actual receipt by the Agency of all required forms and fees.

Stat. Auth.: ORS 696.385 & 183.335
Stats. Implemented: ORS 696.020 & 696.022

Hist.: REA 1-1991, f. & cert. ef. 11-4-91; REA 1-2002, f. 5-31-02, cert. ef. 7-1-02, Renumbered from 863-010-0081; REA 1-2003(Temp), f. 2-27-03, cert. ef. 2-28-03 thru 8-27-03; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03; REA 3-2004, f. 4-28-04 cert. ef. 5-3-04; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05; REA 2-2007(Temp), f. & cert. ef. 3-21-07 thru 9-16-07

Teacher Standards and Practices Commission Chapter 584

Rule Caption: Amends Initial I license requirements, converts Transitional to Initial license, specifies Initial requirements for Out-of-staters.

Adm. Order No.: TSPC 1-2007(Temp)

Filed with Sec. of State: 3-30-2007

Certified to be Effective: 3-30-07 thru 9-26-07

Notice Publication Date:

Rules Adopted: 584-060-0014, 584-060-0163

Rules Amended: 584-060-0012

ADMINISTRATIVE RULES

Subject: 584-060-0014 Initial Teaching License for Out-of-state Candidate First Application: Creates rule for out-of-state candidates who apply for licensure in Oregon for the first time.

584-060-0163 Conversion of Transitional Teaching Licenses: Converts Transitional Teaching Licenses to an Initial Teaching License between April 1, 2007 and August 30, 2007.

584-060-0012 Initial I Teaching License Requirements: Updates rule regarding requirements for Initial I Teaching License.

Rules Coordinator: Victoria Chamberlain—(503) 378-6813

584-060-0012

Initial I Teaching License Requirements

(1) Upon filing a correct and complete application in form and manner prescribed by the commission, a qualified applicant shall be granted an Initial I Teaching License for three years. The first license will be issued for three years plus time to the applicant's birthday.

(2) The Initial I Teaching License is valid for regular teaching at one or more designated authorization levels in one or more designated specialties and for substitute teaching at any level in any specialty. (See 584-060-0052 for Authorization Levels.)

(3) To be eligible for an Initial I Teaching License, an applicant must:

(a) Possess the personal qualifications for licensure including attainment of at least eighteen years of age and possessing good moral character and mental and physical health necessary for employment as an educator; and

(b) Hold a bachelor's degree or higher from a regionally accredited institution in the United States, or the foreign equivalent of such degree approved by the commission. A master's degree or a doctoral degree from a regionally accredited institution in the United States validates a non-regionally accredited bachelor's degree for licensure; and

(c) Complete an initial teacher education program approved by the commission in Oregon, or complete a state-approved teacher preparation program in any U.S. jurisdiction, or complete a foreign program evaluated as satisfactory by an Oregon institution approved to offer the corresponding program; and

(d) Receive a passing score as currently specified by the commission on each of one or more tests of subject mastery for license endorsement or authorization; and

(A) Any subject-matter test, except the basic skills tests, may be waived if the applicant demonstrates special academic preparation satisfactory to the commission together with five years of experience teaching the specific subject matter on a license valid for the assignment in a public school or regionally accredited private school in a U.S. jurisdiction before holding any Oregon license. The five years of experience must be acquired entirely outside of the state of Oregon and must be obtained while holding an out-of-state license valid for the assignment;

(B) Some applicants may be eligible for alternative assessment for waiver of the subject-matter tests only. (See OAR 584-052-0030 to 0033 regarding Alternative Assessment guidelines and regulations.)

(e) Receive a passing score as currently specified by the commission on a test of basic verbal and computational skills; (See 584-060-0002(7) for definition of Basic Skills Tests.)

(f) Receive a passing score on a test of knowledge of U.S. and Oregon civil rights laws at the conclusion of a course or workshop approved by the commission; and

(g) Furnish fingerprints in the manner prescribed by the commission and satisfy requirements of OAR 584-060-0060 Character Questions to Establish Fitness to Serve as an Educator; (See also, OAR 584-036-0062 for Criminal Records Check Requirement.)

(h) Provide a copy of a recognized and current standard first aid card pursuant to ORS 342.126;

(i) Complete a recent experience during the three-year period immediately preceding application. (See OAR 584-005-0005(50) for definition of Recent Experience.)

(4) Applicants who have completed programs from states other than Oregon will be required to submit a C-2 form from the institution granting program completion, in addition to transcripts, verifying completion of the teacher education program. A license from another state valid for unrestricted full time teaching may be accepted in lieu of a C-2. A teaching license issued by the U.S. Department of Defense will be considered as a license from another state. Completion of alternative routes teaching programs through school districts or other avenues are subject to Executive Director approval.

(5) The Initial I Teaching License may be renewed two times for three years upon showing progress toward completion of the renewal require-

ments as described in OAR 584-060-0013 during the life of the Initial I Teaching License under the following conditions:

(a) The progress must meet or exceed the equivalent of 3 semester hours or 4.5 quarter hours of graduate coursework germane to the license or directly germane to public school employment;

(b) The educator must qualify for an Initial II Teaching License upon expiration of ten years following the date the first Initial I Teaching License was issued. A one year unconditional extension may be obtained if the educator is unable to meet all requirements within the nine year period. (See, OAR 584-060-0013 Initial II Teaching License.)

(6) The Executive Director may grant an extension to the Initial I Teaching License for a term determined by the director, if and only if extraordinary circumstances can be demonstrated that the teacher was unable to complete the requirements for the Initial II Teaching License during the life of the Initial I Teaching License.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 342.165 & 342.136

Hist.: TSPC 1-2005, f. & cert. ef. 1-21-05; TSPC 5-2005(Temp), f. & cert. ef. 7-1-05 thru 12-28-05; TSPC 7-2005, f. & cert. ef. 8-24-05; TSPC 1-2007(Temp), f. & cert. ef. 3-30-07 thru 9-26-07

584-060-0014

Initial Teaching License for Out-of-State Candidate First Application

(1) Upon filing a correct and complete application in form and manner prescribed by the commission, a qualified applicant who is applying for licensure in Oregon for the first time and has completed an out-of-state approved teacher-education program shall be granted an Initial Teaching License for eighteen (18) months.

(2) The Initial Teaching License is valid for regular teaching at one or more designated authorization levels in one or more designated specialties and for substitute teaching at any level in any specialty. (See 584-060-0052 for Authorization Levels.)

(3) To be eligible for an Initial Teaching License, an out-of-state applicant must:

(a) Possess the personal qualifications for licensure including attainment of at least eighteen years of age and possessing good moral character and mental and physical health necessary for employment as an educator; and

(b) Hold a bachelor's degree or higher from a regionally accredited institution in the United States, or the foreign equivalent of such degree approved by the commission. A master's degree or a doctoral degree from a regionally accredited institution in the United States validates a non-regionally accredited bachelor's degree for licensure; and

(c) Complete an initial teacher education program in any U.S. jurisdiction, or complete a foreign program evaluated as satisfactory by an Oregon institution approved to offer the corresponding program; and

(d) Applicants who have completed programs from states other than Oregon will be required to submit a C-2 form from the institution granting program completion, in addition to transcripts, verifying completion of the teacher education program. A license from another state valid for unrestricted full time teaching may be accepted in lieu of a C-2. A teaching license issued by the U.S. Department of Defense will be considered as a license from another state. Completion of alternative routes teaching programs through school districts or other avenues are subject to Executive Director approval;

(e) Furnish fingerprints in the manner prescribed by the commission and satisfy the requirements of OAR 584-036-0060 Character Questions to Establish Fitness to Serve as an Educator. (See also, OAR 584-036-0062 for Criminal Records Check Requirement;)

(f) Complete a recent experience during the three-year period immediately preceding application; and (See OAR 584-005-0005(50) for definition of Recent Experience;)

(g) Provide a copy of a recognized and current standard first aid card pursuant to ORS 342.126.

(4) Upon expiration of the Initial Teaching License the applicant must apply for an Initial I Teaching License. Qualified applicant will be issued an Initial I Teaching License for 18 months plus time to the applicant's next birthday.

(5) To be eligible for an Initial I Teaching License, an applicant must:

(a) Receive a passing score as currently specified by the commission on a test of basic verbal and computational skills; and (See 584-060-0002(7) for definition of Basic Skills Tests;)

(b) Receive a passing score as currently specified by the commission on each of one or more tests of subject mastery for licensure endorsement or authorization; and

(A) Any subject-matter test, except the basic skills tests, may be waived if the applicant demonstrates special academic preparation satisfac-

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tory to the commission together with five years of experience teaching the specific subject matter on a license valid for the assignment in a public school or regionally accredited private school in a U.S. jurisdiction before holding any Oregon license. The five years of experience must be acquired entirely outside of the state of Oregon and must be obtained while holding an out-of-state license valid for the assignment; or

(B) Some applicants may be eligible for alternative assessment for waiver of the subject-matter tests only. (See OAR 584-052-0030 to 0033 regarding Alternative Assessment guidelines and regulations.)

(c) Receive a passing score on a test of knowledge of U.S. and Oregon civil rights laws at the conclusion of a course or workshop approved by the commission.

(6) The Initial I Teaching License may be renewed two times for three years upon showing progress toward completion of the renewal requirements as described in OAR 584-060-0013 during the life of the Initial I Teaching License under the following conditions: The progress must meet or exceed the equivalent of 3 semester hours or 4.5 quarter hours of graduate coursework germane to the license or directly germane to public school employment. (See, OAR 584-060-0012, Initial I Teaching License Requirements and 584-060-0013, Initial II Teaching License Requirements for further information related to continuous renewal and retention of the Initial I and Initial II Teaching Licenses.)

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 342.165, 342.136, 342.223 - 342.232

Hist.: TSPC 1-2007(Temp), f. & cert. ef. 3-30-07 thru 9-26-07

584-060-0163

Conversion of Transitional Teaching Licenses

(1) Between April 1, 2007 and August 30, 2007, all Transitional Teaching Licenses will be converted to Initial Teaching Licenses for the time remaining on the Transitional Teaching License, if more than 90 days.

(2) Educators whose licenses have been converted must still qualify for the Initial I Teaching License pursuant to OAR 584-060-0012 as required by 584-060-0161 upon expiration of the Initial Teaching License.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 342.165, 342.136, 342.223 - 342.232

Hist.: TSPC 1-2007(Temp), f. & cert. ef. 3-30-07 thru 9-26-07

Water Resources Department Chapter 690

Rule Caption: Expedited review of certain stored water applications; repeal of water use registration process.

Adm. Order No.: WRD 3-2007

Filed with Sec. of State: 3-28-2007

Certified to be Effective: 3-29-07

Notice Publication Date: 9-1-06

Rules Adopted: 690-340-0060

Rules Amended: 690-310-0040, 690-310-0280

Rules Repealed: 690-340-0050

Subject: The Water Resources Commission adopted rules related to the Water Right Application Process (OAR chapter 690, division 310) and Water Use Authorizations (OAR chapter 690, division 340) implementing HB 2178, Chapter 37, 2005 Oregon Water Laws. HB 2178, which was codified at ORS 537.147, establishes an expedited process for permits to use stored water exclusively. This expedited process allows the Department to issue a permit following a public comment, if no public interest issues are raised. The adopted rules establishes the process, while amendments specify minimum application requirements for applications to use stored water.

The repeal of OAR 690-340-0050 implemented HB 2083 (Chapter 14, 2005 Oregon Water Laws). HB 2083 repealed obsolete statutes.

Rules Coordinator: Debbie Colbert—(503) 986-0878

690-310-0040

Application Requirements

(1)(a) Each application for a permit to appropriate water shall be made to the Department on a form prescribed by the Department and shall set forth:

(A) The name and mailing address of the applicant(s);

(B) The source(s) of water from which the water is proposed to be diverted or appropriated, including the name and mailing address of any owner of the land upon which the source of the water supply is located;

(C) The amount of water to be appropriated from each source;

(D) A map of the proposed water use as set forth in the mapping requirements in OAR 690-310-0050;

(E) The nature of the proposed use(s);

(F) The name and mailing address of the owner of any lands that are not owned by the applicant and that are crossed by the proposed ditch, canal or other work even if the applicant has obtained written authorization or an easement from the owner.

(G) A statement declaring the existence of written authorization or an easement permitting access to land crossed by the proposed ditch, canal or other work. This requirement shall not apply to applications for irrigation or domestic use where the applicant would occupy state-owned submersible lands for the construction, maintenance, and operation of any structure or facility necessary for the use of water;

(H) Proposed dates for the beginning of construction, completion of construction, and complete application of the water to the proposed beneficial use;

(I) The legal description of:

(i) The property from which the water is to be diverted;

(ii) Any property crossed by the proposed ditch, canal or other work;

and

(iii) Any property on which the water is to be used as depicted on the map.

(J) A description, including drawings if required by the Department, of the proposed means of diversion, construction, and operation of the diversion works and conveyance of the appropriated waters;

(K) Information the applicant has that describes why the amount of water requested is needed, measures the applicant proposes to prevent waste, to measure the amount of water diverted, to prevent damage to aquatic life and riparian habitat, to prevent the discharge of contaminated water to a surface stream and measures the applicant proposes to prevent damage to public uses of affected surface waters;

(L) Land use information as outlined in the Department's Land Use Planning Procedures Guide described in OAR 690-005-0035(4) or a receipt signed and dated by a local government official acknowledging the land use information request was received by the local planning Department;

(M) Signature of the applicant(s), and, if the applicant is a public agency, corporation or business, the title or authority of the person who signs the application on behalf of the entity;

(N) An oath that the information contained in the application is true and accurate;

(O) The estimated capacity of each pump in gallons per minute, and the horsepower of each pump motor;

(P) All other data concerning the proposed project and the applicant's ability and intention to construct the project, as the Department considers necessary;

(Q) Any other information required in the application form that is necessary to evaluate the application in accordance with applicable statutory requirements;

(R) If the requested water use is supplemental to an existing water use, identification of any application for a permit, permit, certificate or adjudicated right to appropriate water made or held by the applicant that is primary to the supplemental use.

(b) If the application is for a permit to appropriate ground water, in addition to the information required under subsection (a) of this section, the application shall contain:

(A) For any well already constructed, a copy of the well constructor's log, if available. If a well log is not available, or if the well is not already constructed, the proposed total depth, depth of casing and seal, and the anticipated perforation and open intervals;

(B) The horizontal distance for each proposed point of ground water appropriation to the nearest surface water, if less than one mile, and the difference in land surface elevation between them;

(C) If the ground water is to be used for irrigation purposes, a description of the lands to be irrigated, giving the number of acres to be irrigated in each 40-acre legal subdivision;

(D) The depth to the water table, if known;

(E) The location of each well with reference to government survey corners or monuments or corners of recorded plats;

(F) The estimated capacity of each well;

(G) If the ground water does not require pumping, the rate of flow in gallons in such manner as the Commission may prescribe.

(c) If the application is to store water and to construct a reservoir, or multiple reservoirs on a single contiguous property on the same stream system, the application also shall include or be accompanied by:

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(A) Preliminary plans, specifications and supporting information for the dam and impoundment area including dam height, width, crest width and surface area;

(B) Proposed dates for the beginning and completion of construction of the reservoir, the date the water will be stored and put to beneficial use and the uses to be made of the impounded water;

(C) A legal description of the property upon which the water is to be stored;

(D) A map of the proposed place of use prepared by a certified water right examiner in accordance with OAR 690-014-0150 unless the application is to construct a reservoir storing less than 9.2 acre-feet of water or with a dam less than 10 feet in height, in which case the map need not be prepared by a certified water right examiner.

(d) If the application is to appropriate stored surface water, the application also shall include or be accompanied by documentary evidence that:

(A) The applicant has provided notice of the application to the operator of the reservoir, if other than the applicant. This requirement may be satisfied by providing a copy of written notice to the operator of the reservoir, or a notarized affidavit signed by the applicant stating that notice has been provided to the operator of the reservoir;

(B) An agreement has been entered into with the owner of the reservoir to provide enough water for the purposes set forth in the application. If the applicant is the reservoir owner, no such agreement is required. If the application is made under the expedited review process for applications to use stored water under OAR 690-340-0060, the agreement may be submitted at any time prior to permit issuance; and

(C) An agreement has been entered into with any entity delivering the stored water other than the applicant. If the application is made under the expedited review process for applications to use stored water under OAR 690-340-0060, the agreement may be submitted at any time prior to permit issuance.

(e) If for agricultural purposes, in addition to any other information required, the application shall give the legal subdivisions of the land and the acreage to be irrigated, as near as may be;

(f) Except as otherwise provided in OAR 690, division 51, if for power purposes, in addition to any other information required, the application shall give the nature of the works by means of which the power is to be developed, the head and amount of water to be utilized, and the uses to which the power is to be applied;

(g) If for municipal or quasi-municipal water supply, in addition to any other information required, the application shall give the already installed and available capacities to provide water service, present population to be served, and, as near as may be, the future requirements of the population served, and if known, the methods that may be used to meet such future requirements;

(h) If for mining purposes, in addition to any other information required, the application shall give the nature of the mines to be served, and the methods of supplying and utilizing the water.

(2) Each application for a permit to appropriate water shall be accompanied by the examination fee set forth in ORS 536.050.

(3) If the proposed use of the water is for operation of a chemical process mine as defined in ORS 517.953, the applicant shall provide the information required under this section as part of the consolidated application under ORS 517.952 to 517.987.

(4) If the department determines that the source of a proposed use of water is in or above a scenic waterway, in addition to any other information required, the applicant shall provide the information required under OAR 690-310-0260.

Stat. Auth.: ORS 536.027

Stats. Implemented: ORS 390.835, 537.140 & 537.615

Hist.: WRD 6-1987, f. & cert. 6-11-87; WRD 5-1988, f. & cert. ef. 6-28-88; WRD 12-1990, f. & cert. ef. 8-8-90; WRD 16-1990, f. & cert. ef. 8-23-90; WRD 9-1992, f. & cert. ef. 7-1-92; WRD 5-1994, f. & cert. ef. 4-13-94; WRD 5-1995(Temp), f. & cert. ef. 8-4-95; WRD 1-1996, f. & cert. ef. 1-31-96, Renumbered from 690-011-0020; WRD 5-2004, f. & cert. ef. 6-15-04; WRD 3-2007, f. 3-28-07, cert. ef. 3-29-07

690-310-0280

Assignment of Application

Assignment or change of ownership of application:

(1) When a change of interest or ownership occurs in lands covered by a pending application the record holder may request, in writing, the Director to record the assignment to the new owner;

(2) Should the record holder of the application be unavailable, the current owner of the property involved may furnish proof of such ownership to the Commission to obtain ownership of the application. The Department shall also record a change in ownership to an heir or devisee under a will upon receiving proof of death of the record holder, or to a

trustee upon receiving proof of a transfer to trust by the record holder. Proof of ownership of the involved lands shall include, but not be limited to one or more of the following documents:

(a) A copy of the deed to the land;

(b) A copy of a land sales contract;

(c) A court order or decree; or

(d) Documentation of survivorship of property held jointly.

Stat. Auth.: ORS 536.027

Stats. Implemented: ORS 537.220 & 537.635

Hist.: WRD 1-1996, f. & cert. ef. 1-31-96; WRD 3-2007, f. 3-28-07, cert. ef. 3-29-07

690-340-0060

Expedited Review Process for Applications to Use Stored Water Exclusively

(1) In lieu of the application process described in OAR 690-310-0040, 690-310-0050, and 690-310-0070 through 690-310-0275, a person may apply for a permit to use stored surface water exclusively, to be evaluated through an expedited process. This process may not be used to apply for a permit to use water stored through an aquifer storage and recovery or artificial ground water recharge project under OAR chapter 690, division 350.

(2) In addition to the information, materials, and fees required by OAR 690-310-0040, a person applying under section (1) of this rule shall submit:

(a) A copy of the permit, certificate, or decree as evidence that the proposed use of the stored water is one of the authorized uses under the permit, certificate or decree that allows the storage of water; or

(b) If the storage is authorized under a permit or certificate, the permit or certificate number sufficient to allow the Department to determine that the proposed use of the stored water is one of the authorized uses under the permit or certificate that allows the storage of water; or

(c) If the storage is authorized under a decree, the name of the decree, the volume number, and the page number(s) of the decree sufficient to allow the Department to determine that the proposed use of the stored water is one of the authorized uses under the decree that allows the storage of water.

(3) Within 15 days after receiving an application, the Department shall determine whether the application contains the information required under section (2) of this rule and is complete and not defective, including the payment of all required fees. If the Department determines that the application is incomplete or defective or that all fees have not been paid, the Department shall return all fees and the application.

(4) Upon determining that an application contains the required information and is complete and not defective, the Department shall indorse on the application the date upon which the application was received for filing at the Department. The priority date for use of water not previously reserved under OAR chapter 690, division 79 shall be the date the application was received for filing by the Department.

(5) If an application is complete and not defective, the Department shall determine whether the proposed use is prohibited by any statute. If the proposed use is prohibited by statute, the Department shall reject the application and return all fees to the applicant with an explanation of the statutory prohibition.

(6) As soon as practicable after determining that an application is complete and not defective, that all fees have been paid, and the use is not prohibited by statute as prescribed in section (5) of this rule, the Department shall give public notice of the application in the weekly notice published by the Department.

(7) Within 30 days after the public notice prescribed in section (6) of this rule, any person may submit written comments to the Department. The 30-day comment period shall commence on the day the Department gives notice. All comments must be sent by facsimile, postmarked, or hand-delivered to the Department on or before the last day of the 30-day comment period, and shall identify:

(a) The specific public interest under ORS 537.170(8) that would be affected by the proposed use, and

(b) Specifically how the identified public interest would be affected.

(8) Following the end of the 30-day comment period, the Department may issue a final order and permit approving the application.

(9) If the Department determines public interest issues are raised pursuant to section (7) of this rule, the Department shall process the application as an application under ORS 537.150, and issue a proposed final order pursuant OAR 690-310-0150.

(10) At a minimum, a permit issued under subsection (8) of this rule shall be conditioned to require:

(a) Fish screens and by-pass devices and fish passage consistent with Oregon Department of Fish and Wildlife (ODFW) standards, unless the

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permittee submits written evidence that ODFW has determined that the devices are not necessary;

(b) A measuring device at each point of diversion authorized under the permit.

(11) Within 10 days of issuing a permit under subsection (8) of this rule, the Department shall:

(a) Provide notice of the issuance in the weekly notice published by the Department, and

(b) Send a copy of the permit to persons who have submitted comments pursuant to section (7) of this rule.

Stat. Auth.: ORS 536.027, Ch. 595 & 654

Statutes Implemented: 537.017 - 537.032

Hist.: WRD 3-2007, f. 3-28-07, cert. ef. 3-29-07

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123-065-0350	1-8-07	Amend(T)	2-1-07	125-007-0230	12-28-06	Amend	2-1-07
123-065-1050	1-8-07	Amend(T)	2-1-07	125-007-0230(T)	12-28-06	Repeal	2-1-07
123-065-1060	1-8-07	Adopt(T)	2-1-07	125-007-0240	12-28-06	Amend	2-1-07
123-065-1070	1-8-07	Adopt(T)	2-1-07	125-007-0240(T)	12-28-06	Repeal	2-1-07
123-065-1080	1-8-07	Adopt(T)	2-1-07	125-007-0250	12-28-06	Amend	2-1-07
123-065-1500	1-8-07	Amend(T)	2-1-07	125-007-0250(T)	12-28-06	Repeal	2-1-07
123-065-1520	1-8-07	Amend(T)	2-1-07	125-007-0260	12-28-06	Amend	2-1-07
123-065-1530	1-8-07	Amend(T)	2-1-07	125-007-0260(T)	12-28-06	Repeal	2-1-07
123-065-1540	1-8-07	Amend(T)	2-1-07	125-007-0270	12-28-06	Amend	2-1-07
123-065-1553	1-8-07	Amend(T)	2-1-07	125-007-0270(T)	12-28-06	Repeal	2-1-07
123-065-1590	1-8-07	Amend(T)	2-1-07	125-007-0280	12-28-06	Amend	2-1-07
123-065-1600	1-8-07	Amend(T)	2-1-07	125-007-0280(T)	12-28-06	Repeal	2-1-07
123-065-1620	1-8-07	Amend(T)	2-1-07	125-007-0290	12-28-06	Amend	2-1-07
123-065-1710	1-8-07	Amend(T)	2-1-07	125-007-0290(T)	12-28-06	Repeal	2-1-07
123-065-1720	1-8-07	Amend(T)	2-1-07	125-007-0300	12-28-06	Amend	2-1-07
123-065-1740	1-8-07	Amend(T)	2-1-07	125-007-0300(T)	12-28-06	Repeal	2-1-07
123-065-2520	1-8-07	Amend(T)	2-1-07	125-007-0310	12-28-06	Amend	2-1-07
123-065-2530	1-8-07	Amend(T)	2-1-07	125-007-0310(T)	12-28-06	Repeal	2-1-07
123-065-2550	1-8-07	Amend(T)	2-1-07	125-007-0320	12-28-06	Amend	2-1-07
123-065-3000	1-8-07	Amend(T)	2-1-07	125-007-0320(T)	12-28-06	Repeal	2-1-07
123-065-3030	1-8-07	Amend(T)	2-1-07	125-007-0330	12-28-06	Amend	2-1-07
123-065-3130	1-8-07	Amend(T)	2-1-07	125-007-0330(T)	12-28-06	Repeal	2-1-07
123-065-3200	1-8-07	Amend(T)	2-1-07	125-145-0020	12-6-06	Amend(T)	1-1-07
123-065-3230	1-8-07	Amend(T)	2-1-07	125-145-0040	12-6-06	Amend(T)	1-1-07
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123-065-3330	1-8-07	Amend(T)	2-1-07	125-800-0010	12-28-06	Adopt	2-1-07
123-065-3400	1-8-07	Amend(T)	2-1-07	125-800-0020	12-28-06	Adopt	2-1-07
123-065-3480	1-8-07	Amend(T)	2-1-07	137-025-0060	1-1-07	Amend	1-1-07
123-065-3850	1-8-07	Amend(T)	2-1-07	137-025-0090	1-1-07	Amend	1-1-07
123-065-4020	1-8-07	Amend(T)	2-1-07	137-025-0150	1-1-07	Amend	1-1-07
123-065-4260	1-8-07	Amend(T)	2-1-07	137-025-0210	1-1-07	Amend	1-1-07
123-065-4310	1-8-07	Amend(T)	2-1-07	137-025-0280	1-1-07	Amend	1-1-07
123-065-4323	1-8-07	Amend(T)	2-1-07	137-025-0410	1-1-07	Amend	1-1-07
123-065-4328	1-8-07	Amend(T)	2-1-07	137-025-0415	1-1-07	Amend	1-1-07
123-065-4380	1-8-07	Amend(T)	2-1-07	137-025-0480	1-1-07	Amend	1-1-07
123-065-4440	1-8-07	Amend(T)	2-1-07	137-025-0530	1-1-07	Amend	1-1-07
123-065-4450	1-8-07	Amend(T)	2-1-07	137-055-1020	1-2-07	Amend	2-1-07
123-065-4470	1-8-07	Amend(T)	2-1-07	137-055-1100	1-2-07	Amend	2-1-07
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137-055-6022	1-2-07	Amend	2-1-07	150-318.020(2)	1-1-07	Amend	2-1-07
137-055-6024	1-2-07	Amend	2-1-07	150-318.060	1-1-07	Adopt	2-1-07
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137-055-6120	1-2-07	Amend	2-1-07	150-334.400	1-1-07	Repeal	2-1-07
137-055-6210	1-2-07	Amend	2-1-07	150-401.794	1-1-07	Am. & Ren.	2-1-07
137-079-0110	4-16-07	Adopt	5-1-07	150-457.450	1-1-07	Amend	2-1-07
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137-079-0210	4-16-07	Adopt	5-1-07	161-015-0030	2-9-07	Amend	3-1-07
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141-089-0475	3-26-07	Adopt(T)	5-1-07	165-012-0005	1-5-07	Amend	2-1-07
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330-070-0020	1-1-07	Amend	2-1-07	333-004-0080(T)	4-23-07	Repeal	5-1-07
330-070-0026	1-1-07	Amend	2-1-07	333-004-0090	4-23-07	Amend	5-1-07
330-070-0045	1-1-07	Amend	2-1-07	333-004-0100	4-23-07	Amend	5-1-07
330-070-0059	1-1-07	Amend	2-1-07	333-004-0110	4-1-07	Amend(T)	4-1-07
330-070-0060	1-1-07	Amend	2-1-07	333-004-0110	4-23-07	Amend	5-1-07
330-070-0064	1-1-07	Amend	2-1-07	333-004-0110(T)	4-23-07	Repeal	5-1-07
330-070-0070	1-1-07	Amend	2-1-07	333-004-0120	4-23-07	Amend	5-1-07
330-070-0073	1-1-07	Amend	2-1-07	333-004-0130	4-23-07	Amend	5-1-07
330-090-0110	12-1-07	Amend	1-1-07	333-004-0140	4-23-07	Amend	5-1-07
331-105-0020	12-1-06	Amend	1-1-07	333-004-0150	4-23-07	Amend	5-1-07
331-105-0030	12-1-06	Amend	1-1-07	333-004-0160	4-23-07	Amend	5-1-07
331-110-0005	12-1-06	Amend	1-1-07	333-004-0170	4-23-07	Amend	5-1-07
331-110-0010	12-1-06	Amend	1-1-07	333-004-0180	4-23-07	Amend	5-1-07
331-110-0055	12-1-06	Amend	1-1-07	333-004-0190	4-23-07	Amend	5-1-07
331-120-0000	12-1-06	Amend	1-1-07	333-010-0600	4-13-07	Adopt	5-1-07
331-120-0020	12-1-06	Amend	1-1-07	333-010-0610	4-13-07	Adopt	5-1-07
331-125-0010	12-1-06	Amend	1-1-07	333-010-0620	4-13-07	Adopt	5-1-07
331-135-0000	12-1-06	Amend	1-1-07	333-010-0630	4-13-07	Adopt	5-1-07
331-505-0010	4-1-07	Amend	5-1-07	333-010-0640	4-13-07	Adopt	5-1-07
331-550-0000	4-1-07	Amend	5-1-07	333-010-0650	4-13-07	Adopt	5-1-07
331-555-0010	4-1-07	Amend	5-1-07	333-010-0660	4-13-07	Adopt	5-1-07
331-565-0030	4-1-07	Amend	5-1-07	333-011-0200	12-1-06	Adopt	1-1-07
331-565-0060	4-1-07	Amend	5-1-07	333-012-0270	1-16-07	Amend	3-1-07
331-565-0085	4-1-07	Adopt	5-1-07	333-018-0005	1-16-07	Amend	3-1-07
331-575-0040	4-1-07	Amend	5-1-07	333-018-0018	12-18-06	Amend	1-1-07
331-715-0030	4-1-07	Amend	5-1-07	333-018-0030	1-16-07	Amend	3-1-07
333-002-0010	11-16-06	Amend	1-1-07	333-054-0000	12-27-06	Amend	2-1-07
333-002-0035	11-16-06	Amend	1-1-07	333-054-0010	12-27-06	Amend	2-1-07
333-002-0040	11-16-06	Amend	1-1-07	333-054-0020	12-27-06	Amend	2-1-07
333-002-0050	11-16-06	Amend	1-1-07	333-054-0020(T)	12-27-06	Repeal	2-1-07
333-002-0070	11-16-06	Amend	1-1-07	333-054-0025	12-27-06	Adopt	2-1-07
333-002-0080	11-16-06	Amend	1-1-07	333-054-0030	12-27-06	Amend	2-1-07
333-002-0090	11-16-06	Amend	1-1-07	333-054-0030(T)	12-27-06	Repeal	2-1-07
333-002-0100	11-16-06	Amend	1-1-07	333-054-0040	12-27-06	Amend	2-1-07
333-002-0110	11-16-06	Amend	1-1-07	333-054-0050	12-27-06	Amend	2-1-07
333-002-0120	11-16-06	Amend	1-1-07	333-054-0060	12-27-06	Amend	2-1-07

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333-060-0020	12-13-06	Amend	1-1-07	333-102-0315	3-1-07	Amend	4-1-07
333-100-0001	3-1-07	Amend	4-1-07	333-102-0320	3-1-07	Amend	4-1-07
333-100-0005	3-1-07	Amend	4-1-07	333-102-0325	3-1-07	Amend	4-1-07
333-100-0010	3-1-07	Amend	4-1-07	333-102-0327	3-1-07	Amend	4-1-07
333-100-0015	3-1-07	Amend	4-1-07	333-102-0330	3-1-07	Amend	4-1-07
333-100-0020	3-1-07	Amend	4-1-07	333-102-0335	3-1-07	Amend	4-1-07
333-100-0025	3-1-07	Amend	4-1-07	333-102-0340	3-1-07	Amend	4-1-07
333-100-0030	3-1-07	Amend	4-1-07	333-102-0345	3-1-07	Amend	4-1-07
333-100-0035	3-1-07	Amend	4-1-07	333-102-0350	3-1-07	Amend	4-1-07
333-100-0040	3-1-07	Amend	4-1-07	333-102-0355	3-1-07	Amend	4-1-07
333-100-0045	3-1-07	Amend	4-1-07	333-102-0360	3-1-07	Amend	4-1-07
333-100-0050	3-1-07	Amend	4-1-07	333-102-0365	3-1-07	Amend	4-1-07
333-100-0055	3-1-07	Amend	4-1-07	333-102-0900	3-1-07	Amend	4-1-07
333-100-0057	3-1-07	Amend	4-1-07	333-102-0910	3-1-07	Amend	4-1-07
333-100-0060	3-1-07	Amend	4-1-07	333-103-0001	3-1-07	Amend	4-1-07
333-100-0065	3-1-07	Amend	4-1-07	333-103-0003	3-1-07	Amend	4-1-07
333-100-0070	3-1-07	Amend	4-1-07	333-103-0005	3-1-07	Amend	4-1-07
333-100-0080	3-1-07	Amend	4-1-07	333-103-0010	3-1-07	Amend	4-1-07
333-102-0001	3-1-07	Amend	4-1-07	333-103-0015	3-1-07	Amend	4-1-07
333-102-0005	3-1-07	Amend	4-1-07	333-103-0020	3-1-07	Amend	4-1-07
333-102-0010	3-1-07	Amend	4-1-07	333-103-0025	3-1-07	Amend	4-1-07
333-102-0015	3-1-07	Amend	4-1-07	333-103-0030	3-1-07	Amend	4-1-07
333-102-0020	3-1-07	Amend	4-1-07	333-103-0035	3-1-07	Amend	4-1-07
333-102-0025	3-1-07	Amend	4-1-07	333-103-0050	3-1-07	Amend	4-1-07
333-102-0030	3-1-07	Amend	4-1-07	333-105-0001	3-1-07	Amend	4-1-07
333-102-0035	3-1-07	Amend	4-1-07	333-105-0003	3-1-07	Amend	4-1-07
333-102-0040	3-1-07	Amend	4-1-07	333-105-0005	3-1-07	Amend	4-1-07
333-102-0075	3-1-07	Amend	4-1-07	333-105-0050	3-1-07	Amend	4-1-07
333-102-0101	3-1-07	Amend	4-1-07	333-105-0075	3-1-07	Amend	4-1-07
333-102-0103	3-1-07	Amend	4-1-07	333-105-0420	3-1-07	Amend	4-1-07
333-102-0105	3-1-07	Amend	4-1-07	333-105-0430	3-1-07	Amend	4-1-07
333-102-0110	3-1-07	Amend	4-1-07	333-105-0440	3-1-07	Amend	4-1-07
333-102-0115	3-1-07	Amend	4-1-07	333-105-0450	3-1-07	Amend	4-1-07
333-102-0120	3-1-07	Amend	4-1-07	333-105-0460	3-1-07	Amend	4-1-07
333-102-0125	3-1-07	Amend	4-1-07	333-105-0470	3-1-07	Amend	4-1-07
333-102-0130	3-1-07	Amend	4-1-07	333-105-0480	3-1-07	Amend	4-1-07
333-102-0135	3-1-07	Amend	4-1-07	333-105-0490	3-1-07	Amend	4-1-07
333-102-0190	3-1-07	Amend	4-1-07	333-105-0500	3-1-07	Amend	4-1-07
333-102-0200	3-1-07	Amend	4-1-07	333-105-0510	3-1-07	Amend	4-1-07
333-102-0203	3-1-07	Amend	4-1-07	333-105-0520	3-1-07	Amend	4-1-07
333-102-0235	3-1-07	Amend	4-1-07	333-105-0530	3-1-07	Amend	4-1-07
333-102-0245	3-1-07	Amend	4-1-07	333-105-0540	3-1-07	Amend	4-1-07
333-102-0247	3-1-07	Amend	4-1-07	333-105-0550	3-1-07	Amend	4-1-07
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333-102-0255	3-1-07	Amend	4-1-07	333-105-0570	3-1-07	Amend	4-1-07
333-102-0260	3-1-07	Amend	4-1-07	333-105-0580	3-1-07	Amend	4-1-07
333-102-0265	3-1-07	Amend	4-1-07	333-105-0590	3-1-07	Amend	4-1-07
333-102-0270	3-1-07	Amend	4-1-07	333-105-0600	3-1-07	Amend	4-1-07
333-102-0275	3-1-07	Amend	4-1-07	333-105-0610	3-1-07	Amend	4-1-07
333-102-0285	3-1-07	Amend	4-1-07	333-105-0620	3-1-07	Amend	4-1-07
333-102-0290	3-1-07	Amend	4-1-07	333-105-0630	3-1-07	Amend	4-1-07
333-102-0293	3-1-07	Amend	4-1-07	333-105-0640	3-1-07	Amend	4-1-07
333-102-0297	3-1-07	Amend	4-1-07	333-105-0650	3-1-07	Amend	4-1-07
333-102-0300	3-1-07	Amend	4-1-07	333-105-0660	3-1-07	Amend	4-1-07
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333-105-0700	3-1-07	Amend	4-1-07	333-116-0125	3-1-07	Amend	4-1-07
333-105-0710	3-1-07	Amend	4-1-07	333-116-0130	3-1-07	Amend	4-1-07
333-105-0720	3-1-07	Amend	4-1-07	333-116-0140	3-1-07	Amend	4-1-07
333-105-0730	3-1-07	Amend	4-1-07	333-116-0150	3-1-07	Amend	4-1-07
333-105-0740	3-1-07	Amend	4-1-07	333-116-0160	3-1-07	Amend	4-1-07
333-105-0750	3-1-07	Amend	4-1-07	333-116-0165	3-1-07	Amend	4-1-07
333-105-0760	3-1-07	Amend	4-1-07	333-116-0170	3-1-07	Amend	4-1-07
333-113-0001	3-1-07	Amend	4-1-07	333-116-0180	3-1-07	Amend	4-1-07
333-113-0005	3-1-07	Amend	4-1-07	333-116-0190	3-1-07	Amend	4-1-07
333-113-0007	3-1-07	Amend	4-1-07	333-116-0200	3-1-07	Amend	4-1-07
333-113-0010	3-1-07	Amend	4-1-07	333-116-0220	3-1-07	Amend	4-1-07
333-113-0101	3-1-07	Amend	4-1-07	333-116-0250	3-1-07	Amend	4-1-07
333-113-0105	3-1-07	Amend	4-1-07	333-116-0255	3-1-07	Amend	4-1-07
333-113-0110	3-1-07	Amend	4-1-07	333-116-0260	3-1-07	Amend	4-1-07
333-113-0115	3-1-07	Amend	4-1-07	333-116-0280	3-1-07	Amend	4-1-07
333-113-0120	3-1-07	Amend	4-1-07	333-116-0290	3-1-07	Amend	4-1-07
333-113-0125	3-1-07	Amend	4-1-07	333-116-0300	3-1-07	Amend	4-1-07
333-113-0130	3-1-07	Amend	4-1-07	333-116-0310	3-1-07	Amend	4-1-07
333-113-0135	3-1-07	Amend	4-1-07	333-116-0320	3-1-07	Amend	4-1-07
333-113-0140	3-1-07	Amend	4-1-07	333-116-0330	3-1-07	Amend	4-1-07
333-113-0145	3-1-07	Amend	4-1-07	333-116-0340	3-1-07	Amend	4-1-07
333-113-0150	3-1-07	Amend	4-1-07	333-116-0350	3-1-07	Amend	4-1-07
333-113-0201	3-1-07	Amend	4-1-07	333-116-0360	3-1-07	Amend	4-1-07
333-113-0203	3-1-07	Amend	4-1-07	333-116-0370	3-1-07	Amend	4-1-07
333-113-0205	3-1-07	Amend	4-1-07	333-116-0380	3-1-07	Amend	4-1-07
333-113-0210	3-1-07	Amend	4-1-07	333-116-0390	3-1-07	Amend	4-1-07
333-113-0301	3-1-07	Amend	4-1-07	333-116-0400	3-1-07	Amend	4-1-07
333-113-0305	3-1-07	Amend	4-1-07	333-116-0405	3-1-07	Amend	4-1-07
333-113-0310	3-1-07	Amend	4-1-07	333-116-0410	3-1-07	Amend	4-1-07
333-113-0315	3-1-07	Amend	4-1-07	333-116-0420	3-1-07	Amend	4-1-07
333-113-0325	3-1-07	Amend	4-1-07	333-116-0425	3-1-07	Amend	4-1-07
333-113-0335	3-1-07	Amend	4-1-07	333-116-0430	3-1-07	Amend	4-1-07
333-113-0401	3-1-07	Amend	4-1-07	333-116-0440	3-1-07	Amend	4-1-07
333-113-0403	3-1-07	Amend	4-1-07	333-116-0445	3-1-07	Amend	4-1-07
333-113-0405	3-1-07	Amend	4-1-07	333-116-0447	3-1-07	Amend	4-1-07
333-113-0410	3-1-07	Amend	4-1-07	333-116-0450	3-1-07	Amend	4-1-07
333-113-0501	3-1-07	Amend	4-1-07	333-116-0460	3-1-07	Amend	4-1-07
333-116-0010	3-1-07	Amend	4-1-07	333-116-0470	3-1-07	Amend	4-1-07
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333-116-0025	3-1-07	Amend	4-1-07	333-116-0480	3-1-07	Amend	4-1-07
333-116-0027	3-1-07	Amend	4-1-07	333-116-0490	3-1-07	Amend	4-1-07
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333-116-0050	3-1-07	Amend	4-1-07	333-116-0540	3-1-07	Amend	4-1-07
333-116-0055	3-1-07	Amend	4-1-07	333-116-0550	3-1-07	Amend	4-1-07
333-116-0057	3-1-07	Amend	4-1-07	333-116-0560	3-1-07	Amend	4-1-07
333-116-0059	3-1-07	Amend	4-1-07	333-116-0570	3-1-07	Amend	4-1-07
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333-116-0105	3-1-07	Amend	4-1-07	333-116-0580	3-1-07	Amend	4-1-07
333-116-0107	3-1-07	Amend	4-1-07	333-116-0583	3-1-07	Amend	4-1-07
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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	340-041-0002	3-15-07	Amend	4-1-07
333-250-0042	2-1-07	Amend	3-1-07	340-041-0004	3-15-07	Amend	4-1-07
333-250-0043	2-1-07	Amend	3-1-07	340-041-0007	3-15-07	Amend	4-1-07
333-250-0044	2-1-07	Amend	3-1-07	340-041-0016	3-15-07	Amend	4-1-07
333-250-0045	2-1-07	Amend	3-1-07	340-041-0021	3-15-07	Amend	4-1-07
333-250-0046	2-1-07	Amend	3-1-07	340-041-0028	3-14-07	Amend	4-1-07
333-250-0047	2-1-07	Amend	3-1-07	340-041-0028	3-15-07	Amend	4-1-07
333-250-0048	2-1-07	Amend	3-1-07	340-041-0032	3-15-07	Amend	4-1-07
333-250-0049	2-1-07	Amend	3-1-07	340-041-0046	3-15-07	Amend	4-1-07
333-250-0050	2-1-07	Amend	3-1-07	340-041-0053	3-14-07	Amend	4-1-07
333-250-0060	2-1-07	Amend	3-1-07	340-041-0053	3-15-07	Amend	4-1-07
333-250-0070	2-1-07	Amend	3-1-07	340-041-0104	3-15-07	Amend	4-1-07
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333-250-0090	2-1-07	Repeal	3-1-07	340-041-0175	3-15-07	Amend	4-1-07
333-250-0100	2-1-07	Amend	3-1-07	340-041-0180	3-15-07	Amend	4-1-07
333-255-0000	2-1-07	Amend	3-1-07	340-041-0185	3-14-07	Amend	4-1-07
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333-255-0020	2-1-07	Amend	3-1-07	340-041-0201	3-15-07	Amend	4-1-07
333-255-0030	2-1-07	Amend	3-1-07	340-041-0235	3-15-07	Amend	4-1-07
333-255-0040	2-1-07	Amend	3-1-07	340-041-0260	3-15-07	Amend	4-1-07
333-255-0050	2-1-07	Amend	3-1-07	340-041-0271	3-15-07	Amend	4-1-07
333-255-0060	2-1-07	Amend	3-1-07	340-041-0300	3-15-07	Amend	4-1-07
333-255-0070	2-1-07	Amend	3-1-07	340-041-0315	3-15-07	Amend	4-1-07
333-255-0071	2-1-07	Amend	3-1-07	340-041-0320	3-15-07	Amend	4-1-07
333-255-0072	2-1-07	Amend	3-1-07	340-041-0340	3-15-07	Amend	4-1-07
333-255-0073	2-1-07	Amend	3-1-07	340-041-0345	3-15-07	Amend	4-1-07
333-255-0079	2-1-07	Amend	3-1-07	340-041-0350	3-15-07	Amend	4-1-07
333-255-0080	2-1-07	Amend	3-1-07	340-200-0025	4-12-07	Amend	5-1-07
333-255-0081	2-1-07	Amend	3-1-07	340-200-0040	4-12-07	Amend	5-1-07
333-255-0082	2-1-07	Amend	3-1-07	340-200-0090	4-12-07	Amend	5-1-07
333-255-0090	2-1-07	Amend	3-1-07	340-202-0010	4-12-07	Amend	5-1-07
333-255-0091	2-1-07	Amend	3-1-07	340-204-0030	4-12-07	Amend	5-1-07
333-255-0092	2-1-07	Amend	3-1-07	340-204-0040	4-12-07	Amend	5-1-07
333-255-0093	2-1-07	Amend	3-1-07	340-204-0050	4-12-07	Amend	5-1-07
333-265-0130	2-1-07	Amend	3-1-07	340-224-0060	4-12-07	Amend	5-1-07
335-001-0000	2-9-07	Amend	3-1-07	340-225-0090	4-12-07	Amend	5-1-07
335-001-0005	2-9-07	Amend	3-1-07	340-228-0300	12-22-06	Amend	2-1-07
335-005-0030	2-9-07	Amend	3-1-07	340-228-0600	12-22-06	Adopt	2-1-07
335-010-0060	2-1-07	Amend	3-1-07	340-228-0602	12-22-06	Adopt	2-1-07
335-010-0070	2-1-07	Amend	3-1-07	340-228-0603	12-22-06	Adopt	2-1-07
335-060-0005	2-1-07	Amend	3-1-07	340-228-0604	12-22-06	Adopt	2-1-07
335-070-0020	2-1-07	Amend	3-1-07	340-228-0605	12-22-06	Adopt	2-1-07
335-070-0030	2-1-07	Amend	3-1-07	340-228-0606	12-22-06	Adopt	2-1-07
335-070-0040	2-1-07	Amend	3-1-07	340-228-0608	12-22-06	Adopt	2-1-07
335-070-0050	2-1-07	Amend	3-1-07	340-228-0610	12-22-06	Adopt	2-1-07
335-070-0055	2-1-07	Amend	3-1-07	340-228-0612	12-22-06	Adopt	2-1-07
335-095-0050	2-1-07	Amend	3-1-07	340-228-0614	12-22-06	Adopt	2-1-07
335-095-0060	2-1-07	Amend	3-1-07	340-228-0616	12-22-06	Adopt	2-1-07
337-010-0010	1-1-07	Amend	1-1-07	340-228-0618	12-22-06	Adopt	2-1-07
337-010-0011	1-1-07	Adopt	1-1-07	340-228-0620	12-22-06	Adopt	2-1-07

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340-228-0624	12-22-06	Adopt	2-1-07	340-242-0290	4-12-07	Amend	5-1-07
340-228-0626	12-22-06	Adopt	2-1-07	340-242-0400	4-12-07	Amend	5-1-07
340-228-0628	12-22-06	Adopt	2-1-07	340-242-0410	4-12-07	Amend	5-1-07
340-228-0630	12-22-06	Adopt	2-1-07	340-242-0420	4-12-07	Amend	5-1-07
340-228-0632	12-22-06	Adopt	2-1-07	340-242-0430	4-12-07	Amend	5-1-07
340-228-0634	12-22-06	Adopt	2-1-07	340-242-0440	4-12-07	Amend	5-1-07
340-228-0636	12-22-06	Adopt	2-1-07	340-244-0030	12-22-06	Amend	2-1-07
340-228-0638	12-22-06	Adopt	2-1-07	340-244-0040	12-22-06	Amend	2-1-07
340-228-0640	12-22-06	Adopt	2-1-07	407-003-0000	2-15-07	Adopt	3-1-07
340-228-0642	12-22-06	Adopt	2-1-07	407-003-0010	2-15-07	Adopt	3-1-07
340-228-0644	12-22-06	Adopt	2-1-07	407-020-0000	2-1-07	Adopt	3-1-07
340-228-0646	12-22-06	Adopt	2-1-07	407-020-0005	2-1-07	Adopt	3-1-07
340-228-0648	12-22-06	Adopt	2-1-07	407-020-0010	2-1-07	Adopt	3-1-07
340-228-0650	12-22-06	Adopt	2-1-07	407-020-0015	2-1-07	Adopt	3-1-07
340-228-0652	12-22-06	Adopt	2-1-07	407-030-0010	3-1-07	Am. & Ren.	4-1-07
340-228-0654	12-22-06	Adopt	2-1-07	407-030-0020	3-1-07	Am. & Ren.	4-1-07
340-228-0656	12-22-06	Adopt	2-1-07	407-030-0030	3-1-07	Am. & Ren.	4-1-07
340-228-0658	12-22-06	Adopt	2-1-07	407-030-0040	3-1-07	Am. & Ren.	4-1-07
340-228-0660	12-22-06	Adopt	2-1-07	409-021-0010	2-1-07	Amend	3-1-07
340-228-0662	12-22-06	Adopt	2-1-07	409-021-0115	2-1-07	Am. & Ren.	3-1-07
340-228-0664	12-22-06	Adopt	2-1-07	409-021-0120	2-1-07	Am. & Ren.	3-1-07
340-228-0666	12-22-06	Adopt	2-1-07	409-021-0130	2-1-07	Am. & Ren.	3-1-07
340-228-0668	12-22-06	Adopt	2-1-07	409-021-0140	2-1-07	Am. & Ren.	3-1-07
340-228-0670	12-22-06	Adopt	2-1-07	409-021-0150	2-1-07	Adopt	3-1-07
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340-228-0674	12-22-06	Adopt	2-1-07	409-022-0040	1-1-07	Adopt	1-1-07
340-228-0676	12-22-06	Adopt	2-1-07	409-022-0050	1-1-07	Adopt	1-1-07
340-228-0678	12-22-06	Adopt	2-1-07	409-022-0060	1-1-07	Adopt	1-1-07
340-232-0010	4-12-07	Amend	5-1-07	409-022-0070	1-1-07	Adopt	1-1-07
340-232-0020	4-12-07	Amend	5-1-07	409-022-0080	1-1-07	Adopt	1-1-07
340-238-0040	12-22-06	Amend	2-1-07	409-030-0000	11-28-06	Amend(T)	1-1-07
340-238-0060	12-22-06	Amend	2-1-07	409-030-0005	11-28-06	Amend(T)	1-1-07
340-242-0010	4-12-07	Amend	5-1-07	409-030-0020	11-28-06	Amend(T)	1-1-07
340-242-0020	4-12-07	Amend	5-1-07	409-030-0050	11-28-06	Amend(T)	1-1-07
340-242-0030	4-12-07	Amend	5-1-07	410-020-0000	3-30-07	Repeal	5-1-07
340-242-0040	4-12-07	Amend	5-1-07	410-020-0010	3-30-07	Repeal	5-1-07
340-242-0050	4-12-07	Amend	5-1-07	410-020-0020	3-30-07	Repeal	5-1-07
340-242-0070	4-12-07	Amend	5-1-07	410-020-0030	3-30-07	Repeal	5-1-07
340-242-0080	4-12-07	Amend	5-1-07	410-020-0040	3-30-07	Repeal	5-1-07
340-242-0090	4-12-07	Amend	5-1-07	410-020-0050	3-30-07	Repeal	5-1-07
340-242-0100	4-12-07	Repeal	5-1-07	410-120-0000	1-1-07	Amend	1-1-07
340-242-0110	4-12-07	Amend	5-1-07	410-120-1280	1-1-07	Amend	1-1-07
340-242-0120	4-12-07	Amend	5-1-07	410-120-1295	1-1-07	Amend(T)	1-1-07
340-242-0130	4-12-07	Repeal	5-1-07	410-120-1295	4-5-07	Amend	5-1-07
340-242-0160	4-12-07	Amend	5-1-07	410-120-1295(T)	4-5-07	Repeal	5-1-07
340-242-0180	4-12-07	Amend	5-1-07	410-120-1340	1-1-07	Amend	1-1-07
340-242-0190	4-12-07	Amend	5-1-07	410-120-1380	1-1-07	Amend	1-1-07
340-242-0200	4-12-07	Amend	5-1-07	410-120-1390	1-1-07	Amend	1-1-07
340-242-0210	4-12-07	Amend	5-1-07	410-120-1960	1-1-07	Amend	1-1-07
340-242-0220	4-12-07	Amend	5-1-07	410-121-0030	1-1-07	Amend	2-1-07
340-242-0240	4-12-07	Amend	5-1-07	410-121-0040	1-1-07	Amend	1-1-07
340-242-0260	4-12-07	Amend	5-1-07	410-121-0149	1-1-07	Amend	1-1-07
340-242-0270	4-12-07	Amend	5-1-07	410-121-0157	1-1-07	Amend	2-1-07

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410-121-0320	1-1-07	Amend	2-1-07	410-141-0520	1-1-07	Amend	1-1-07
410-122-0000	1-1-07	Repeal	2-1-07	410-142-0000	1-1-07	Repeal	2-1-07
410-122-0020	1-1-07	Amend	1-1-07	410-142-0225	1-1-07	Adopt	1-1-07
410-122-0055	1-1-07	Amend	1-1-07	410-143-0000	1-1-07	Repeal	2-1-07
410-122-0080	1-1-07	Amend	1-1-07	410-147-0120	1-1-07	Amend	1-1-07
410-122-0085	1-1-07	Repeal	1-1-07	410-147-0320	1-1-07	Amend	1-1-07
410-122-0182	1-1-07	Amend	1-1-07	410-147-0365	1-1-07	Amend	1-1-07
410-122-0184	1-1-07	Amend	1-1-07	410-147-0460	1-1-07	Amend	1-1-07
410-122-0186	1-1-07	Amend	1-1-07	410-147-0480	1-1-07	Amend	1-1-07
410-122-0190	1-1-07	Repeal	1-1-07	410-147-0620	1-1-07	Amend	1-1-07
410-122-0202	1-1-07	Amend	1-1-07	410-148-0260	1-1-07	Amend	2-1-07
410-122-0203	1-1-07	Amend	1-1-07	411-020-0002	12-21-06	Amend	2-1-07
410-122-0204	1-1-07	Amend	1-1-07	411-020-0020	12-21-06	Amend	2-1-07
410-122-0205	1-1-07	Amend	1-1-07	411-020-0100	12-21-06	Amend	2-1-07
410-122-0207	1-1-07	Amend	1-1-07	411-020-0120	12-21-06	Amend	2-1-07
410-122-0208	1-1-07	Amend	1-1-07	411-026-0000	12-1-06	Amend	1-1-07
410-122-0209	1-1-07	Amend	1-1-07	411-026-0010	12-1-06	Amend	1-1-07
410-122-0210	1-1-07	Amend	1-1-07	411-026-0020	12-1-06	Amend	1-1-07
410-122-0240	1-1-07	Amend	1-1-07	411-026-0030	12-1-06	Amend	1-1-07
410-122-0280	1-1-07	Amend	1-1-07	411-026-0040	12-1-06	Amend	1-1-07
410-122-0320	1-1-07	Amend	1-1-07	411-026-0050	12-1-06	Amend	1-1-07
410-122-0325	1-1-07	Amend	1-1-07	411-026-0060	12-1-06	Amend	1-1-07
410-122-0340	1-1-07	Amend	1-1-07	411-026-0070	12-1-06	Amend	1-1-07
410-122-0360	1-1-07	Amend	1-1-07	411-026-0080	12-1-06	Amend	1-1-07
410-122-0365	1-1-07	Amend	1-1-07	411-030-0020	5-1-07	Amend(T)	5-1-07
410-122-0375	1-1-07	Amend	1-1-07	411-030-0080	5-1-07	Amend(T)	5-1-07
410-122-0380	1-1-07	Amend	1-1-07	411-030-0090	3-30-07	Amend(T)	5-1-07
410-122-0400	1-1-07	Amend	1-1-07	411-031-0020	4-17-07	Amend	5-1-07
410-122-0420	1-1-07	Amend	1-1-07	411-031-0020(T)	4-17-07	Repeal	5-1-07
410-122-0500	1-1-07	Amend	1-1-07	411-031-0040	4-17-07	Amend	5-1-07
410-122-0510	1-1-07	Amend	1-1-07	411-031-0040(T)	4-17-07	Repeal	5-1-07
410-122-0530	1-1-07	Repeal	1-1-07	411-050-0400	1-1-07	Amend	2-1-07
410-122-0580	1-1-07	Amend	1-1-07	411-050-0401	1-1-07	Amend	2-1-07
410-122-0600	1-1-07	Amend	1-1-07	411-050-0405	1-1-07	Amend	2-1-07
410-122-0620	1-1-07	Amend	1-1-07	411-050-0408	1-1-07	Amend	2-1-07
410-122-0660	1-1-07	Amend	1-1-07	411-050-0410	1-1-07	Amend	2-1-07
410-122-0678	1-1-07	Amend	1-1-07	411-050-0412	1-1-07	Amend	2-1-07
410-122-0700	1-1-07	Amend	1-1-07	411-050-0415	1-1-07	Amend	2-1-07
410-122-0720	1-1-07	Amend	1-1-07	411-050-0420	1-1-07	Amend	2-1-07
410-125-0146	1-1-07	Amend	1-1-07	411-050-0430	1-1-07	Amend	2-1-07
410-125-0195	1-1-07	Amend	1-1-07	411-050-0435	1-1-07	Amend	2-1-07
410-127-0000	1-1-07	Repeal	2-1-07	411-050-0437	1-1-07	Repeal	2-1-07
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410-129-0010	1-1-07	Repeal	2-1-07	411-050-0441	1-1-07	Repeal	2-1-07
410-129-0080	1-1-07	Amend	1-1-07	411-050-0442	1-1-07	Repeal	2-1-07
410-131-0020	1-1-07	Repeal	2-1-07	411-050-0443	1-1-07	Amend	2-1-07
410-131-0080	1-1-07	Amend	1-1-07	411-050-0444	1-1-07	Adopt	2-1-07
410-132-0000	1-1-07	Repeal	2-1-07	411-050-0445	1-1-07	Amend	2-1-07
410-136-0020	1-1-07	Repeal	2-1-07	411-050-0447	1-1-07	Amend	2-1-07
410-141-0000	1-1-07	Amend	1-1-07	411-050-0450	1-1-07	Amend	2-1-07
410-141-0060	1-1-07	Amend	1-1-07	411-050-0455	1-1-07	Amend	2-1-07
410-141-0070	1-1-07	Amend	1-1-07	411-050-0460	1-1-07	Amend	2-1-07
410-141-0080	1-1-07	Amend	1-1-07	411-050-0465	1-1-07	Amend	2-1-07
410-141-0220	1-1-07	Amend	1-1-07	411-050-0480	1-1-07	Amend	2-1-07
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411-050-0485	1-1-07	Amend	2-1-07	413-015-0409	3-20-07	Adopt	5-1-07
411-050-0487	1-1-07	Amend	2-1-07	413-015-0415	3-20-07	Adopt	5-1-07
411-050-0491	1-1-07	Adopt	2-1-07	413-015-0420	3-20-07	Adopt	5-1-07
411-070-0130	3-13-07	Amend	4-1-07	413-015-0425	3-20-07	Adopt	5-1-07
411-335-0010	1-1-07	Amend	2-1-07	413-015-0430	3-20-07	Adopt	5-1-07
411-335-0020	1-1-07	Amend	2-1-07	413-015-0435	3-20-07	Adopt	5-1-07
411-335-0030	1-1-07	Amend	2-1-07	413-015-0440	3-20-07	Adopt	5-1-07
411-335-0050	1-1-07	Amend	2-1-07	413-015-0445	3-20-07	Adopt	5-1-07
411-335-0060	1-1-07	Amend	2-1-07	413-015-0450	3-20-07	Adopt	5-1-07
411-335-0070	1-1-07	Amend	2-1-07	413-015-0455	3-20-07	Am. & Ren.	5-1-07
411-335-0080	1-1-07	Amend	2-1-07	413-015-0460	3-20-07	Adopt	5-1-07
411-335-0090	1-1-07	Amend	2-1-07	413-015-0465	3-20-07	Adopt	5-1-07
411-335-0100	1-1-07	Amend	2-1-07	413-015-0470	3-20-07	Adopt	5-1-07
411-335-0110	1-1-07	Amend	2-1-07	413-015-0475	3-20-07	Adopt	5-1-07
411-335-0120	1-1-07	Amend	2-1-07	413-015-0480	3-20-07	Adopt	5-1-07
411-335-0130	1-1-07	Amend	2-1-07	413-015-0485	3-20-07	Renumber	5-1-07
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411-335-0150	1-1-07	Amend	2-1-07	413-015-0505	3-20-07	Repeal	5-1-07
411-335-0160	1-1-07	Amend	2-1-07	413-015-0510	3-20-07	Repeal	5-1-07
411-335-0170	1-1-07	Amend	2-1-07	413-015-0511	3-20-07	Repeal	5-1-07
411-335-0190	1-1-07	Amend	2-1-07	413-015-0512	3-20-07	Repeal	5-1-07
411-335-0200	1-1-07	Amend	2-1-07	413-015-0513	3-20-07	Repeal	5-1-07
411-335-0210	1-1-07	Amend	2-1-07	413-015-0514	3-20-07	Repeal	5-1-07
411-335-0220	1-1-07	Amend	2-1-07	413-015-0600	3-20-07	Repeal	5-1-07
411-335-0230	1-1-07	Amend	2-1-07	413-015-0605	3-20-07	Repeal	5-1-07
411-335-0240	1-1-07	Amend	2-1-07	413-015-0610	3-20-07	Repeal	5-1-07
411-335-0270	1-1-07	Amend	2-1-07	413-015-0615	3-20-07	Repeal	5-1-07
411-335-0300	1-1-07	Amend	2-1-07	413-015-0700	3-20-07	Repeal	5-1-07
411-335-0320	1-1-07	Amend	2-1-07	413-015-0705	3-20-07	Repeal	5-1-07
411-335-0330	1-1-07	Amend	2-1-07	413-015-0710	3-20-07	Repeal	5-1-07
411-335-0340	1-1-07	Amend	2-1-07	413-015-0715	3-20-07	Repeal	5-1-07
411-335-0350	1-1-07	Amend	2-1-07	413-015-0720	3-20-07	Repeal	5-1-07
411-335-0360	1-1-07	Amend	2-1-07	413-015-0725	3-20-07	Repeal	5-1-07
411-335-0380	1-1-07	Amend	2-1-07	413-015-0730	3-20-07	Repeal	5-1-07
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413-015-0211	3-20-07	Amend	5-1-07	413-020-0005	3-20-07	Amend	5-1-07
413-015-0212	3-20-07	Amend	5-1-07	413-020-0010	3-20-07	Amend	5-1-07
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413-015-0225	3-20-07	Amend	5-1-07	413-020-0045	3-20-07	Adopt	5-1-07
413-015-0300	3-20-07	Amend	5-1-07	413-020-0050	3-20-07	Amend	5-1-07
413-015-0302	3-20-07	Amend	5-1-07	413-020-0060	3-20-07	Adopt	5-1-07
413-015-0305	3-20-07	Amend	5-1-07	413-020-0065	3-20-07	Adopt	5-1-07
413-015-0310	3-20-07	Amend	5-1-07	413-020-0070	3-20-07	Adopt	5-1-07
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413-030-0006	3-20-07	Am. & Ren.	5-1-07	413-090-0000	4-1-07	Amend	5-1-07
413-030-0009	3-20-07	Adopt	5-1-07	413-090-0000(T)	4-1-07	Repeal	5-1-07
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413-030-0016	3-20-07	Adopt	5-1-07	413-090-0010	4-1-07	Amend	5-1-07
413-030-0019	3-20-07	Adopt	5-1-07	413-090-0010(T)	4-1-07	Repeal	5-1-07
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413-030-0026	3-20-07	Adopt	5-1-07	413-090-0030(T)	4-1-07	Repeal	5-1-07
413-030-0030	3-20-07	Amend	5-1-07	413-090-0040	4-1-07	Amend	5-1-07
413-040-0000	3-20-07	Amend	5-1-07	413-090-0050	4-1-07	Amend	5-1-07
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413-040-0047	3-20-07	Repeal	5-1-07	413-090-0170	4-1-07	Amend	5-1-07
413-040-0052	3-20-07	Repeal	5-1-07	413-090-0170(T)	4-1-07	Repeal	5-1-07
413-040-0057	3-20-07	Repeal	5-1-07	413-090-0180	4-1-07	Amend	5-1-07
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413-040-0071	3-20-07	Repeal	5-1-07	413-090-0190	4-1-07	Amend	5-1-07
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413-200-0292	3-20-07	Adopt	5-1-07	416-115-0040	2-13-07	Adopt	3-1-07
413-200-0294	3-20-07	Adopt	5-1-07	416-115-0050	2-13-07	Adopt	3-1-07
413-200-0296	3-20-07	Adopt	5-1-07	416-115-0060	2-13-07	Adopt	3-1-07
413-200-0301	3-20-07	Amend	5-1-07	416-115-0070	2-13-07	Adopt	3-1-07
413-200-0305	3-20-07	Amend	5-1-07	416-115-0080	2-13-07	Adopt	3-1-07
413-200-0306	3-20-07	Amend	5-1-07	416-115-0090	2-13-07	Adopt	3-1-07
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413-200-0335	3-20-07	Amend	5-1-07	416-115-0150	2-13-07	Adopt	3-1-07
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459-076-0050	4-4-07	Amend	5-1-07	461-135-0491	4-1-07	Adopt	5-1-07
459-076-0060	4-4-07	Amend	5-1-07	461-135-0492	4-1-07	Adopt	5-1-07
459-080-0100	11-24-06	Amend	1-1-07	461-135-0493	4-1-07	Adopt	5-1-07
461-001-0000	1-1-07	Amend	2-1-07	461-135-0494	4-1-07	Adopt	5-1-07
461-001-0000	4-1-07	Amend	5-1-07	461-135-0495	4-1-07	Adopt	5-1-07
461-001-0015	1-1-07	Adopt	2-1-07	461-135-0496	4-1-07	Adopt	5-1-07
461-001-0020	1-1-07	Adopt	2-1-07	461-135-0497	4-1-07	Adopt	5-1-07
461-001-0030	4-1-07	Amend	5-1-07	461-135-0506	1-1-07	Amend	2-1-07

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461-135-0520	1-1-07	Amend	2-1-07	461-145-0455	4-1-07	Amend	5-1-07
461-135-0708	1-1-07	Amend	2-1-07	461-145-0470	1-1-07	Amend	2-1-07
461-135-0725	1-1-07	Amend	2-1-07	461-145-0490	4-1-07	Amend	5-1-07
461-135-0730	4-1-07	Amend	5-1-07	461-145-0505	1-1-07	Amend	2-1-07
461-135-0750	1-1-07	Amend	2-1-07	461-145-0510	4-1-07	Amend	5-1-07
461-135-0750	4-1-07	Amend	5-1-07	461-145-0540	1-1-07	Amend	2-1-07
461-135-0780	1-1-07	Amend	2-1-07	461-145-0540	1-1-07	Amend	2-1-07
461-135-0950	1-1-07	Amend	2-1-07	461-145-0540	4-1-07	Amend	5-1-07
461-135-0960	1-1-07	Amend	2-1-07	461-145-0570	1-1-07	Amend	2-1-07
461-140-0040	4-1-07	Amend	5-1-07	461-145-0580	1-1-07	Amend	2-1-07
461-140-0120	4-1-07	Amend	5-1-07	461-145-0600	4-1-07	Amend	5-1-07
461-140-0210	1-1-07	Amend	2-1-07	461-145-0920	4-1-07	Amend	5-1-07
461-140-0220	1-1-07	Amend	2-1-07	461-145-0930	4-1-07	Amend	5-1-07
461-140-0242	1-1-07	Amend	2-1-07	461-150-0010	1-1-07	Repeal	2-1-07
461-140-0242	1-1-07	Amend	2-1-07	461-150-0055	1-1-07	Amend	2-1-07
461-140-0242	4-1-07	Amend	5-1-07	461-150-0070	1-1-07	Amend	2-1-07
461-140-0270	1-1-07	Amend	2-1-07	461-150-0080	1-1-07	Amend	2-1-07
461-140-0296	1-1-07	Amend	2-1-07	461-155-0180	1-24-07	Amend	3-1-07
461-140-0296	4-1-07	Amend	5-1-07	461-155-0225	1-1-07	Amend	2-1-07
461-140-0300	1-1-07	Amend	2-1-07	461-155-0225	4-1-07	Amend	5-1-07
461-145-0001	1-1-07	Amend	2-1-07	461-155-0235	1-24-07	Amend	3-1-07
461-145-0005	4-1-07	Amend	5-1-07	461-155-0250	1-1-07	Amend	2-1-07
461-145-0008	4-1-07	Amend	5-1-07	461-155-0250	3-1-07	Amend(T)	4-1-07
461-145-0010	4-1-07	Amend	5-1-07	461-155-0250	3-9-07	Amend(T)	4-1-07
461-145-0020	1-1-07	Amend	2-1-07	461-155-0250	4-1-07	Amend	5-1-07
461-145-0020	4-1-07	Amend	5-1-07	461-155-0250	4-1-07	Amend(T)	5-1-07
461-145-0022	1-1-07	Amend	2-1-07	461-155-0250(T)	3-9-07	Suspend	4-1-07
461-145-0022	4-1-07	Amend	5-1-07	461-155-0250(T)	4-1-07	Suspend	5-1-07
461-145-0025	1-1-07	Amend	2-1-07	461-155-0270	1-1-07	Amend	2-1-07
461-145-0030	4-1-07	Amend	5-1-07	461-155-0290	3-1-07	Amend(T)	4-1-07
461-145-0050	4-1-07	Amend	5-1-07	461-155-0290	4-1-07	Amend	5-1-07
461-145-0055	1-1-07	Amend	2-1-07	461-155-0291	3-1-07	Amend(T)	4-1-07
461-145-0055	4-1-07	Repeal	5-1-07	461-155-0291	4-1-07	Amend	5-1-07
461-145-0060	4-1-07	Amend	5-1-07	461-155-0295	3-1-07	Amend(T)	4-1-07
461-145-0086	4-1-07	Am. & Ren.	5-1-07	461-155-0295	4-1-07	Amend	5-1-07
461-145-0100	4-1-07	Amend	5-1-07	461-155-0300	1-1-07	Amend	2-1-07
461-145-0108	1-1-07	Amend	2-1-07	461-155-0530	4-1-07	Amend	5-1-07
461-145-0120	4-1-07	Amend	5-1-07	461-155-0660	1-1-07	Amend	2-1-07
461-145-0130	1-1-07	Amend	2-1-07	461-155-0670	4-1-07	Amend	5-1-07
461-145-0130	4-1-07	Amend	5-1-07	461-160-0010	1-1-07	Amend	2-1-07
461-145-0140	1-1-07	Amend	2-1-07	461-160-0015	1-1-07	Amend	2-1-07
461-145-0140	4-1-07	Amend	5-1-07	461-160-0020	1-1-07	Repeal	2-1-07
461-145-0175	1-1-07	Amend	2-1-07	461-160-0055	1-1-07	Amend	2-1-07
461-145-0185	1-1-07	Adopt	2-1-07	461-160-0090	1-1-07	Amend	2-1-07
461-145-0220	1-1-07	Amend	2-1-07	461-160-0400	1-1-07	Amend	2-1-07
461-145-0250	1-1-07	Amend	2-1-07	461-160-0415	1-1-07	Amend	2-1-07
461-145-0250	4-1-07	Amend	5-1-07	461-160-0430	1-1-07	Amend	2-1-07
461-145-0280	1-1-07	Amend	2-1-07	461-160-0500	1-1-07	Amend	2-1-07
461-145-0310	1-1-07	Amend	2-1-07	461-160-0560	1-1-07	Am. & Ren.	2-1-07
461-145-0330	1-1-07	Amend	2-1-07	461-160-0580	1-1-07	Amend	2-1-07
461-145-0340	1-1-07	Amend	2-1-07	461-160-0580	4-1-07	Amend	5-1-07
461-145-0343	1-1-07	Adopt	2-1-07	461-160-0610	1-1-07	Amend	2-1-07
461-145-0380	4-1-07	Amend	5-1-07	461-160-0610	4-1-07	Amend	5-1-07
461-145-0420	4-1-07	Amend	5-1-07	461-160-0620	1-1-07	Amend	2-1-07
461-145-0433	4-1-07	Amend	5-1-07	461-160-0620	4-1-07	Amend	5-1-07

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461-165-0120	4-1-07	Amend	5-1-07	471-030-0075	1-29-07	Amend	3-1-07
461-165-0180	1-1-07	Amend	2-1-07	471-031-0181	2-1-07	Adopt	3-1-07
461-170-0020	1-1-07	Amend	2-1-07	471-040-0010	12-3-06	Amend	1-1-07
461-170-0020	4-1-07	Amend	5-1-07	471-040-0040	12-3-06	Amend	1-1-07
461-170-0035	4-1-07	Amend	5-1-07	471-040-0041	12-3-06	Adopt	1-1-07
461-170-0101	1-1-07	Amend	2-1-07	571-004-0016	2-14-07	Amend(T)	3-1-07
461-170-0102	1-1-07	Amend	2-1-07	571-011-0015	3-1-07	Amend	4-1-07
461-170-0103	1-1-07	Amend	2-1-07	571-021-0005	2-14-07	Suspend	3-1-07
461-170-0130	1-1-07	Amend	2-1-07	571-021-0009	2-14-07	Suspend	3-1-07
461-175-0010	1-1-07	Amend	2-1-07	571-021-0015	2-14-07	Suspend	3-1-07
461-175-0030	1-1-07	Repeal	2-1-07	571-021-0019	2-14-07	Suspend	3-1-07
461-175-0050	4-1-07	Amend	5-1-07	571-021-0024	2-14-07	Suspend	3-1-07
461-175-0206	4-1-07	Amend	5-1-07	571-021-0029	2-14-07	Suspend	3-1-07
461-175-0250	1-1-07	Amend	2-1-07	571-021-0030	2-14-07	Suspend	3-1-07
461-175-0270	4-1-07	Amend	5-1-07	571-021-0035	2-14-07	Suspend	3-1-07
461-180-0010	4-1-07	Amend	5-1-07	571-021-0038	2-14-07	Suspend	3-1-07
461-180-0020	4-1-07	Amend	5-1-07	571-021-0040	2-14-07	Suspend	3-1-07
461-180-0044	1-1-07	Amend	2-1-07	571-021-0045	2-14-07	Suspend	3-1-07
461-180-0044	4-1-07	Amend	5-1-07	571-021-0050	2-14-07	Suspend	3-1-07
461-180-0085	1-1-07	Amend	2-1-07	571-021-0055	2-14-07	Suspend	3-1-07
461-180-0090	1-1-07	Amend	2-1-07	571-021-0056	2-14-07	Suspend	3-1-07
461-185-0050	1-1-07	Amend	2-1-07	571-021-0057	2-14-07	Suspend	3-1-07
461-190-0110	1-1-07	Am. & Ren.	2-1-07	571-021-0060	2-14-07	Suspend	3-1-07
461-190-0161	1-1-07	Repeal	2-1-07	571-021-0064	2-14-07	Suspend	3-1-07
461-190-0195	4-1-07	Amend	5-1-07	571-021-0068	2-14-07	Suspend	3-1-07
461-190-0197	1-1-07	Amend	2-1-07	571-021-0070	2-14-07	Suspend	3-1-07
461-190-0310	1-1-07	Amend	2-1-07	571-021-0072	2-14-07	Suspend	3-1-07
461-195-0301	1-1-07	Amend	2-1-07	571-021-0073	2-14-07	Suspend	3-1-07
461-195-0305	1-1-07	Amend	2-1-07	571-021-0100	2-14-07	Adopt(T)	3-1-07
461-195-0310	1-1-07	Amend	2-1-07	571-021-0105	2-14-07	Adopt(T)	3-1-07
461-195-0325	1-1-07	Amend	2-1-07	571-021-0110	2-14-07	Adopt(T)	3-1-07
461-195-0511	1-1-07	Amend	2-1-07	571-021-0115	2-14-07	Adopt(T)	3-1-07
461-195-0541	1-1-07	Amend	2-1-07	571-021-0120	2-14-07	Adopt(T)	3-1-07
461-195-0541	4-1-07	Amend	5-1-07	571-021-0125	2-14-07	Adopt(T)	3-1-07
461-195-0611	1-1-07	Amend	2-1-07	571-021-0130	2-14-07	Adopt(T)	3-1-07
462-160-0010	3-7-07	Repeal	4-1-07	571-021-0140	2-14-07	Adopt(T)	3-1-07
462-160-0020	3-7-07	Repeal	4-1-07	571-021-0150	2-14-07	Adopt(T)	3-1-07
462-160-0030	3-7-07	Repeal	4-1-07	571-021-0160	2-14-07	Adopt(T)	3-1-07
462-160-0100	3-7-07	Adopt	4-1-07	571-021-0165	2-14-07	Adopt(T)	3-1-07
462-160-0100(T)	3-7-07	Repeal	4-1-07	571-021-0200	2-14-07	Adopt(T)	3-1-07
462-160-0110	3-7-07	Adopt	4-1-07	571-021-0205	2-14-07	Adopt(T)	3-1-07
462-160-0110(T)	3-7-07	Repeal	4-1-07	571-021-0210	2-14-07	Adopt(T)	3-1-07
462-160-0120	3-7-07	Adopt	4-1-07	571-021-0215	2-14-07	Adopt(T)	3-1-07
462-160-0120(T)	3-7-07	Repeal	4-1-07	571-021-0220	2-14-07	Adopt(T)	3-1-07
462-160-0130	3-7-07	Adopt	4-1-07	571-021-0230	2-14-07	Adopt(T)	3-1-07
462-160-0130(T)	3-7-07	Repeal	4-1-07	571-021-0240	2-14-07	Adopt(T)	3-1-07
462-160-0140	3-7-07	Adopt	4-1-07	571-021-0250	2-14-07	Adopt(T)	3-1-07
462-160-0140	3-7-07	Amend(T)	4-1-07	571-023-0000	2-14-07	Adopt(T)	3-1-07
462-160-0140(T)	3-7-07	Repeal	4-1-07	571-023-0005	2-14-07	Amend(T)	3-1-07
462-210-0030	7-1-07	Amend	5-1-07	571-023-0010	2-14-07	Suspend	3-1-07
462-220-0030	7-1-07	Amend	5-1-07	571-023-0015	2-14-07	Suspend	3-1-07
462-220-0070	7-1-07	Amend	5-1-07	571-023-0020	2-14-07	Suspend	3-1-07
462-220-0090	7-1-07	Adopt	5-1-07	571-023-0025	2-14-07	Amend(T)	3-1-07
471-030-0074	12-3-06	Amend(T)	1-1-07	571-023-0030	2-14-07	Suspend	3-1-07
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571-023-0100	2-14-07	Adopt(T)	3-1-07	577-070-0010	1-5-07	Amend	2-1-07
571-023-0105	2-14-07	Adopt(T)	3-1-07	577-070-0015	1-5-07	Amend	2-1-07
571-023-0110	2-14-07	Adopt(T)	3-1-07	577-070-0020	1-5-07	Amend	2-1-07
571-023-0115	2-14-07	Adopt(T)	3-1-07	577-070-0025	1-5-07	Amend	2-1-07
571-023-0120	2-14-07	Adopt(T)	3-1-07	577-070-0030	1-5-07	Amend	2-1-07
571-040-0010	2-14-07	Adopt(T)	3-1-07	577-070-0035	1-5-07	Amend	2-1-07
571-040-0015	2-14-07	Adopt(T)	3-1-07	577-070-0045	1-5-07	Amend	2-1-07
571-040-0020	2-14-07	Am. & Ren.(T)	3-1-07	577-070-0050	1-5-07	Amend	2-1-07
571-040-0030	2-14-07	Am. & Ren.(T)	3-1-07	580-020-0020	1-11-07	Repeal	2-1-07
571-040-0040	2-14-07	Am. & Ren.(T)	3-1-07	580-023-0005	11-29-06	Adopt	1-1-07
571-040-0050	2-14-07	Am. & Ren.(T)	3-1-07	580-023-0010	11-29-06	Adopt	1-1-07
571-040-0060	2-14-07	Am. & Ren.(T)	3-1-07	580-023-0015	11-29-06	Adopt	1-1-07
571-040-0070	2-14-07	Am. & Ren.(T)	3-1-07	580-023-0020	11-29-06	Adopt	1-1-07
571-040-0080	2-14-07	Am. & Ren.(T)	3-1-07	580-023-0025	11-29-06	Adopt	1-1-07
571-040-0100	2-14-07	Adopt(T)	3-1-07	580-023-0030	11-29-06	Adopt	1-1-07
571-040-0201	2-14-07	Am. & Ren.(T)	3-1-07	580-023-0035	11-29-06	Adopt	1-1-07
571-040-0220	2-14-07	Suspend	3-1-07	580-023-0040	11-29-06	Adopt	1-1-07
571-040-0240	2-14-07	Suspend	3-1-07	580-023-0045	11-29-06	Adopt	1-1-07
571-040-0251	2-14-07	Am. & Ren.(T)	3-1-07	580-023-0050	11-29-06	Adopt	1-1-07
571-040-0253	2-14-07	Suspend	3-1-07	580-023-0055	11-29-06	Adopt	1-1-07
571-040-0261	2-14-07	Am. & Ren.(T)	3-1-07	580-023-0060	11-29-06	Adopt	1-1-07
571-040-0280	2-14-07	Suspend	3-1-07	580-023-0065	11-29-06	Adopt	1-1-07
571-040-0380	2-14-07	Amend(T)	3-1-07	580-040-0035	1-11-07	Amend	2-1-07
571-040-0382	2-14-07	Amend(T)	3-1-07	581-001-0005	2-21-07	Amend	4-1-07
571-040-0390	2-14-07	Amend(T)	3-1-07	581-011-0077	12-12-06	Amend	1-1-07
571-040-0400	2-14-07	Adopt(T)	3-1-07	581-011-0131	1-26-07	Adopt	3-1-07
571-040-0410	2-14-07	Am. & Ren.(T)	3-1-07	581-021-0061	12-12-06	Amend	1-1-07
571-040-0420	2-14-07	Am. & Ren.(T)	3-1-07	581-021-0062	12-12-06	Adopt	1-1-07
571-040-0430	2-14-07	Am. & Ren.(T)	3-1-07	581-021-0220	3-1-07	Amend	4-1-07
571-040-0440	2-14-07	Am. & Ren.(T)	3-1-07	581-021-0250	3-1-07	Amend	4-1-07
571-040-0450	2-14-07	Am. & Ren.(T)	3-1-07	581-021-0255	3-1-07	Adopt	4-1-07
571-040-0450	2-14-07	Am. & Ren.(T)	3-1-07	581-021-0260	3-1-07	Amend	4-1-07
571-040-0450	2-14-07	Am. & Ren.(T)	3-1-07	581-021-0265	3-1-07	Adopt	4-1-07
571-040-0460	2-14-07	Am. & Ren.(T)	3-1-07	581-021-0270	3-1-07	Amend	4-1-07
571-060-0005	2-22-07	Amend	4-1-07	581-021-0330	3-1-07	Amend	4-1-07
571-060-0005	3-12-07	Amend	4-1-07	581-021-0340	3-1-07	Amend	4-1-07
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571-100-0010	2-20-07	Adopt(T)	4-1-07	581-021-0360	3-1-07	Amend	4-1-07
571-100-0020	2-20-07	Adopt(T)	4-1-07	581-021-0371	3-1-07	Adopt	4-1-07
571-100-0030	2-20-07	Adopt(T)	4-1-07	581-021-0372	3-1-07	Adopt	4-1-07
571-100-0040	2-20-07	Adopt(T)	4-1-07	581-021-0380	3-1-07	Amend	4-1-07
571-100-0050	2-20-07	Adopt(T)	4-1-07	581-021-0391	3-1-07	Adopt	4-1-07
571-100-0060	2-20-07	Adopt(T)	4-1-07	581-021-0400	3-1-07	Amend	4-1-07
571-100-0070	2-20-07	Adopt(T)	4-1-07	581-021-0410	3-1-07	Amend	4-1-07
571-100-0080	2-20-07	Adopt(T)	4-1-07	581-021-0440	3-1-07	Repeal	4-1-07
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571-100-0100	2-20-07	Adopt(T)	4-1-07	581-022-1060	2-21-07	Amend	4-1-07
571-100-0110	2-20-07	Adopt(T)	4-1-07	581-022-1065	2-21-07	Adopt	4-1-07
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731-001-0150	3-26-07	Repeal	5-1-07	731-001-0710	3-26-07	Repeal	5-1-07
731-001-0160	3-26-07	Repeal	5-1-07	731-001-0720	3-26-07	Adopt	5-1-07
731-001-0170	3-26-07	Repeal	5-1-07	731-001-0730	3-26-07	Adopt	5-1-07
731-001-0180	3-26-07	Repeal	5-1-07	731-005-0450	1-24-07	Amend	3-1-07
731-001-0190	3-26-07	Repeal	5-1-07	731-005-0600	1-24-07	Amend	3-1-07
731-001-0200	3-26-07	Repeal	5-1-07	731-005-0600(T)	1-24-07	Repeal	3-1-07
731-001-0210	3-26-07	Repeal	5-1-07	731-146-0010	11-17-06	Amend	1-1-07
731-001-0220	3-26-07	Repeal	5-1-07	731-147-0010	11-17-06	Amend	1-1-07
731-001-0230	3-26-07	Repeal	5-1-07	731-148-0010	11-17-06	Amend	1-1-07
731-001-0240	3-26-07	Repeal	5-1-07	731-149-0010	11-17-06	Amend	1-1-07
731-001-0250	3-26-07	Repeal	5-1-07	733-030-0011	3-1-07	Amend	4-1-07
731-001-0260	3-26-07	Repeal	5-1-07	733-030-0016	3-1-07	Amend	4-1-07
731-001-0270	3-26-07	Repeal	5-1-07	733-030-0021	3-1-07	Amend	4-1-07
731-001-0280	3-26-07	Repeal	5-1-07	733-030-0026	3-1-07	Amend	4-1-07
731-001-0290	3-26-07	Repeal	5-1-07	733-030-0036	3-1-07	Amend	4-1-07
731-001-0300	3-26-07	Repeal	5-1-07	733-030-0045	3-1-07	Amend	4-1-07
731-001-0310	3-26-07	Repeal	5-1-07	733-030-0050	3-1-07	Amend	4-1-07
731-001-0320	3-26-07	Repeal	5-1-07	733-030-0055	3-1-07	Amend	4-1-07
731-001-0330	3-26-07	Repeal	5-1-07	733-030-0065	11-24-06	Amend	1-1-07
731-001-0340	3-26-07	Repeal	5-1-07	733-030-0090	3-1-07	Amend	4-1-07
731-001-0350	3-26-07	Repeal	5-1-07	733-030-0100	3-1-07	Amend	4-1-07
731-001-0360	3-26-07	Repeal	5-1-07	733-030-0105	3-1-07	Amend	4-1-07
731-001-0370	3-26-07	Repeal	5-1-07	733-030-0110	3-1-07	Amend	4-1-07
731-001-0380	3-26-07	Repeal	5-1-07	733-030-0135	11-24-06	Amend	1-1-07
731-001-0390	3-26-07	Repeal	5-1-07	733-030-0350	11-24-06	Amend	1-1-07
731-001-0400	3-26-07	Repeal	5-1-07	734-010-0230	1-24-07	Amend	3-1-07
731-001-0410	3-26-07	Repeal	5-1-07	734-010-0240	1-24-07	Amend	3-1-07
731-001-0420	3-26-07	Repeal	5-1-07	734-051-0020	1-26-07	Amend	3-1-07
731-001-0430	3-26-07	Repeal	5-1-07	734-051-0035	1-26-07	Amend	3-1-07
731-001-0440	3-26-07	Repeal	5-1-07	734-051-0040	1-26-07	Amend	3-1-07
731-001-0450	3-26-07	Repeal	5-1-07	734-051-0070	1-26-07	Amend	3-1-07
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731-001-0470	3-26-07	Repeal	5-1-07	734-051-0125	1-26-07	Amend	3-1-07
731-001-0480	3-26-07	Repeal	5-1-07	734-051-0145	1-26-07	Amend	3-1-07
731-001-0490	3-26-07	Repeal	5-1-07	734-051-0155	1-26-07	Amend	3-1-07
731-001-0500	3-26-07	Repeal	5-1-07	734-051-0225	1-26-07	Amend	3-1-07
731-001-0510	3-26-07	Repeal	5-1-07	734-051-0285	1-26-07	Amend	3-1-07
731-001-0520	3-26-07	Repeal	5-1-07	734-051-0295	1-26-07	Amend	3-1-07
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731-001-0580	3-26-07	Repeal	5-1-07	735-022-0040	11-17-06	Amend	1-1-07
731-001-0590	3-26-07	Repeal	5-1-07	735-022-0070	11-17-06	Amend	1-1-07
731-001-0600	3-26-07	Repeal	5-1-07	735-022-0080	11-17-06	Amend	1-1-07
731-001-0610	3-26-07	Repeal	5-1-07	735-022-0090	11-17-06	Amend	1-1-07
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735-064-0237	12-13-06	Amend	1-1-07	736-147-0020	2-7-07	Adopt	3-1-07
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735-072-0030	1-24-07	Repeal	3-1-07	736-147-0050	2-7-07	Adopt	3-1-07
735-072-0031	1-24-07	Repeal	3-1-07	736-147-0060	2-7-07	Adopt	3-1-07
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801-005-0010	1-1-07	Amend	2-1-07	812-004-0320	1-1-07	Amend	1-1-07
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801-010-0065	1-1-07	Amend	2-1-07	812-004-0360	1-1-07	Amend	1-1-07
801-010-0080	1-1-07	Amend	2-1-07	812-004-0400	1-1-07	Amend	1-1-07
801-010-0100	1-1-07	Amend	2-1-07	812-004-0420	1-1-07	Amend	1-1-07
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801-010-0345	1-1-07	Amend	2-1-07	812-004-0450	1-1-07	Amend	1-1-07
801-020-0620	1-1-07	Amend	2-1-07	812-004-0460	1-1-07	Amend	1-1-07
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801-030-0010	1-1-07	Amend	2-1-07	812-004-0500	1-1-07	Amend	1-1-07
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812-002-0460	1-1-07	Amend	1-1-07	812-007-0020	1-1-07	Amend	1-1-07
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812-002-0670	1-1-07	Amend	1-1-07	812-007-0060	1-1-07	Amend	1-1-07
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812-003-0300	1-1-07	Amend	1-1-07	812-009-0020	1-1-07	Amend	1-1-07
812-003-0400	1-1-07	Amend	1-1-07	812-009-0050	1-1-07	Amend	1-1-07
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812-004-0001	1-1-07	Amend	1-1-07	812-009-0090	1-1-07	Amend	1-1-07
812-004-0110	1-1-07	Amend	1-1-07	812-009-0100	1-1-07	Amend	1-1-07
812-004-0120	1-1-07	Amend	1-1-07	812-009-0120	1-1-07	Amend	1-1-07
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812-010-0090	1-1-07	Amend	1-1-07	813-012-0180	1-11-07	Adopt	2-1-07
812-010-0100	1-1-07	Amend	1-1-07	813-030-0005	1-11-07	Amend	2-1-07
812-010-0110	1-1-07	Amend	1-1-07	813-030-0010	1-11-07	Amend	2-1-07
812-010-0120	1-1-07	Amend	1-1-07	813-030-0020	1-11-07	Amend	2-1-07
812-010-0140	1-1-07	Amend	1-1-07	813-030-0025	1-11-07	Amend	2-1-07
812-010-0200	1-1-07	Amend	1-1-07	813-030-0030	1-11-07	Amend	2-1-07
812-010-0220	1-1-07	Amend	1-1-07	813-030-0031	1-11-07	Amend	2-1-07
812-010-0260	1-1-07	Amend	1-1-07	813-030-0032	1-11-07	Amend	2-1-07
812-010-0290	1-1-07	Amend	1-1-07	813-030-0034	1-11-07	Amend	2-1-07
812-010-0300	1-1-07	Amend	1-1-07	813-030-0035	1-11-07	Amend	2-1-07
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
813-010-0006	1-11-07	Amend	2-1-07	813-035-0005	1-11-07	Amend	2-1-07
813-010-0011	1-11-07	Amend	2-1-07	813-035-0011	1-11-07	Amend	2-1-07
813-010-0016	1-11-07	Amend	2-1-07	813-035-0016	1-11-07	Amend	2-1-07
813-010-0021	1-11-07	Amend	2-1-07	813-035-0018	1-11-07	Amend	2-1-07
813-010-0023	1-11-07	Repeal	2-1-07	813-035-0021	1-11-07	Amend	2-1-07
813-010-0024	1-11-07	Repeal	2-1-07	813-035-0029	1-11-07	Amend	2-1-07
813-010-0028	1-11-07	Repeal	2-1-07	813-035-0033	1-11-07	Amend	2-1-07
813-010-0029	1-11-07	Amend	2-1-07	813-035-0036	1-11-07	Amend	2-1-07
813-010-0032	1-11-07	Amend	2-1-07	813-035-0040	1-11-07	Amend	2-1-07
813-010-0033	1-11-07	Amend	2-1-07	813-035-0045	1-11-07	Amend	2-1-07
813-010-0036	1-11-07	Amend	2-1-07	813-035-0051	1-11-07	Amend	2-1-07
813-010-0042	1-11-07	Amend	2-1-07	813-035-0070	1-11-07	Adopt	2-1-07
813-010-0051	1-11-07	Amend	2-1-07	813-035-0700	1-11-07	Repeal	2-1-07
813-010-0700	1-11-07	Amend	2-1-07	813-035-0705	1-11-07	Repeal	2-1-07
813-010-0705	1-11-07	Amend	2-1-07	813-035-0710	1-11-07	Repeal	2-1-07
813-010-0710	1-11-07	Amend	2-1-07	813-035-0715	1-11-07	Repeal	2-1-07
813-010-0715	1-11-07	Amend	2-1-07	813-035-0720	1-11-07	Repeal	2-1-07
813-010-0720	1-11-07	Amend	2-1-07	813-042-0000	1-11-07	Adopt	2-1-07
813-010-0740	1-11-07	Adopt	2-1-07	813-042-0000(T)	1-11-07	Repeal	2-1-07
813-012-0010	1-11-07	Amend	2-1-07	813-042-0010	1-11-07	Adopt	2-1-07
813-012-0020	1-11-07	Amend	2-1-07	813-042-0010(T)	1-11-07	Repeal	2-1-07
813-012-0030	1-11-07	Amend	2-1-07	813-042-0020	1-11-07	Adopt	2-1-07
813-012-0040	1-11-07	Amend	2-1-07	813-042-0020(T)	1-11-07	Repeal	2-1-07
813-012-0050	1-11-07	Amend	2-1-07	813-042-0030	1-11-07	Adopt	2-1-07
813-012-0060	1-11-07	Amend	2-1-07	813-042-0030(T)	1-11-07	Repeal	2-1-07
813-012-0070	1-11-07	Amend	2-1-07	813-042-0040	1-11-07	Adopt	2-1-07
813-012-0080	1-11-07	Amend	2-1-07	813-042-0040(T)	1-11-07	Repeal	2-1-07
813-012-0090	1-11-07	Amend	2-1-07	813-042-0050	1-11-07	Adopt	2-1-07
813-012-0100	1-11-07	Amend	2-1-07	813-042-0050(T)	1-11-07	Repeal	2-1-07
813-012-0110	1-11-07	Amend	2-1-07	813-042-0060	1-11-07	Adopt	2-1-07
813-012-0120	1-11-07	Amend	2-1-07	813-042-0060(T)	1-11-07	Repeal	2-1-07
813-012-0130	1-11-07	Amend	2-1-07	813-042-0070	1-11-07	Adopt	2-1-07

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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
813-060-0061	1-11-07	Amend	2-1-07	813-205-0000	1-11-07	Amend	2-1-07
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
813-060-0070	1-11-07	Adopt	2-1-07	813-205-0010(T)	1-11-07	Repeal	2-1-07
813-090-0031	1-11-07	Amend	2-1-07	813-205-0020	1-11-07	Amend	2-1-07
813-090-0031(T)	1-11-07	Repeal	2-1-07	813-205-0020(T)	1-11-07	Repeal	2-1-07
813-090-0035	1-11-07	Amend	2-1-07	813-205-0030	1-11-07	Amend	2-1-07
813-090-0035(T)	1-11-07	Repeal	2-1-07	813-205-0030(T)	1-11-07	Repeal	2-1-07
813-090-0036	1-11-07	Amend	2-1-07	813-205-0040	1-11-07	Amend	2-1-07
813-090-0036(T)	1-11-07	Repeal	2-1-07	813-205-0040(T)	1-11-07	Repeal	2-1-07
813-090-0070	1-11-07	Amend	2-1-07	813-205-0050	1-11-07	Amend	2-1-07
813-090-0070(T)	1-11-07	Repeal	2-1-07	813-205-0050(T)	1-11-07	Repeal	2-1-07
813-110-0010	1-11-07	Amend	2-1-07	813-205-0051	1-11-07	Amend	2-1-07
813-110-0010(T)	1-11-07	Repeal	2-1-07	813-205-0051(T)	1-11-07	Repeal	2-1-07
813-110-0015	1-11-07	Amend	2-1-07	813-205-0052	1-11-07	Adopt	2-1-07
813-110-0015(T)	1-11-07	Repeal	2-1-07	813-205-0052(T)	1-11-07	Repeal	2-1-07
813-110-0030	1-11-07	Amend	2-1-07	813-205-0060	1-11-07	Amend	2-1-07
813-110-0030(T)	1-11-07	Repeal	2-1-07	813-205-0060(T)	1-11-07	Repeal	2-1-07
813-110-0033	1-11-07	Amend	2-1-07	813-205-0070	1-11-07	Amend	2-1-07
813-110-0033(T)	1-11-07	Repeal	2-1-07	813-205-0070(T)	1-11-07	Repeal	2-1-07
813-110-0035	1-11-07	Amend	2-1-07	813-205-0080	1-11-07	Amend	2-1-07
813-110-0035(T)	1-11-07	Repeal	2-1-07	813-205-0080(T)	1-11-07	Repeal	2-1-07
813-120-0080	1-11-07	Amend	2-1-07	813-205-0085	1-11-07	Adopt	2-1-07
813-120-0080(T)	1-11-07	Repeal	2-1-07	813-205-0085(T)	1-11-07	Repeal	2-1-07
813-120-0100	1-11-07	Amend	2-1-07	813-205-0100	1-11-07	Adopt	2-1-07
813-120-0100(T)	1-11-07	Repeal	2-1-07	813-205-0100(T)	1-11-07	Repeal	2-1-07
813-130-0000	1-11-07	Amend	2-1-07	813-205-0110	1-11-07	Adopt	2-1-07
813-130-0000(T)	1-11-07	Repeal	2-1-07	813-205-0110(T)	1-11-07	Repeal	2-1-07
813-130-0010	1-11-07	Amend	2-1-07	813-205-0120	1-11-07	Adopt	2-1-07
813-130-0010(T)	1-11-07	Repeal	2-1-07	813-205-0120(T)	1-11-07	Repeal	2-1-07
813-130-0020	1-11-07	Amend	2-1-07	813-205-0130	1-11-07	Adopt	2-1-07
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818-001-0021	3-1-07	Repeal	4-1-07	836-071-0220	1-1-08	Amend	4-1-07
818-012-0030	3-1-07	Amend	4-1-07	836-071-0242	1-1-08	Amend	4-1-07
820-001-0000	11-21-06	Amend	1-1-07	836-071-0250	1-1-08	Amend	4-1-07
820-001-0020	11-21-06	Amend	1-1-07	837-012-0305	1-1-07	Amend	2-1-07
820-010-0010	11-21-06	Amend	1-1-07	837-012-0310	1-1-07	Amend	2-1-07
820-010-0010	4-5-07	Amend	5-1-07	837-012-0315	1-1-07	Amend	2-1-07
820-010-0200	11-21-06	Amend	1-1-07	837-012-0320	1-1-07	Amend	2-1-07
820-010-0204	11-21-06	Adopt	1-1-07	837-012-0325	1-1-07	Amend	2-1-07
820-010-0205	11-21-06	Amend	1-1-07	837-012-0330	1-1-07	Amend	2-1-07
820-010-0206	11-21-06	Adopt	1-1-07	837-012-0340	1-1-07	Amend	2-1-07
820-010-0207	11-21-06	Amend	1-1-07	837-012-0350	1-1-07	Amend	2-1-07
820-010-0208	11-21-06	Adopt	1-1-07	837-012-0360	1-1-07	Amend	2-1-07
820-010-0210	4-5-07	Amend	5-1-07	837-012-0370	1-1-07	Amend	2-1-07
820-010-0225	11-21-06	Amend	1-1-07	837-012-1200	12-1-06	Amend	1-1-07
820-010-0226	11-21-06	Adopt	1-1-07	837-012-1210	12-1-06	Amend	1-1-07
820-010-0227	11-21-06	Adopt	1-1-07	837-012-1220	12-1-06	Amend	1-1-07
820-010-0228	11-21-06	Adopt	1-1-07	837-012-1230	12-1-06	Amend	1-1-07
820-010-0230	11-21-06	Amend	1-1-07	837-012-1240	12-1-06	Amend	1-1-07
820-010-0230	4-5-07	Amend	5-1-07	837-012-1250	12-1-06	Amend	1-1-07
820-010-0231	11-21-06	Adopt	1-1-07	837-012-1260	12-1-06	Amend	1-1-07
820-010-0231	4-5-07	Amend	5-1-07	837-012-1270	12-1-06	Amend	1-1-07
820-010-0255	11-21-06	Amend	1-1-07	837-012-1280	12-1-06	Amend	1-1-07
820-010-0300	11-21-06	Amend	1-1-07	837-012-1290	12-1-06	Amend	1-1-07
820-010-0305	11-21-06	Amend	1-1-07	837-012-1300	12-1-06	Amend	1-1-07
820-010-0325	3-23-07	Amend(T)	5-1-07	837-012-1310	12-1-06	Amend	1-1-07
820-010-0400	11-21-06	Adopt	1-1-07	837-012-1320	12-1-06	Amend	1-1-07
820-010-0605	11-21-06	Amend	1-1-07	837-012-1330	12-1-06	Amend	1-1-07
820-010-0617	11-21-06	Amend	1-1-07	837-012-1340	12-1-06	Amend	1-1-07
820-010-0618	11-21-06	Repeal	1-1-07	837-012-1350	12-1-06	Amend	1-1-07
820-010-0620	12-5-06	Amend(T)	1-1-07	837-012-1360	12-1-06	Amend	1-1-07
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820-010-0621	4-5-07	Adopt	5-1-07	837-012-1380	12-1-06	Amend	1-1-07
820-010-0622	11-21-06	Amend	1-1-07	837-012-1390	12-1-06	Amend	1-1-07
820-010-0635	11-21-06	Amend	1-1-07	837-012-1400	12-1-06	Amend	1-1-07
820-010-0635	4-5-07	Amend	5-1-07	837-012-1410	12-1-06	Amend	1-1-07
820-010-0720	4-5-07	Amend	5-1-07	837-012-1420	12-1-06	Amend	1-1-07
820-015-0005	11-21-06	Amend	1-1-07	837-020-0025	4-1-07	Amend	5-1-07
820-015-0010	11-21-06	Amend	1-1-07	837-020-0035	4-1-07	Amend	5-1-07
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820-020-0045	11-21-06	Amend	1-1-07	837-020-0075	4-1-07	Amend	5-1-07
820-040-0040	11-21-06	Amend	1-1-07	837-020-0080	4-1-07	Amend	5-1-07
836-020-0770	2-12-07	Amend	3-1-07	837-020-0085	4-1-07	Amend	5-1-07
836-031-0800	2-12-07	Adopt	3-1-07	837-020-0105	4-1-07	Amend	5-1-07
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836-031-0810	2-12-07	Adopt	3-1-07	837-020-0120	4-1-07	Amend	5-1-07
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836-043-0110	1-17-07	Amend	3-1-07	837-040-0001	4-1-07	Amend	1-1-07
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839-005-0030	1-3-07	Amend	2-1-07	848-020-0000	4-1-07	Amend	4-1-07
839-006-0205	2-1-07	Amend	3-1-07	848-040-0100	4-1-07	Amend	4-1-07
839-006-0206	2-1-07	Amend	3-1-07	848-040-0110	4-1-07	Amend	4-1-07
839-009-0250	1-17-07	Amend	3-1-07	848-040-0117	4-1-07	Amend	4-1-07
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839-025-0020	1-23-07	Amend	3-1-07	848-040-0135	4-1-07	Amend	4-1-07
839-025-0700	1-31-07	Amend	3-1-07	848-040-0140	4-1-07	Amend	4-1-07
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839-025-0700	12-8-06	Amend	1-1-07	848-040-0150	4-1-07	Amend	4-1-07
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839-025-0700	4-1-07	Amend	5-1-07	850-060-0226	12-11-06	Amend	1-1-07
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845-016-0036	9-1-07	Adopt	4-1-07	855-065-0007	12-19-06	Amend	2-1-07
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