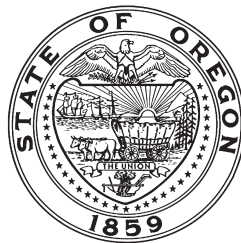


# OREGON BULLETIN

Supplements the 2007 *Oregon Administrative Rules Compilation*

**Volume 46, No. 8**  
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For June 18, 2007–July 13, 2007



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**BILL BRADBURY**  
Secretary of State  
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# INFORMATION AND PUBLICATION SCHEDULE

## General Information

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

## Background on Oregon Administrative Rules

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

## How to Cite

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

## Understanding an Administrative Rule’s “History”

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

## Locating the Most Recent Version of an Administrative Rule

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

## Locating Administrative Rules Unit Publications

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

## 2006–2007 Oregon Bulletin Publication Schedule

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

## Submission Deadline — Publishing Date

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

## Reminder for Agency Rules Coordinators

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

## Publication Authority

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

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# EXECUTIVE ORDERS

## EXECUTIVE ORDER NO. 07 - 08

### INVOCATION OF EMERGENCY CONFLAGRATION ACT FOR EGLEY COMPLEX FIRES IN HARNEY COUNTY

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

Fires known as the "Egley Complex Fires" are burning in Harney County.

The resources necessary for protection of life and property from the Egley Complex Fires are beyond local capabilities. Assistance with life, safety, and structural fire protection was requested by the Harney County Fire Defense Chief. The State Fire Marshal concurs with that request.

In accordance with ORS 476.510-476-610, I have determined that a threat to life, safety, and property exists due to fires known as the Egley Complex Fires in Harney County and the threat exceeds the firefighting capabilities of local firefighting personnel and equipment. Accordingly, I have invoked the Emergency Conflagration Act.

These findings were made at 11:12 p.m. on July 9, 2007 and I now confirm them with this Executive Order.

### NOW THEREFORE, IT IS HEREBY DIRECTED AND ORDERED:

1. The Oregon State Police and the Office of State Fire Marshal shall mobilize fire resources statewide and coordinate with all appropriate Fire Defense Chiefs for the use of personnel and equipment in accordance with the Emergency Conflagration Act to suppress and contain this fire.
2. This emergency is declared only for the Egley Complex Fires in Harney County.
3. This order was made by verbal proclamation at 11:12 p.m. the 9th day of July, 2007 and signed this 10th day of July, 2007, in Salem, Oregon.

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

ATTEST

/s/ Bill Bradbury  
Bill Bradbury  
SECRETARY OF STATE

## EXECUTIVE ORDER NO. 07 - 09

### PROCLAMATION OF STATE OF EMERGENCY DUE TO IMMINENT THREAT OF WILDFIRE

Pursuant to ORS 401.055, I find that the State of Oregon is in a critical fire danger situation. Many areas of the state are experiencing

record high heat and widespread lightning strikes have occurred in recent days. The forecast calls for thunderstorms with lightning in many parts of the state and extreme drought conditions exist in several areas of Oregon. The extended forecast calls for above normal temperatures and below normal precipitation through the remainder of the summer. The imminent threat of wildfire exists statewide, including forests in coastal counties, the Cascades and eastern and southern Oregon. In fact, numerous wildfires are currently burning in the state. This threat is not likely to recede in the near future.

These conditions, in conjunction with the existing nationwide shortage of aviation resources available to fight fires, require a concerted and coordinated state response. In particular, it is critically important that National Guard resources be positioned to respond adequately and effectively to this dangerous and dynamic situation.

Therefore, subject to the limitations described below, I hereby declare a statewide **State of Emergency** due to the imminent threat of wildfire.

### NOW, THEREFORE, IT IS DIRECTED AND ORDERED:

1. The Oregon Military Department, including its Office of Emergency Management, and the Oregon Department of Forestry are authorized to coordinate the use of National Guard personnel and equipment to perform any activity designed to prevent or alleviate damage from the emergency.
2. This statewide fire emergency declaration is limited to the use of National Guard resources for fire management. Any local government requests for state resources must be submitted through county governing bodies to the Office of Emergency Management pursuant to ORS Chapter 401. If the circumstances warrant a broader invocation of the state's emergency management, additional declarations of emergency will be issued.
3. This order shall remain in effect until the threat is significantly relieved, the fire season ends, or I expressly rescind this Order.

This order was made by verbal proclamation at 5:30 pm on the 11th day of July, 2007 and signed this 12th day of July, 2007 in Salem, Oregon.

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

ATTEST

/s/ Bill Bradbury  
Bill Bradbury  
SECRETARY OF STATE

## OTHER NOTICES

### PROPOSED CLEANUP ACTION AT THE FORMER AVISON MILL #1 SITE

**COMMENTS DUE:** August 30, 2007

**PROJECT LOCATION:** 500 E. 5th Street, Molalla, Oregon

**PROPOSAL:** The Department of Environmental Quality (DEQ) invites public comment on environmental cleanup action proposed for contaminated soil and sediment on the 25-acre northern portion of the Avison Mill #1 site that is proposed for redevelopment. The proposed action consists of: removal of a small area of contaminated soil as necessary; capping of remaining contamination exceeding DEQ action levels; and institutional controls requiring inspection and maintenance of the cap. Groundwater beneath the site has not been significantly impacted.

**HIGHLIGHTS:** The approximately 54-acre former Avison Mill #1 property is located in a mixed industrial/residential area south of downtown Molalla, and is vacant except for a small concrete batch plant operating in the northwest site corner. A lumber mill operated on the site from the 1950s through 1990s. From approximately 1973 to 1983 a 1% pentachlorophenol (PCP) solution was used to prevent mold growth on lumber prior to overseas shipment. Treatment occurred at two tanks in the northwest site corner. The tanks and nearby soil were removed from the site by Avison in the 1980s. Investigation has determined that contamination remains in soil and ditch sediment in the vicinity of the former tanks at concentrations exceeding DEQ action levels for both residential and industrial exposure. Detected contaminants are primarily chlorinated dibenzo-dioxins and -furans (dioxins), thought to be impurities in the former dip tank solutions, and to a lesser extent PCP. Concentrations of dioxins exceeded DEQ's "hot spot" values at one location near the former west dip tank. A risk assessment and feasibility study were completed in July 2007 for the 25-acre northern portion of the Avison site that has been proposed as a Certified Industrial Site. This area includes the most contaminated part of the site where the dip tanks were formerly located. A remedy consisting of limited hot spot removal as necessary; capping of remaining contaminated soil; and the recording of institutional controls are proposed for the 25-acre parcel. The proposed remedy is considered to be consistent with Oregon rule and statute and protective of human health.

**HOW TO COMMENT:** To review project records, please call (503) 229-6729. The DEQ project manager is Dan Hafley (503-229-5417). Send written comments to the project manager at the Department of Environmental Quality, Northwest Region, 2020 SW 4th Avenue, Suite 400, Portland, OR 97201 by August 30, 2007. A public meeting will be held to receive oral comments if requested by 10 or more people, or by a group with a membership of 10 or more.

**THE NEXT STEP:** DEQ will consider all comments received and make a final decision after consideration of these comments.

### A CHANCE TO COMMENT ON PROPOSED CONSENT JUDGMENT FOR A PROSPECTIVE PURCHASER AGREEMENT AT THE FORMER LINNTON PLYWOOD ASSOCIATION PROPERTY IN PORTLAND, OREGON

**COMMENTS DUE:** August 31, 2007

**PROJECT LOCATION:** 10504 NW St Helens Rd., Portland, Oregon.

**PROPOSAL:** The Department of Environmental Quality (DEQ) is proposing to enter into a Consent Judgment for a Prospective Purchaser Agreement (PPA) with Linnton Property, LLC for the property located at 10504 NW St Helens Rd., Portland, Oregon (the "Property").

**HIGHLIGHTS:** Linnton Property, LLC is acquiring the Property to allow Linnton Property, LLC to provide beneficial redevelopment of the Property, create new jobs in the Linnton Area and return the Property to productive use. The Property was used historically as a lumber mill from 1894 through 1947 and then as a plywood mill from

1951 through 2001. During historic operations at the site, hazardous substances may have been released at and from the Property.

The Consent Judgment will require Linnton Property, LLC to coordinate future development plans with DEQ, to update the stormwater discharge permit and to manage stormwater discharges in accordance with the DEQ/EPA Portland Harbor Joint Source Control Strategy. Linnton Property, LLC will agree to provide access to the Property for any additional investigation and removal or remedial actions that may be required, and to implement any institutional or engineering controls that may be necessary.

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 more than 90 Prospective Purchaser Agreements throughout the State since the program began.

The proposed Consent Judgment will provide Linnton Property, LLC with a release from liability for claims by the State of Oregon under ORS §465.255 relating to any historical releases of hazardous substances at or from the Property. The proposed Consent Judgment will also provide Linnton Property, LLC with protection from potential contribution actions by third parties for recovery of remedial action costs associated with any historical releases at or from the Property. DEQ retains all existing rights it may have as to all other parties potentially liable for any releases.

**HOW TO COMMENT:** Written comments concerning the proposed Consent Judgment 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 August 31, 2007.

Questions may be directed to Mr. Landman at that address or by calling (503) 229-6461. The proposed Consent Judgment and DEQ file on the Property may be reviewed at DEQ's Northwest Region office in Portland by contacting Loren Garner at (503) 229-6900.

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 Consent Judgment.

**THE NEXT STEP:** DEQ will consider all public comments. A final decision concerning the proposed Consent Judgment will be made after consideration of public comments.

### DEQ DETERMINES NO FURTHER ACTION REQUIRED RIVER BEND SAND AND GRAVEL SITE SALEM, OREGON

**PROJECT LOCATION:** River Bend Sand and Gravel, 4105 Lancaster Drive SE, Salem, Oregon.

**HIGHLIGHTS:** In 1988 there was a spill of approximately 4,000 gallons of diesel fuel from an above ground storage tank, some of which leaked through a crack in the secondary containment system. The containment system was repaired and contaminated soils were removed shortly thereafter, but DEQ did not receive a cleanup report at the time.

In 2006 soil samples were collected from all sides of the storage tank to confirm that sufficient contaminated soil had been removed. Several petroleum constituents were detected, but at levels below DEQ standards for soil cleanup. As there is no unacceptable risk based on contaminants at this site, DEQ has issued a No Further Action (NFA) determination.

A file containing detailed information for the site is available for review in DEQ's Eugene office located at 1102 Lincoln St., Suite 210, Eugene, Oregon 97401. Questions concerning this site should be directed to Seth Sadofsky at DEQ's Eugene office or by calling him at 541-687-7329 or toll-free in Oregon at 1-800-844-8467, extension 7329.

## OTHER NOTICES

### CHANCE TO COMMENT ON... PROPOSED NO FURTHER ACTION DETERMINATION FOR THE FANNO CREEK PLACE PROPERTY, PORTLAND, OREGON

**COMMENTS DUE:** September 1, 2007

**PROJECT LOCATION:** 16045 & 16075 SW Upper Boones Ferry Road, Tigard, 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 no further action determination (NFA) at the Fanno Creek Place property in Tigard, Oregon. The property owner is Opus Northwest, LLC.

**HIGHLIGHTS:** DEQ has reviewed Phase I Environmental Site Assessments (ESAs), Phase II ESAs, a remedial action plan (RAP) and a RAP Closure Report for this 6.44-acre site in Tigard, Oregon. Site assessments and investigations identified areas of the property with moderate levels of petroleum contaminated soil and groundwater caused as part of the site's past operations supporting concrete construction, lawn care providers, truck maintenance, a former gas station and other commercial and light industrial businesses. Site sampling investigations were also performed to evaluate the areas of the property where above-ground storage tanks (ASTs) were located, to support the removal of two underground storage tanks (USTs).

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

- A total of 194 tons of petroleum-contaminated soil was removed and disposed of at the Hillsboro landfill;
- A total of 7,200 gallons of petroleum-contaminated water was removed from excavations, sumps and USTs;
- Removal of two sumps, two USTs and a septic system;
- A UIC was decommissioned.

Based on the work performed by Opus Northwest and their consultant, and the confirmation sampling performed in January and February of 2007, DEQ is prepared to issue a NFA for 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](mailto:harman.charles@deq.state.or.us) by 5 p.m., September 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 Fanno Creek Place property is listed as ECSI # 4677.

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 September 1, 2007 deadline and the Regional Cleanup Manager will make a final decision after consideration of these public comments.

### CONDITIONAL NO FURTHER ACTION PROPOSAL FORMER SPIC N SPAN DRY CLEANER ONTARIO, OREGON

**COMMENT PERIOD:** August 1–31, 2007

**PROJECT LOCATION:** 1427 SW 4th Ave, Ontario, OR

The Oregon Department of Environmental Quality (DEQ) is proposing a conditional "No Further Action" determination for the former Spic 'n Span Dry Cleaner site at 1427 SW 4th Ave. in Ontario. The site is located in a small shopping plaza (West Park Plaza) along Ontario's main downtown arterial constructed in 1971. The site is no

longer an active dry cleaner store but was operated for a period of approximately 5 years during the 1970's.

Investigation work in 2005 and 2006 confirmed historic releases of dry cleaning solvents to the subsurface. Soil and groundwater contamination are currently below DEQ's Risk Based Concentrations (RBCs) for exposure pathways which include residential, occupational, and excavation scenarios.

Ventilation controls at the shopping plaza are currently providing adequate air exchange in the former dry cleaner space to control and mitigate potential issues with indoor air.

DEQ invites public comment on the proposed conditional NFA until August 31, 2007. Project documents are available for review at the DEQ Bend office, 300 SE Reed Market Rd. Office hours are 8 a.m. to noon and 1 to 5 p.m., Monday through Friday.

Questions or concerns regarding DEQ's decision should be addressed to David Anderson, DEQ project manager, at 541-388-6146 x258 or via e-mail at [anderson.david@deq.state.or.us](mailto:anderson.david@deq.state.or.us)

### CHANCE TO COMMENT ON... PROPOSED CONDITIONAL NO FURTHER ACTION DECISION, FORMER MARINE FINANCE SITE

**COMMENTS DUE:** August 31, 2007

**PROJECT LOCATION:** The site is located at 8444 NW St. Helens Road, 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 for a "Conditional No Further Action" (CNFA) determination for the former Marine Finance Site. Because institutional and engineering controls will be implemented the site will not be removed from the Confirmed Release list, and will be placed on the Inventory of hazardous substance sites list.

**HIGHLIGHTS:** The site is located on the Willamette River and since the 1920s has been used by various marine construction and tow boat/barge companies. Between 1936 and 1940 the area was built up with fill material, followed by construction of two buildings prior to 1957. Most of the site was leased to two metal salvage companies from 1988 to 1993. Advanced American Construction Properties LLC (AACP) acquired the property in 2004 and completed site redevelopment in 2006.

DEQ conducted the initial site investigative work and corrective actions in 2000 using the Orphan Fund account. Due to remaining contamination issues, AACP entered into a Prospective Purchaser Agreement (PPA) with DEQ to conduct a site investigation and implement remedial actions as needed to address soil and groundwater contamination.

Soil with contaminant levels above either human-health risk based concentrations or screening levels developed to protect human health and wildlife in the Willamette River required remediation. A total of 535 cubic yards of impacted soil were excavated and used as fill beneath the newly constructed building. Other contaminated areas were capped with at least 3 feet of clean soil. DEQ did not require a remedial action for groundwater.

Based on the results of the risk evaluation DEQ determined that no further action is required to address site contamination provided a cap is maintained over areas of residual soil contamination in order to prevent direct contact by site workers, and to mitigate erosion and runoff of soil to the Willamette River. To ensure that the site remains protective of human health and the environment, DEQ will require maintenance of the cap, and an institutional control preventing activities that could affect cap integrity unless they are approved by DEQ. These controls will be documented in an Equitable Easement and Servitude (EE&S) to be issued by DEQ and recorded with the deed by the County.

**HOW TO COMMENT:** You can review the administrative record for the proposed Conditional No Further Action at DEQ's Northwest Region located at 2020 SW Fourth Avenue, Suite 400, Portland, Oregon. For an appointment to review the files call DEQ File Clerk,

## OTHER NOTICES

Dawn Weinberger at (503)229-6729 or toll free at (800)452-4011; or TTY at (503)229-5471. Please send written comments to Mark Pugh, Project Manager, DEQ Northwest Region, 2020 SW Fourth Avenue, Suite 400, Portland, Oregon 97201 or via email at: pugh.mark@deq.state.or.us. DEQ must receive written comments by 5:00 p.m. on August 31, 2007.

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

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

**THE NEXT STEP:** DEQ will consider all public comments received by the August 31, 2007 deadline. A final decision will be made after consideration of public comment.

### CHANCE TO COMMENT ON... PROPOSED NO FURTHER ACTION DECISION FOR THE UPPER OVERBANK DEPOSITS PORTION OF THE DOLLAR DEVELOPMENT, HOLMAN AVENUE SITE, PORTLAND, OREGON

**COMMENTS DUE:** August 31, 2007

**PROJECT LOCATION:** 10940 NE Holman Avenue, Portland, Oregon

**PROPOSAL:** Pursuant to Oregon Revised Statute, ORS 465.320, and Oregon Administrative Rule, OAR 340-122-100, the Department of Environmental Quality (DEQ) invites public comment on its proposal for a "No Further Action" (NFA) determination proposed for a portion of the Dollar Development site, located in the Holman Redevelopment Area in Portland, Oregon. This proposed NFA determination is for the upper Overbank Deposits portion of the site. The proposed NFA determination is based on approval of the investigation and remedial measures conducted to date.

**HIGHLIGHTS:** DEQ has completed an environmental evaluation of the Dollar Development, Holman Avenue site. Dollar purchased the property in 1989, and has remained vacant and undeveloped since that time. In November 1996, DEQ issued an Order (WMCSR-NWR-96-09) to Dollar Development requiring performance of a remedial investigation and feasibility study to address contamination detected at the site in the Overbank Deposits (OD) and in the Troutdale Gravel Aquifer (TGA). Previous investigations of the Dollar site identified chlorinated solvents in groundwater and low concentrations of petroleum constituents in soil. A remedial investigation (RI) and risk assessment of the Dollar Development property completed in May 2005 indicate soil and groundwater conditions at the site do not pose an unacceptable risk to human health and the environment, and do not appear to pose a significant threat to beneficial use of underlying groundwater in the TGA as a source of public water supply by the City of Portland. A source for the groundwater contamination present in the OD has not been identified in on-site soil. Based on this information, DEQ has concluded that NFA is warranted for the upper OD portion of the Dollar Development site.

**HOW TO COMMENT:** You may review the administrative record for the proposed NFA at DEQ's Northwest Region Gresham Office located at 1550 NW Eastman Parkway, Suite 290, Gresham, Oregon, 97030. For an appointment to review these files call 503-667-8414 x55012; toll free at (800)452-4011; or TTY at 503-229-5471. Please send written comments to Mavis Kent, Project Manager, at the address listed above or via email at KENT.Mavis@deq.state.or.us. DEQ must receive written comments by 5 p.m. on August 31, 2007. Upon written request by ten or more persons or by a group with a

membership of 10 or more, DEQ will hold a public meeting to receive verbal comments.

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

**THE NEXT STEP:** DEQ will consider all public comments received by the August 31, 2007 deadline. In the absence of comments, DEQ will issue the No Further Action determination.

### NO FURTHER ACTION PROPOSED FOR FORMER PACO PUMPS FACILITY

**PROJECT LOCATION:** Paco Pumps, 2551 NW 30th Avenue, Portland, Oregon

**PROPOSAL:** As required by ORS 465.320, the Department of Environmental Quality (DEQ) invites public comment on its proposal to approve the completion of investigation and remedial actions at the former Paco Pumps facility. Contaminated soil at the site has been cleaned up and DEQ is proposing to issue a "no further action" determination for the project.

**HIGHLIGHTS:** The Paco Pumps site is 1.34 acres in the industrial area of northwest Portland. Their operations entailed pump assembly, pump rental, and pump servicing with a machine shop, pump washing and service area, and paint booth. Phase I and Limited Phase II Environmental Site Assessments were completed for the property in 2004. The main hazardous substance concern was the detection of polychlorinated biphenyls (PCBs) in shallow soil on the west side of the facility building. Soil excavations were completed, most recently in January 2007, to remove the PCB-contaminated soil. Confirmation samples were collected with residual PCBs in soil below DEQ's risk-based concentrations for the protection of human health and below screening level values for protection of ecological receptors. In addition, storm drain lines were cleaned out to remove sediments related to past facility activities.

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

### A CHANCE TO COMMENT ON PROPOSED NO FURTHER ACTION DETERMINATION AT HEADWATERS AT TRYON CREEK SITE

**COMMENTS DUE:** August 31, 2007

**PROJECT LOCATION:** 8833 SW 30th Avenue, Portland, Oregon  
**PROPOSAL:** Pursuant to ORS 465.320 the Department of Environmental Quality (DEQ) invites public comment on the no further action recommendation for the Headwaters at Tryon Creek site at 8833 SW 30th Avenue (Intersection of SW 30th Avenue and SW Marigold Street) in Portland, Oregon.

**HIGHLIGHTS:** The Headwaters at Tryon Creek project involved the redevelopment of the former Eagles Lodge into multi-story apartments and townhomes, and the daylighting of a stream channel leading to Tryon Creek that had been buried in a culvert when the property was originally leveled. During site excavation activities hydrocarbon contaminated soil was discovered in the eastern portion of Lot 3 and beneath SW 30th Avenue. No source was discovered, and it appears likely that petroleum contaminated soil was used as part of the fill on the property and beneath the street. More than 2200 tons of soil was removed from these areas. All contaminated soil was removed from the property to below risk-based levels. Limited soil contamination remains in place beneath SW 30th Avenue, but an impervious liner has been placed between those soils and the Head-

## OTHER NOTICES

waters at Tryon Creek property. Petroleum contamination was also found in the backfill material around one of the utility lines exposed during installation of the stream culvert. The stream culvert was enclosed in a liner beneath SW 30th Avenue to prevent migration of contaminants into the stream or Tryon Creek. DEQ is therefore proposing a no further action (NFA) determination for the Headwaters at Tryon Creek property with no restrictions on future site use.

**HOW TO COMMENT:** The project file is available for public review (ECSI File # 4371). To schedule an appointment, contact Dawn Weinberger at 503-229-6729. The DEQ contact for this project is Loren Garner, 503-229-6900. Written comments should be sent to Loren Garner, DEQ Northwest Region, 2020 SW Fourth Avenue, Suite 400, Portland, OR 97201 by August 31, 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. Please notify DEQ if you need copies of written materials in an alternative format (e.g., Braille, large print, etc.). To make these arrangements, contact DEQ Office of Communication and Outreach at 503-229-5317. Additional information is also available at: <http://www.deq.state.or.us/news/publicnotices/pn.asp>

**THE NEXT STEP:** DEQ will consider all public comments before making the final decision.

### REQUEST FOR PUBLIC COMMENT RECOMMENDATION FOR NO FURTHER ACTION ON CE MILLER AUTO BODY PROPERTY, SALEM

**COMMENTS DUE:** September 1, 2007

**PROJECT LOCATION:** CE Miller Auto Body Shop, 1365 Broadway St. NE, Salem.

**PROPOSAL:** DEQ is recommending no further cleanup action at the CE Miller Auto Body Site. This notification is required by ORS 465.320.

**HIGHLIGHTS:** Soil contamination was discovered during sewer repairs in the alley behind the CE Miller Auto Body Shop in the spring of 2005. The contamination is believed to be caused by past dumping of waste paint and/or solvents behind the shop. A subsequent investigation found contaminants including several volatile organic compounds in soil and groundwater at the site. Concentrations of Benzene, sec-Butylbenzene, and Xylenes in soil were above DEQ cleanup standards.

On July 26, 2005, approximately 4.6 tons of soil was removed from the site. Subsequent sampling showed that remaining soil and groundwater contaminant concentrations are below any applicable DEQ cleanup standards. In the absence of unacceptable risks from residual contamination at the site, DEQ recommends that no further action be required.

**HOW TO COMMENT:** The project files may be reviewed by appointment at DEQ's Eugene office, 1102 Lincoln Street. Written comments must be received by September 1, 2007. Comments should be submitted to DEQ's Eugene office, located at 1102 Lincoln St., Suite 210, Eugene, OR 97401 or by e-mail at [sadofsky.seth@deq.state.or.us](mailto:sadofsky.seth@deq.state.or.us). Questions may also be directed to Seth Sadofsky at the Eugene address or by calling him at 1-800-844-8467 ext 7329. The TTY number for the hearing impaired is 541-687-5603. DEQ will consider all public comments before taking final actions on this matter.

### A CHANCE TO COMMENT ON PROPOSED CONSENT JUDGMENT FOR A PROSPECTIVE PURCHASER AGREEMENT AT THE ROSSMAN LANDFILL PROPERTY IN OREGON CITY

**COMMENTS DUE:** August 31, 2007

**PROJECT LOCATION:** Rossman Landfill and other parcels described below, Oregon City, Oregon.

**PROPOSAL:** The Department of Environmental Quality (DEQ) is proposing to enter into a Consent Judgment for a Prospective Purchaser Agreement (PPA) with OC CenterCal, LLC for the property located in Section 29, Township 2 South, Range 2 East, consisting of the Rossman Landfill/Trails End Golf/Parker Northwest Paving parcel at 1101-1107 Abernathy Road, the Stein Oil parcel at 1780 Washington Street, and the City of Oregon City Parcel at 1810 Washington Street, Oregon City, Oregon (the "Property").

**HIGHLIGHTS:** OC CenterCal, LLC is acquiring the Property to allow OC CenterCal, LLC to provide beneficial redevelopment of the Property, create new jobs, and return the Property to productive use. The majority of the Property was used historically as a landfill from 1969 to 1983. The landfill is now closed. During historic operations at the site, hazardous substances, including methane, may have been released at and from the Property.

The Consent Judgment will require OC CenterCal, LLC to assume certain environmental obligations relating to its redevelopment project and to monitor baseline environmental conditions at the Property so that existing conditions are not exacerbated as a result of the redevelopment project. CenterCal Property LLC will also coordinate future development plans with DEQ to ensure that structures built at the Property contain appropriate mitigation measures to control, monitor, and evaluate the presence of methane gas. OC CenterCal, LLC will agree to provide access to the Property for any additional investigation and removal or remedial actions that may be required, and to implement any institutional or engineering controls that may be necessary as they relate to the redevelopment project.

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 more than 90 Prospective Purchaser Agreements throughout the State since the program began.

The proposed Consent Judgment will provide OC CenterCal, LLC with a release from liability for claims by the State of Oregon under ORS §465.255 relating to releases of hazardous substances at or from the Property. The proposed Consent Judgment will also provide OC CenterCal, LLC with protection from potential contribution actions by third parties for recovery of remedial action costs associated with releases at or from the Property. DEQ retains all existing rights it may have as to all other parties potentially liable for any releases.

**HOW TO COMMENT:** Written comments concerning the proposed Consent Judgment 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 August 31, 2007. Questions may be directed to Mr. Landman at that address or by calling (503) 229-6461. The proposed Consent Judgment and DEQ file on the Property may be reviewed at DEQ's Northwest Region office in Portland by contacting Tim Spencer at (503) 229-5826.

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 Consent Judgment.

**THE NEXT STEP:** DEQ will consider all public comments. A final decision concerning the proposed Consent Judgment will be made after consideration of public comments.



# NOTICES OF PROPOSED RULEMAKING

## Notices of Proposed Rulemaking and Proposed Rulemaking Hearings

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

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

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

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

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

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**Board of Nursing**  
**Chapter 851**

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

**Date:** 9-20-07      **Time:** 9 a.m.      **Location:** 17938 SW Upper Boones Ferry Rd. Portland, OR 97224

**Hearing Officer:** Sandra Theis

**Stat. Auth.:** ORS 678.385, 678.390

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

**Proposed Amendments:** 851-056-0012

**Last Date for Comment:** 9-18-07, 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 July, August and September 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, 17938 SW Upper Boones Ferry Rd., Portland, OR 97224

**Telephone:** (971) 673-0638

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**Rule Caption:** Additional Tasks built into three New CNA 2 Categories.

**Date:** 9-20-07      **Time:** 9 a.m.      **Location:** 17938 SW Upper Boones Ferry Rd. Portland, Oregon 97224

**Hearing Officer:** Sandra Theis

**Stat. Auth.:** ORS 678.440, 442

**Stats. Implemented:** ORS 678.440, 442, 444

**Proposed Amendments:** 851-063-0035

**Last Date for Comment:** 9-18-07, 5 p.m.

**Summary:** These rules cover the standards and authorized duties for Certified Nursing Assistants and Certified Medication Aides.

**Rules Coordinator:** KC Cotton

**Address:** Board of Nursing, 17938 SW Upper Boones Ferry Rd., Portland, OR 97224

**Telephone:** (971) 673-0638

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**Columbia River Gorge Commission**  
**Chapter 350**

**Rule Caption:** Amendments to Commission Land Use Ordinance for Klickitat County.

**Date:** 9-11-07      **Time:** 9 a.m.      **Location:** Hood River Co. Admin. Bldg. Hood River, OR

**Hearing Officer:** Staff

**Stat. Auth.:** ORS 196.150

**Other Auth.:** RCW 43.97.015, 16 USC 544e(c), 544f(l)

**Stats. Implemented:** ORS 196.150, RCW 43.97.015, 16 USC 544e(c), 544f(l)

**Proposed Adoptions:** 350-081-0231

**Proposed Amendments:** 350-081-0020, 350-081-0032, 350-081-0042, 350-081-0050, 350-081-0052, 350-081-0060, 350-081-0074, 350-081-0082, 350-081-0108, 350-081-0112, 350-081-0126, 350-081-0190, 350-081-0200, 350-081-0232, 350-081-0270, 350-081-0280, 350-081-0340; 350-081-0370, 350-081-0380, 350-081-0420, 350-081-0490, 350-081-0520, 350-081-0530, 350-081-0540, 350-081-0550, 350-081-0560; 350-081-0600, 350-081-0630

**Last Date for Comment:** 9-10-07

**Summary:** The purpose of this rulemaking is to put into effect recent amendments to the Management Plan for the Columbia River Gorge Commission. This rulemaking will incorporate the recent amendments into the Commission's land use ordinance for Scenic Area land within Klickitat County. The Commission is not proposing any substantive changes the provisions already adopted into the Management Plan.

**Rules Coordinator:** Nancy A. Andring

**Address:** Columbia River Gorge Commission, P.O. Box 730, White Salmon, WA 98672

**Telephone:** (509) 493-3323, ext. 221

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**Construction Contractors Board**  
**Chapter 812**

**Rule Caption:** Regarding providing SSN, granting a license to parties with criminal convictions, and criteria for higher bond requirements.

**Date:** 8-28-07      **Time:** 11 a.m.      **Location:** West Salem Roth's IGA Santiam Rm. 1130 Wallace Rd. Salem, OR

**Hearing Officer:** Tom Skaar

**Stat. Auth.:** ORS 670.310, 701.085, 701.235

**Stats. Implemented:** ORS 25.270, 25.785, 25.990, 701.005, 701.035, 701.072, 701.075, 701.077, 701.085, 701.105, 701.125, 701.135

**Proposed Amendments:** 812-003-0260, 812-003-0450, 812-005-0210

**Last Date for Comment:** 8-28-07, 11 a.m.

**Summary:** • 812-003-0260 is amended to clarify that sole proprietorships and partners in partnership, if partners are human beings, are required to provide their social security number to CCB on their application form.

• 812-003-0450 is amended to establish the conditions under which CCB will grant a license to applicants or licensees who have had a criminal conviction.

• 812-005-0210 is amended to provide objective criteria the agency will use when requiring higher bond levels.

**Rules Coordinator:** Catherine Dixon

# NOTICES OF PROPOSED RULEMAKING

**Address:** Construction Contractors Board, 700 Summer St. NE, Suite 300, Salem, OR 97310  
**Telephone:** (503) 378-4621, ext. 4077

.....  
**Department of Agriculture,  
Oregon Dungeness Crab Commission  
Chapter 645**

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

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
8-22-07	3 p.m.	964 Central Ave. Coos Bay, OR 97420

**Hearing Officer:** Hugh Link

**Stat. Auth.:** ORS 576.304

**Other Auth.:** Motion approved by Commission at 05/30/07 meeting.

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

**Proposed Adoptions:** 645-040-0010, 645-040-0020, 645-040-0030

**Last Date for Comment:** 8-22-07, Close of Hearing

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

**Rules Coordinator:** Shirley D. Velazquez

**Address:** P.O. Box 1160, 964 Central Ave., Coos Bay, OR 97420

**Telephone:** (541) 267-5810

.....  
**Department of Consumer and Business Services,  
Director's Office  
Chapter 440**

**Rule Caption:** 2008 Workers' Compensation Premium Assessment Rates.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
9-24-07	10-10:30 a.m.	Labor & Industries Bldg. 350 Winter Street NE, Conference Rm. F Salem, OR

**Hearing Officer:** Fred Bruyns

**Stat. Auth.:** ORS 705.135, 656.726, 656.612

**Stats. Implemented:** ORS 656.612, 656.614

**Proposed Amendments:** 440-045-0020, 440-045-0025

**Last Date for Comment:** 9-24-07, 5 p.m.

**Summary:** The director adopts by rule the workers' compensation premium assessment rate that is paid by all employers based on their workers' compensation premium and is collected by the insurer at the time the employer pays the premium. This assessment is used to fund workers' compensation related programs and workplace safety and health programs that serve Oregon employers and workers. In addition, the rule adopts the rate for an additional assessment percentage amount that is collected from all self-insured employers as well as all self-insured employer groups to fund the Self-Insured Employers Adjustment Reserve and the Self-Insured Employer Group Adjustment Reserve. These reserves are established to assure benefits are available in the event of a financial failure of a self-insured employer or self-insured employer group. This rulemaking will adopt the assessment percentage that will be in effect from January 1, 2008 to December 31, 2008. Before recommending the 2008 premium assessment rate, the department must analyze financial data that is not available until late July 2007, review the data, and authorize or disapprove a proposed workers' compensation pure premium insurance rate filing filed by the National Council on Compensation Insurance. We expect the recommendation for the 2008 premium assessment rate to be announced between September 18 and September 21, 2007.

Text of the proposed rule as well as the other rulemaking documents can be found at: <http://www.oregon.gov/DCBS/DIR/rules.shtml>

Address questions to: Myrna Curzon, Rules Coordinator; phone 503-947-7866; fax 503-947-6444; or e-mail [myrna.curzon@state.or.us](mailto:myrna.curzon@state.or.us)

**Rules Coordinator:** Myrna Curzon

**Address:** 350 Winter Street NE, P.O. Box 14480, Salem Oregon 97309-0405

**Telephone:** (503) 947-7866

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**Department of Consumer and Business Services,  
Insurance Division  
Chapter 836**

**Rule Caption:** Trade practice regulation of life insurance sales to military personnel.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
9-6-07	1:30 p.m.	Conference Rm. F (basement) 350 Winter St. NE Salem, OR

**Hearing Officer:** Lewis Littlehales

**Stat. Auth.:** ORS 731.244

**Stats. Implemented:** ORS 746.075, 746.110, 746.240

**Proposed Adoptions:** 836-080-0750 – 836-080-0775

**Last Date for Comment:** 9-11-07

**Summary:** This rulemaking proposes to adopt the Military Sales Practices Model Regulation, drafted by the Nation Association of Insurance Commissioners. This rulemaking is proposed pursuant to the federal "Military Personnel Financial Services Protection Act," and applies to the solicitation or sale of life insurance and annuity products by an insurer or insurance producer to an active duty service member of the United States Armed Forces.

**Rules Coordinator:** Sue Munson

**Address:** Department of Consumer and Business Services, Insurance Division, 350 Winter St. NE, Rm. 440, Salem, OR 97301

**Telephone:** (503) 947-7272

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**Rule Caption:** Assessments against insurers to fund regulatory functions under Insurance Code.

**Stat. Auth.:** ORS 293.445, 731.244, 731.804

**Stats. Implemented:** ORS 731.804

**Proposed Amendments:** 836-009-0011

**Last Date for Comment:** 8-24-07

**Summary:** This rulemaking implements recently enacted legislation (HB 3484). The legislation amends ORS 731.804, which authorized DCBS to assess premium on Oregon insurance policies in order to fund DCBS's regulatory functions under the Insurance Code. The amendment eliminates the exemption from assessment that has applied to annuity premium. This rulemaking makes a conforming change to the Insurance Division's rule that implements the assessment authority.

**Rules Coordinator:** Sue Munson

**Address:** Department of Consumer and Business Services, Insurance Division, 350 Winter St. NE, Rm. 440, Salem, OR 97301

**Telephone:** (503) 947-7272

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

**Rule Caption:** Propose to adopt changes to Vehicle Rules in General Industry and Construction.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
8-29-07	9:30 a.m.	Fish & Wildlife Bldg. 3406 Cherry Avenue NE Commission Rm. - First Flr. Salem OR 97303

**Hearing Officer:** Sue Joye

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

**Stats. Implemented:** ORS 654.001 – 654.295

**Proposed Adoptions:** 437-002-2224, 437-002-2225, 437-002-2226, 437-003-3224, 437-003-3225, 437-003-3226

# NOTICES OF PROPOSED RULEMAKING

**Proposed Amendments:** 437-002-0223, 437-002-00227, 437-003-0001.

**Proposed Repeals:** 437-003-0093

**Last Date for Comment:** 9-5-07

**Summary:** This is a reorganization of the existing OR-OSHA rules on vehicles in Divisions 2, General Industry and 3, Construction. Current vehicle rules in both divisions are repealed.

It converts the rules to plain language. It also deletes a few rules that were deemed outdated or unnecessary as duplicative of rules administered by other Oregon agencies. It reorganizes the old rule into three new rules.

The requirement for fire extinguishers in vehicles is deleted.

The requirement prohibiting persons under 18 from operating vehicles is eliminated and a note is added referring readers to BOLI for guidance on the employment of minors.

New requirements are to report inspection findings to the employer, check the employee's drivers license, train new drivers and a requirement to fill flammable containers outside the vehicle.

Please visit our web site [www.orosha.org](http://www.orosha.org) Click 'Rules & Laws' in the left vertical column and view our proposed, adopted, and final rules.

**Rules Coordinator:** Sue C. Joye

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

**Telephone:** (503) 947-7449

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## Department of Corrections Chapter 291

**Rule Caption:** Use of Electronic Immobilizing Devices and Specialty Impact Munitions in Use of Force Situations.

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

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

**Proposed Amendments:** 291-013-0010, 291-013-0070, 291-013-0100, 291-013-0104, 291-013-0110, 291-013-0205, 291-013-0206, 291-013-0215

**Last Date for Comment:** 8-25-07

**Summary:** These rule modifications are necessary to clarify proper deployment and use of electronic immobilizing devices and specialty impact munitions in use of force situations. This includes use of the taser and pepperball launching systems. Other amendments are necessary to update terminology for the custody classification level of inmates.

**Rules Coordinator:** Janet R. Worley

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

**Telephone:** (503) 945-0933

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## Department of Environmental Quality Chapter 340

**Rule Caption:** Proposal to increase Oregon Air Contaminant Discharge Permit Fees by 20%.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
8-16-07	6 p.m.	DEQ Conference Rm. 10 811 SW 6th Ave. Portland, OR

**Hearing Officer:** Sarah Armitage, DEQ

**Stat. Auth.:** ORS 468.020, 468A.040

**Stats. Implemented:** ORS 468A.025, 468A.035

**Proposed Amendments:** 340-216-0020

**Last Date for Comment:** 8-20-07, 5 p.m.

**Summary:** The proposed rulemaking would increase Air Contaminant Discharge Permit (ACDP) fees by 20% for all permit categories, as shown in Table 2, OAR 340-216-0020. This increase matches the rise in ACDP program costs since 2001. The annual revenue from a 20% fee increase would fully fund the ACDP Program for two biennia (four years). The proposed ACDP fee increase will benefit Oregonians and the environment by allowing DEQ to issue

and renew ACDP permits in a timely manner, meet the Oregon Progress Board economic benchmark to issue 90% of ACDP permits within the target timeframe, complete required ACDP inspections, and monitor and enforce compliance with air quality regulations that apply to ACDP facilities. If the fee increase is approved by the Environmental Quality Commission, it will be reflected in invoices issued in October 2007.

To submit comments or request additional information, please contact Andrea Curtis at the Department of Environmental Quality (DEQ), 811 S.W. 6th Avenue, Portland, Oregon, 97204, toll free in Oregon at 800-452-4011 or 503-229-6866, or at [curtis.andrea@deq.state.or.us](mailto:curtis.andrea@deq.state.or.us), or by fax 503-229-5675, or visit DEQ's website <http://www.deq.state.or.us/news/publicnotices/pn.asp>

**Rules Coordinator:** Larry McAllister

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

**Telephone:** (503) 229-6412

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**Rule Caption:** This rulemaking will allow wastewater treatment facilities to produce recycled water for a variety of beneficial purposes.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
8-15-07	6 p.m.	Community Justice Ctr. Main Floor Conf Rm. 1101 W. Main, Suite 101 Medford, OR
8-16-07	6 p.m.	Health & Human Services Bldg. Lewis & Clark R. 1300 NW Wall St., Ste 101 Bend, OR
8-20-07	6 p.m.	DEQ Headquarters EQC Conf. Rm A, 10th floor 811 SW 6th Ave Portland, OR
8-21-07	6 p.m.	City Hall, Community Rm. 501 SW Emigrant Ave. Pendleton, OR

**Hearing Officer:** DEQ staff

**Stat. Auth.:** ORS 468.020, 468B.010, 468B.015

**Stats. Implemented:** ORS 468B.005, 468B.015, 468B.020, 468B.030, 468B.050, 468B.150 – 468B.190

**Proposed Amendments:** 340-055-0005, 340-055-0007, 340-055-0010, 340-055-0013, 340-055-0020, 340-055-0025, 340-055-0030, 340-041-0009

**Proposed Ren. & Amends:** 340-055-0015 to 340-055-0012, 340-055-0015 to 340-055-0016, 340-055-0015 to 340-055-0017, 340-055-0015 to 340-055-0022

**Last Date for Comment:** 8-31-07 5 p.m.

**Summary:** Encouraging water reuse has received much statewide interest during the last several years:

- In 2003, the Oregon Legislature passed Senate Bill 820 that required the Oregon Department of Environmental Quality (DEQ) to work with interested parties and stakeholders and develop a report on opportunities and barriers with wastewater reuse in urban areas. The Urban Water Reuse Task Force and DEQ prepared a report in December 2004 on the Implementation of Senate Bill 820.

- The Governor's Executive Order No. EO 05-04 on Water Reuse signed in March 2005 addresses the need to promote policies and programs to encourage and support water reuse.

Based on the Urban Water Reuse Task Force recommendations and the Governor's Executive Order, DEQ is proposing to:

- Amend recycled water treatment and use requirements that allow for additional beneficial purposes and new wastewater treatment technology.

- Clarify responsibility requirements for the use of recycled water.

- Institute program improvements that promote efficiency, effectiveness and consistency for approving and implementing a recycled water use program.

# NOTICES OF PROPOSED RULEMAKING

- Clarify the regulatory process and involvement of other state agencies for recycled water use projects.

- Revise language that unduly stigmatizes reuse.

To submit comments or request additional information, please contact Judy Johndohl at the Department of Environmental Quality (DEQ), 811 SW 6th Avenue, toll free in Oregon at 800-452-4011 or (503) 229-6896, recycled.waterrule@deq.state.or.us, Fax (503) 229-6037, or visit DEQ's website <http://www.deq.state.or.us/wq/reuse/reuse.htm>

**Rules Coordinator:** Larry McAllister

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

**Telephone:** (503) 229-6412

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**Rule Caption:** Asbestos Abatement Notification Fee Increase.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
8-16-07	7:30 p.m.	Rm. EQC A 811 SW Sixth Ave. Portland OR

**Hearing Officer:** Sarah Armitage, DEQ

**Stat. Auth.:** ORS 468A.750(1)(d)

**Stats. Implemented:** ORS 468A.707

**Proposed Amendments:** 340-248-0260

**Last Date for Comment:** 8-20-07, 5 p.m.

**Summary:** The Department is proposing to increase the filing fee for asbestos abatement notifications. The Department proposed increasing these fees as part of its budget request to the legislature. This proposed rule implements the legislatively adopted budget for the asbestos program.

The Department of Environmental Quality's asbestos program has been supported by asbestos contractor license fees and asbestos abatement notification fees. However, the notification fees are no longer sufficient to cover the cost of the program for two reasons. First, the fees have not been increased since 1995 whereas costs for existing staff have increased. Second, there has been a significant shift from large to smaller asbestos abatement projects over the past few years. The smaller projects generate less fee income but cost almost as much as the larger projects to administer. In addition, the shift to smaller projects has resulted in a need for more assistance and community outreach for homeowners and small businesses to avoid adverse health effects and enforcement actions for the mishandling of asbestos.

The proposed fee increase will affect about 2,400 asbestos abatement projects per year. The proposed increase is scaled to the size of the asbestos abatement project, so smaller projects have a smaller dollar increase. The fees would remain a small portion of the total project costs.

To submit comments or request additional information, please contact Ed Druback at the Department of Environmental Quality (DEQ), 1550 NW Eastman Parkway, Suite 290, Gresham, OR 97030, toll free in Oregon at 800-452-4011 or 503-667-8414 ext 55014, or at [druback.ed@deq.state.or.us](mailto:druback.ed@deq.state.or.us), or by fax 503-674-5148, or visit DEQ's website <http://www.deq.state.or.us/news/publicnotices/PN.asp>

**Rules Coordinator:** Larry McAllister

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

**Telephone:** (503) 229-6412

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## Department of Fish and Wildlife Chapter 635

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

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
9-7-07	8 a.m.	College Union, Mt. Mazama Rm. Oregon Institute of Technology 3201 Campus Dr. Klamath Falls, OR 97601

**Hearing Officer:** Fish & Wildlife Commission

**Stat. Auth.:** ORS 496.138, 496.146, 506.036, 506.119, 506.129

**Stats. Implemented:** ORS 496.162, 506.109, 506.129

**Proposed Adoptions:** Rules in 635-500

**Proposed Amendments:** Rules in 635-500

**Proposed Repeals:** Rules in 635-500

**Last Date for Comment:** 9-7-07

**Summary:** Rules relating to implementation of the Rogue Spring Chinook Salmon Conservation Plan of 2007 may be adopted, amended, or repealed as determined necessary by the Oregon Fish and Wildlife Commission. Housekeeping and technical corrections to the regulations relating to hatcheries and harvest opportunities; predators; regulatory programs; water quality; and adaptive management may occur as determined necessary to ensure rule consistency.

**Rules Coordinator:** Casaria Tuttle

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

**Telephone:** (503) 947-6033

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**Rule Caption:** Amend rules related to 2008 Oregon Sport Fishing Regulations for the Rogue River.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
9-7-07	8 a.m.	College Union Mt. Mazama Rm. Oregon Institute of Technology 3201 Campus Dr. Klamath Falls, OR 97601

**Hearing Officer:** Fish & Wildlife Commission

**Stat. Auth.:** ORS 496.138, 496.146, 497.121, 506.119, 506.129

**Stats. Implemented:** ORS 496.004, 496.009, 496.162, 506.129

**Proposed Adoptions:** Rules 635-016

**Proposed Amendments:** Rules 635-016

**Proposed Repeals:** Rules 635-016

**Last Date for Comment:** 9-7-07

**Summary:** Rules relating to Rogue River sport fisheries may be adopted, amended, or repealed as determined necessary by the Oregon Fish and Wildlife Commission. Housekeeping and technical corrections to the regulations relating to hatcheries and harvest opportunities; predators; regulatory programs; water quality; and adaptive management may occur as determined necessary to ensure rule consistency.

**Rules Coordinator:** Casaria Tuttle

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

**Telephone:** (503) 947-6033

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

**Rule Caption:** Amend the "Abuse" definition for Residential Treatment Homes, Residential Treatment Facilities, and Adult Foster Homes.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
8-17-07	3 p.m.	500 Summer St. NE Rm. 137A Salem, OR

**Hearing Officer:** Richard Luthe

**Stat. Auth.:** ORS 409.050

**Stats. Implemented:** ORS 409.050

**Proposed Amendments:** Rules in 309-035 & 309-040

**Proposed Repeals:** 309-035-0105(T), 309-035-0260(T) & 309-040-0305(T)

# NOTICES OF PROPOSED RULEMAKING

**Last Date for Comment:** 8-24-07, 5 p.m.

**Summary:** The Addictions and Mental Health Division is proposing to amend the “abuse” definition in: OAR’s 309-035-0105; 309-035-0260 & 309-040-0305 to update the definitions, and to align all three rules with a common definition.

**Rules Coordinator:** Richard Luthe

**Address:** 500 Summer St. NE E86, Salem, OR 97301

**Telephone:** (503) 947-1186

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**Rule Caption:** Revised Requirements for AFH “Home Alone” Variances, and updating references.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
8-17-07	1 p.m.	500 Summer St. NE Rm. 137A Salem, OR

**Hearing Officer:** Richard Luthe

**Stat. Auth.:** ORS 409.010 & 409.050

**Other Auth.:** SB 42 Enrolled (2007 Session)

**Stats. Implemented:** ORS 443.705 – 443.825

**Proposed Amendments:** Rules in 309-040

**Proposed Repeals:** 309-040-0350(T)

**Last Date for Comment:** 8-24-07, 5 p.m.

**Summary:** The Department of Human Services, Addictions and Mental Health Division (AMH) is amending Oregon Administrative Rule (OAR) 309-040-0350 to grant a variance to the requirement that a provider or caregiver must be on duty 24 hours a day in an Adult Foster Home licensed with the AMH and to develop a process of determining when residents of adult foster homes may remain at home alone unsupervised. References will also be updated.

**Rules Coordinator:** Richard Luthe

**Address:** 500 Summer St. NE E86, Salem OR 97301

**Telephone:** (503) 947-1186

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

**Rule Caption:** Renumbering of DHS Criminal History Check Rules; Change in Subject Individual’s Access to Fingerprint Results.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
8-23-07	1:30–2:30 p.m.	Human Services Bldg. Rm. 137-A 500 Summer St. NE Salem, OR 97301

**Hearing Officer:** Jennifer Bittel

**Stat. Auth.:** ORS 181.537, 409.010, 409.050

**Stats. Implemented:** ORS 181.537

**Proposed Renumberings:** 410-007-0200 to 407-007-0200, 410-007-0280 to 407-007-0280, 410-007-0350 to 407-007-0350, 410-007-0360 to 407-007-0360, 410-007-0370 to 407-007-0370, 410-007-0380 to 407-007-0380

**Proposed Ren. & Amends:** 410-007-0210 to 407-007-0210 through 410-007-0270 to 407-007-0270, 410-007-0290 to 407-007-0290 through 410-007-0340 to 407-007-0340

**Last Date for Comment:** 8-27-07, 5 p.m.

**Summary:** The DHS criminal history check rules are being moved to the DHS department-wide rule chapter due to the broad scope of the rules across several DHS divisions. All references to “410” rules have been amended to “407” rules.

2005 legislation amended ORS 181.537. Subject individuals desiring to review information concerning themselves maintained in the OSP Criminal Offender Information System, if fingerprinted during the criminal history check process, may request copies of the resulting Oregon and national criminal history record. OAR 407-007-0340 is amended to reflect this statutory change.

**Rules Coordinator:** Jennifer Bittel

**Address:** 500 Summer St. NE, E-03, Salem, OR 97301

**Telephone:** (503) 947-5250

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

**Rule Caption:** Changing OARs affecting Child Welfare programs.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
8-23-07	1:30 p.m.	Rm. 255 500 Summer St. NE Salem, OR

**Hearing Officer:** Annette Tesch

**Stat. Auth.:** ORS 418.005

**Stats. Implemented:** ORS 418.005 – 418.640

**Proposed Amendments:** 413-200-0270, 413-200-0272, 413-200-0274, 413-200-0278, 413-200-0281, 413-200-0287, 413-200-0292, 413-200-0296, 413-200-0306, 413-200-0314, 413-200-0335, 413-200-0354, 413-200-0358, 413-200-0371, 413-200-0379, 413-200-0383, 413-200-0390

**Last Date for Comment:** 8-23-07, 5 p.m.

**Summary:** OAR 413-200-0270 is being amended to clarify the purpose of OAR 413-200-0270 to 413-200-0296 as these rules pertain to an adoptive applicant.

OAR 413-200-0272 is being amended to remove the definition of “firearm” which is no longer needed with the amendments to OAR 413-200-0335.

OAR 413-200-0274 about responsibilities for certification is being amended to clarify authority to approve certification after a child abuse or neglect disposition, parameters of requesting child abuse background history checks, parameters of issuing a two-year certificate of approval, and clarify parameters of verification of Foundations training.

OAR 413-200-0278 about responsibilities for issuing a certificate of approval is being amended to clarify timeframes for certification assessment activities and how the rules pertain to an adoptive applicant.

OAR 413-200-0281 is being amended to clarify parameters of child abuse and neglect and criminal history background checks for alternate caregivers.

OAR 413-200-0287 about responsibilities regarding a two-year renewal of the Certificate of Approval is being amended to change the title of the rule to clarify its purpose. This rule is also being amended to clarify when a child abuse history background check is required.

OAR 413-200-0292 about responsibilities regarding recertification of a previously certified home is being amended to change the title of the rule to clarify its purpose. This rule is also being amended to clarify requirements for criminal history background checks for new household members and the assessment process for family whose certificate of approval has expired. This rule is also being amended to add an approval for exemption from the requirement for Foundations training.

OAR 413-200-0296 about the denial or revocation of a certificate of approval is being amended to clarify the Department requirement for written notice of intent to revoke.

OAR 413-200-0306 is being amended to remove the definition of “firearm” which is no longer needed with the amendments to OAR 413-200-0335.

OAR 413-200-0314 about the process to apply for a certificate of approval is being amended to clarify requirements about references and the applicant’s requirement for Department access to every member of the household.

OAR 413-200-0335 is being amended so that the storage and transportation of firearms in the presence foster children is no longer regulated in this rule, although the use of firearms by a child or young adult continues to require Department authorization.

OAR 413-200-0354 is being amended to clarify the certified family responsibilities regarding a child’s education.

## NOTICES OF PROPOSED RULEMAKING

OAR 413-200-0358 about requirements regarding a child or young adult's discipline is being amended to add a definition of "physical restraint".

OAR 413-200-0371 is being amended to clarify the permitted use of relief or respite care providers.

OAR 413-200-0379 about education and training for applicants and certified families is being amended to clarify parameters of verification of Foundations training.

OAR 413-200-0383 is being amended to clarify parameters of required notification for certified families.

OAR 413-200-0390 is being amended to clarify how recertification requirements apply to an adoptive applicant.

These rule changes will make permanent temporary rules adopted on July 13, 2007.

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

**Rules Coordinator:** Annette Tesch

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

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

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**Rule Caption:** Changing OARs affecting Child Welfare programs.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
8-22-07	8:30 a.m.	Rm. 254 500 Summer St. NE Salem, OR

**Hearing Officer:** Annette Tesch

**Stat. Auth.:** ORS 418.005

**Stats. Implemented:** ORS 276.591, 418.005

**Proposed Repeals:** 413-300-0000, 413-300-0005, 413-300-0010, 413-300-0020, 413-300-0030, 413-300-0040, 413-300-0050, 413-300-0060, 413-300-0070, 413-300-0080, 413-300-0090, 413-300-0100, 413-300-0110, 413-300-0120, 413-320-0000, 413-320-0010, 413-320-0020, 413-320-0030, 413-320-0040, 413-320-0050, 413-320-0060, 413-330-0400, 413-330-0410, 413-330-0420, 413-330-0430

**Last Date for Comment:** 8-22-07, 5 p.m.

**Summary:** The Department is repealing rules about: audits, auditing, and quality control review; parking; and contract writing.

**Rules Coordinator:** Annette Tesch

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

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

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**Department of Human Services,  
Children, Adults and Families Division:  
Self-Sufficiency Programs  
Chapter 461**

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

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
8-22-07	10 a.m.	Rm 255 500 Summer St. NE Salem, OR

**Hearing Officer:** Annette Tesch

**Stat. Auth.:** ORS 409.050, 411.060, 411.070, 411.700, 411.730, 411.816, 414.032, 414.042, 418.100

**Other Auth.:** 7 USC 2014; 7 USC 2014(d); 7 USC 2020(e); 42 USC 405(c)(2)(C)(i); 42 USC 602(a)(1)(B)(iii); 42 USC 1396r-6; 7 CFR 273.9; 7 CFR 273.9(d)(6)(iii); 7 CFR 273.10(f); 7 CFR 273.12(c)(1); 7 CFR 273.14; 20 CFR 416.414; 42 CFR 435.601; 42 CFR 435.622; 42 CFR 435.910; 42 CFR 435.911; 42 CFR 435.1005; 42 CFR 435.1009; 42 CFR 457.340; 42 CFR 457.340(b); 45 CFR Part 98; Oregon Medicaid/State Children's Health Insurance Program (SCHIP) Health Insurance Flexibility and Accountability (HIFA) Section 1115 Demonstration; Sec. 402(a)(1)(B)(iii) of the Social

Security Act; Social Security Administration, Program Operations Manual System (POMS) section SI 00820.210; Social Security Administration Program Operations Manual System (POMS) SI 00830.550; Social Security Administration Program Operations Manual section SI 01120.210; Radiation Exposure Compensation Act of 1990 (Pub. L. 101-426), 4 Stat. 920; 42 U.S.C. § 2210 note, the Radiation Exposure Compensation Act Amendments of 2000 (Pub. L. 106-245); "21st Century Department of Justice Appropriation Authorization Act" (Pub. L. 107-273); USDA Food and Nutrition Service, IPM 90-20, "Treatment of Expenses for Service Animals"; Policy clarification received from Food and Nutrition Service on June 3, 2007

**Stats. Implemented:** ORS 409.050, 411.060, 411.070, 411.105, 411.111, 411.117, 411.700, 411.730, 411.816, 411.825, 414.032, 414.042, 418.100, 1999 OL ch. 859

**Proposed Adoptions:** 461-135-0745

**Proposed Amendments:** 461-001-0000, 461-110-0210, 461-110-0310, 461-110-0370, 461-110-0430, 461-110-0630, 461-115-0010, 461-115-0050, 461-115-0190, 461-115-0450, 461-120-0120, 461-120-0210, 461-135-0010, 461-135-0750, 461-135-0900, 461-135-0990, 461-135-1230, 461-140-0020, 461-140-0040, 461-145-0080, 461-145-0088, 461-145-0110, 461-145-0120, 461-145-0130, 461-145-0180, 461-145-0210, 461-145-0240, 461-145-0260, 461-145-0270, 461-145-0280, 461-145-0290, 461-145-0300, 461-145-0340, 461-145-0345, 461-145-0360, 461-145-0365, 461-145-0380, 461-145-0400, 461-145-0410, 461-145-0415, 461-145-0430, 461-145-0440, 461-145-0460, 461-145-0510, 461-145-0540, 461-145-0600, 461-150-0060, 461-155-0010, 461-155-0030, 461-155-0190, 461-155-0225, 461-155-0250, 461-155-0630, 461-155-0680, 461-160-0040, 461-160-0055, 461-160-0420, 461-160-0430, 461-165-0030, 461-170-0020, 461-175-0200, 461-175-0305, 461-180-0020, 461-180-0090

**Last Date for Comment:** 8-22-07, 5 p.m.

**Summary:** OAR 461-001-0000 is being amended to state how the term "dependent child" is defined for rules about the REF (Refugee Assistance) program and to state how the term "minor parent" is defined for rules about the REF and REFM (Refugee Assistance Medical) programs. This rule is also being amended to add cross-references and follow standard formatting.

OAR 461-110-0210 describing the individuals considered part of the same household group for the eligibility process is being amended to state additional requirements that apply in the MAA (Medical Assistance Assumed), MAF (Medical Assistance to Families), REF (Refugee Assistance), and REFM (Refugee Assistance Medical) programs.

OAR 461-110-0310 about filing groups and OAR 461-110-0370 about filing groups in the Food Stamp program are being amended to transfer the requirements for being a member of two Food Stamp filing groups from OAR 461-110-0310 to 461-110-0370. The filing group consists of the individuals from the household group whose circumstances are considered in the eligibility determination process. These rules are also being amended to add cross-references and follow standard formatting. OAR 461-110-0370 is also being amended to implement the annual increase in the standards for the Food Stamp Program.

OAR 461-110-0370 about filing groups, 461-155-0190 about income and payment standards, and 461-160-0430 about income deductions are being amended to implement the annual increase in the standards for the Food Stamp Program. OAR 461-160-0420 is being amended to reflect the annual change in the Standard Utility Allowances. Each year Oregon surveys utility companies and the general public about increases in utility costs. The utility allowances are derived from these surveys and approved by the Food and Nutrition Service in the Food Stamp Program State Plan. There are four utility allowances. The full utility allowance (FUA) is for those households that have heating and cooling costs. The limited utility allowance (LUA) is a new utility allowance and is for those households with more than one non-heating/cooling utility costs. The

## NOTICES OF PROPOSED RULEMAKING

individual utility allowance (IUA) is for those households with a single non-heat cost. The single utility allowance (TUA) is for those households with only a telephone cost.

OAR 461-110-0430 is being amended to change the requirements about the individuals considered part of the same filing group for the REF (Refugee Assistance), and REFM (Refugee Assistance Medical) programs. The filing group consists of the individuals from the household group whose circumstances are considered in the eligibility determination process.

OAR 461-110-0630 about individuals whose basic and special needs are used in determining eligibility and benefit level is being amended to change the requirements that apply to the Children's Health Insurance Program (CHIP or OHP-CHP) need group. Effective October 1, 2007, CHIP clients will be required to provide or apply for an SSN as part of the eligibility process. CHIP clients who do not provide or apply for an SSN will not be part of the CHIP need group. Individuals excluded from the need group for medical program benefits are not considered when determining eligibility.

OAR 461-115-0010 about the application process for food stamps, public assistance, and medical assistance is being amended to remove its requirement to screen applicants for emergent need (other than domestic violence). This rule is also being amended to add cross-references.

OAR 461-115-0050 about application requirements is being amended to state when a new application is required to add an individual to a benefit group in the REF (Refugee Assistance) program.

OAR 461-115-0190 about application processing time frames is being amended to clarify when the Department extends the time for determining eligibility for the Oregon Supplemental Income Program Medical (OSIPM). This rule is also being amended to remove the exclusion of medical assistance programs based on disability from the application processing time frame requirements of the rule.

OAR 461-115-0450 about Food Stamp periodic redeterminations is being amended to reorganize the text and incorporate policies in the rule that are in practice via the Food Stamp Chapter located in the Family Services Manual and SPD manual or federal regulations. The amended rule will clarify when a certification period may be lengthened. This rule is also being amended to replace the term "timely" and clarify when benefits are not prorated at recertification. This rule is also being amended to update terminology and add cross-references to other rules. The Department has pending amendments to OAR 461-115-0450 under its January 12, 2007 Notice of Proposed Rulemaking to allow the Department to shorten FS certification periods if needed to bring them into alignment with the redetermination periods of newly approved public assistance or medical benefits for the same client, and to update terminology and add cross-references to other rules. The implementation of the Food Stamp waiver was delayed, and the amendments pending since January are likely to be filed separately during this comment period. Should there be further delays, those "January" amendments may be filed at the same time as these changes.

OAR 461-120-0120 is being amended to clarify which parolees are eligible for the REF (Refugee Assistance) and REFM (Refugee Assistance Medical) programs.

OAR 461-120-0210 about the requirement to provide or apply for a Social Security Number (SSN) is being amended to remove Children's Health Insurance Program clients (CHIP or OHP-CHP) from the list of program clients exempt from the requirement. Removing the exception means that CHIP program clients will be required to provide or apply for an SSN as part of the eligibility process. This rule is also being amended to state the purposes of the Department in collecting SSNs and the uses made of them.

OAR 461-135-0010 about assumed eligibility for medical programs is being amended to change the requirements to be assumed eligible for the REFM (Refugee Assistance Medical) program.

OAR 461-135-0745 is being adopted to cover the eligibility requirements for the OSIPM program (Oregon Supplemental Income Program Medical) for individuals in acute care settings. Eli-

gibility requirements in this setting include a continuous period of care and income below the institutionalized income standard of 300 percent of SSI. The requirement for an assessment is no longer necessary based on 42 CFR 435.622. OAR 461-135-0750 about eligibility for the OSIPM program (Oregon Supplemental Income Program Medical) for individuals in long term care or waived services is being amended to remove the reference to individuals in an acute care hospital.

OAR 461-135-0900 is being amended to restate the specific eligibility requirements for the REF (Refugee Assistance) and REFM (Refugee Assistance Medical) programs, the eligibility of students for REF and REFM, and the relationship between REF, REFM, pre-TANF, and TANF.

OAR 461-135-0990 about reimbursement of employer-sponsored health insurance premiums is being amended to remove clients who are only in the REF (Refugee Assistance) program and these clients would no longer be reimbursed for these premiums.

OAR 461-135-1230 about the benefits of the TA-DVS (Temporary Assistance for Domestic Violence Survivors) program is being amended to state the Department's policy about not paying for relocation expenses from another state.

OAR 461-140-0020 is being amended to state how, in the REF (Refugee Assistance) and REFM (Refugee Assistance Medical) programs, to treat resources that remain in the applicant's country of origin. This rule is also being amended to add cross-references and follow standard formatting.

OAR 461-140-0040 about the income considered available to clients in the eligibility process is being amended to specify the income considered available to clients in the REF (Refugee Assistance) and REFM (Refugee Assistance Medical) programs. This amendment also states that any income used for medical or medical-related purposes is not considered available in these programs.

OAR 461-145-0080 about the treatment of child support in the eligibility process is being amended to state how these payments are treated in the REF (Refugee Assistance) program. This rule is also being amended to change references to JOBS Plus agreements to TANF JOBS Plus agreements. This rule is being further amended to add cross-references and follow standard formatting.

OAR 461-145-0088 about the treatment of corporate assets is being amended to include the Oregon Supplemental Income Program (OSIP), Oregon Supplemental Income Program - medical (OSIPM) and Qualified Medicare Beneficiary (QMB) program in the policy regarding the treatment of payments from a corporation or business entity which benefit a client. The current policy is unclear as to the treatment of these payments. OAR 461-145-0120 about the definition of earned income is being amended to make this rule consistent with OAR 461-145-0088 for the OSIP, OSIPM, and QMB programs as well as the Food Stamp program on the subject of the treatment of payments from a corporation or business entity which benefit the client.

OAR 461-145-0110 about the treatment in the eligibility process of payments under the Domestic Volunteer Services Act is being amended to count, in the ERDC (Employment or Education Related Day Care), REF (Refugee Assistance), and REFM (Refugee Assistance Medical) programs, compensation received by clients receiving payments under Title I (VISTA, University Year of Action, and Urban Crime Prevention) as earned income if the payment is equal to or greater than compensation at the state minimum wage. Currently, these payments are excluded if the client is receiving Department program benefits when they join the program.

OAR 461-145-0130 is being amended to specify how earned income is treated in the eligibility process for the REF (Refugee Assistance) and REFM (Refugee Assistance Medical) programs. This rule is also being amended to add cross-references and follow standard formatting.

OAR 461-145-0180 is being amended to state how Family Support Payments are treated in the eligibility process for the REF (Refugee Assistance) and REFM (Refugee Assistance Medical)

## NOTICES OF PROPOSED RULEMAKING

programs. Family Support Payments are social benefits distributed by state or local agencies to families caring for individuals with extraordinary care needs who live at home. Needs are typically caused by disability or advanced age. Payments are made to or on behalf of family members. This rule is also being amended to add cross-references and follow standard formatting.

OAR 461-145-0210 about the treatment of gifts and winning in the eligibility process is being amended to clarify the rule and state how gift cards and certificates are treated.

OAR 461-145-0240 about the treatment of income producing sales contracts and OAR 461-145-0460 about the treatment of income from the sale of a resource are being amended to make these rules consistent with each other and remove overlapping and inconsistent statements. These amendments will change how the equity value of these contracts and how sales income is treated in the eligibility process for food stamps, public assistance, and medical assistance. These rules are also being amended to add cross-references and follow standard formatting.

OAR 461-145-0260 about the treatment of Native American benefits in the eligibility process and the type of income excluded under specific public laws for Indian benefits, judgments and per capita payments is being amended to clarify the rule and add cross-references to other rules and laws. This rule is also being amended to align Food Stamp and TANF policy regarding the exclusion of payments received from trusts, restricted lands, and judgment payments.

OAR 461-145-0270 is being amended to change the way inheritances are treated in the General Assistance (GA, currently closed) and GA-Medical (GAM, currently closed), Oregon Supplemental Income Program (OSIP, serving the elderly and people with disabilities), OSIP-Medical (OSIPM) and the Qualified Medicare Beneficiary (QMB) Programs. Previously, all assets received via an inheritance were treated as either periodic or lump sum income. The rule is being amended to state that a non-cash inheritance is treated according to the policy for that specific asset and a cash inheritance is treated as either periodic or lump sum income.

OAR 461-145-0280 is being amended to state how in-kind income is treated in the eligibility process for the REF (Refugee Assistance) program. This rule is also being amended to add cross-references and follow standard formatting.

OAR 461-145-0290 is about the treatment of Job Corps payments in the eligibility process to treat Job Corps reimbursements in the same manner as other reimbursements under OAR 461-145-0440. In limited situations, reimbursements will be counted in the ERDC (Employment or Education Related Day Care) and Food Stamp programs. This rule is also being amended to add cross-references to other rules.

OAR 461-145-0300 about the treatment of payments under the Workforce Investment Act in the eligibility process is being amended to update program names, state how these payments are treated in the REF (Refugee Assistance) and REFM (Refugee Assistance Medical) programs, add and update cross-references to other rules, and make this rule consistent with OAR 461-145-0440 about reimbursements.

OAR 461-145-0340 is being amended to state how lodger income is treated in the eligibility process for the REF (Refugee Assistance) and REFM (Refugee Assistance Medical) programs. This rule is also being amended to add cross-references and follow standard formatting.

OAR 461-145-0345 about the treatment of military income in the eligibility process is being amended to clarify the rule and add cross-references to other rules.

OAR 461-145-0360 is being amended to state how the value of a motor vehicle is treated in the eligibility process for the REFM (Refugee Assistance Medical) program. This rule is also being amended to update and add cross-references, and follow standard formatting.

OAR 461-145-0365 about the treatment of National and Community Services Trust Act (NCSTA) income in the eligibility process

is being amended to clarify when child care allowances are counted as unearned income for the MAA (Medical Assistance Assumed, TANF-related medical) and REF (Refugee Assistance) program recipients. This rule is also being amended to clarify that the rule applies to AmeriCorps payments other than AmeriCorps VISTA.

OAR 461-145-0380 about the treatment of pension and retirement plans in the eligibility process is being amended to state that an annuity purchased by the spouse of a client with funds from a retirement plan is not considered a retirement plan. Additionally, for the Oregon Supplemental Income Program (OSIP), Oregon Supplemental Income Program Medical (OSIPM), and Qualified Medicare Beneficiary Program (QMB), this rule is being amended to clarify current policy and to reflect federal policy regarding the treatment of retirement plans and annuities purchased with retirement plans. Currently, the rule states that the equity value of pension and retirement plans is treated as a resource (minus any penalty for early withdraw) if the plans allow clients to withdraw funds before retirement. This rule is being amended to address the treatment of retirement plans separately from annuities purchased with retirement plan funds, and to specify situations when the equity value of retirement plans and annuities purchased with retirement plan funds is counted and excluded as a resource.

OAR 461-145-0400 about the treatment of personal injury settlements in the eligibility process for food stamps, public assistance, and medical assistance is being amended to clarify that workers compensation payments are covered under another rule, update terminology, and add cross-references.

OAR 461-145-0410 about the treatment of program benefits in the eligibility process for food stamps, public assistance, and medical assistance is being amended to remove the exclusion in the OHP program for administrative error overpayments and to state how TADVS program payments are treated. This rule is also being amended to exclude Refugee (REF) program support service payments and count REF program client incentive payments to the extent that TANF client incentive payments are counted. This rule is being further amended to state that all policies about the treatment of TANF benefits apply to tribal TANF benefits and to state that the current exclusion for JOBS Plus support services payments applies to TANF JOBS Plus support services payments. In addition, the rule is being amended to state that TANF client incentive payments currently counted if received as cash are counted if the payments are not in-kind. This rule is also being amended to reorder and reorganize its sections, update terminology, and add cross-references.

OAR 461-145-0415 is being amended to exclude payments under the Radiation Exposure Compensation Act from being counted in the General Assistance (GA) and GA-Medical (GAM) programs. These programs are currently closed.

OAR 461-145-0430 about excluded real property under an Interim Assistance Agreement is being amended to clarify the rule and add cross-references to other rules and laws.

OAR 461-145-0440 about the treatment of reimbursements in the eligibility process is being amended to clarify the rule and make this rule consistent with related rules. The rule will refer to OAR 461-145-0570 for USDA meal reimbursements and to OAR 461-145-0920 for self-employment. Current language about cash reimbursements is being modified to make clear this language applies to other forms of money. This rule is also being amended to clarify that in the Food Stamp and OHP programs, reimbursements of expenditures by a business entity that benefit a principal are counted as earned income. This rule is being further amended to add cross-references to other rules.

OAR 461-145-0510 is being amended to state how SSI payments are treated in the eligibility process for the REF (Refugee Assistance) and REFM (Refugee Assistance Medical) programs. This rule is also being amended to add cross-references and follow standard formatting.

OAR 461-145-0540 is being amended to state how trusts are treated in the eligibility process for the REFM (Refugee Assistance



## NOTICES OF PROPOSED RULEMAKING

Medical) program. This rule is also being amended to add cross-references and follow standard formatting.

OAR 461-145-0600 is being amended to state how work-related capital assets, equipment, and inventory are treated in the eligibility process for the REFM (Refugee Assistance Medical) program. This rule is also being amended to change how these items are treated in the REF (Refugee Assistance) program. This rule is being further amended to add cross-references and follow standard formatting.

OAR 461-150-0060 about the use of prospective and retrospective eligibility and budgeting is being amended to clarify eligibility and budgeting in the REFM (Refugee Assistance Medical) program. This rule is also being amended to add cross-references to other rules.

OAR 461-155-0010 about the use of payment standards to establish needs is being amended to remove a reference to OAR 461-155-0520 and clarify current policy regarding the use of special needs to determine initial and ongoing eligibility, benefit amount, and client liability.

OAR 461-155-0030 is being amended to raise the Adjusted Income/Payment Standard for the MAA (Medical Assistance Assumed), MAF (Medical Assistance to Families), REF (Refugee Assistance), SAC (Medical Coverage for Children in Substitute or Adoptive Care), and TANF (Temporary Assistance to Needy Families) programs. This amendment makes permanent a temporary rule that raised the payment standard for these programs by 3.1 percent effective July 1, 2007. This standard is used as the adjusted income limit and to calculate cash benefits for need groups with an adult. A need group consists of the individuals whose basic and special needs are used in determining eligibility and benefit level.

OAR 461-155-0225 is being amended to set the income standard for the REFM (Refugee Assistance Medical) program.

OAR 461-155-0250 about income and payment standards in the Oregon Supplemental Income Program (OSIP) and Oregon Supplemental Income Program Medical (OSIPM) is being amended to clarify current policy regarding the determination of the supplemental income payment (SIP) when both spouses receive supplemental security income (SSI) and live in an Adult Foster Care (AFC), Assisted Living Facility (ALF) or Residential Care Facility (RCF). The reference to "living" in one of these care settings is being changed to "receiving services" in one of these settings. This rule is also being amended to clarify current policy regarding the SIP amount for spouses in some other situations.

OAR 461-155-0630 about special need payments for the Oregon Supplemental Income Program (OSIP) and the Oregon Supplemental Income Program – Medical (OSIPM) is being amended to clarify the policy that explains the amount of time a client may be absent when receiving this special need. Additionally, the policy on service payments is being removed from this rule and will be added to a rule in OAR 411-027.

OAR 461-155-0680 about the payment of telephone costs for Oregon Supplemental Income Program Medical (OSIPM) - serving the elderly and people with disabilities) clients receiving SSI or in-home long-term care services is being amended to remove a reference to emergency response systems and for clarification.

OAR 461-160-0040 is being amended to state when dependent care costs are covered in the REF (Refugee Assistance) program. This rule is also being amended to add cross-references and follow standard formatting.

OAR 461-160-0055 is being amended to clarify the programs to which the rule applies and to clarify that in order to allow costs of an animal as a medical deduction in the Food Stamp program, the animal must have received professional training to provide a service to the client. The term companion animal is also being removed because most companion animals are pets with no professional training and will not be eligible for this deduction.

OAR 461-165-0030 about duplicate and concurrent program benefits is being amended to state the extent to which clients in the REF (Refugee Assistance) and REFM (Refugee Assistance Medical) programs may receive benefits in other public assistance and medical

assistance programs. This rule is also being amended to add cross-references and follow standard formatting.

OAR 461-170-0020 is being amended to state the changes that clients in the REF (Refugee Assistance) and REFM (Refugee Assistance Medical) programs must report. This rule is also being amended to add cross-references and follow standard formatting.

OAR 461-175-0200 about situations in which the Department sends decision notices is being amended to identify the type of decision notice the Department will send when a Food Stamp case is recertified early to align the FS certification end date with the end date of TANF or medical benefits. This rule is also being amended to change the name of the Assessment Program to pre-TANF Program. This rule is being further amended to clarify that in the pre-TANF program, a basic decision notice is sent when a payment for support service in the JOBS program is denied. This rule is also being amended to clarify the rule and add cross-references to other rules and laws.

OAR 461-175-0305 is being amended to state the type of notice required to remove an individual from the benefit group in the REF (Refugee Assistance) and REFM (Refugee Assistance Medical) programs. This rule is also being amended to add cross-references and follow standard formatting.

OAR 461-180-0020 is being amended to correct policy on the effective date for changes in income or income deductions that cause increases on Food Stamp cases, by removing the language that directs changes to be made the month after they become effective and delays an increase in benefits to ongoing clients.

OAR 461-180-0090 about the effective dates of initial month medical benefits is being amended to clarify that in the EXT (Extended Medical Assistance) program, eligibility begins the first of the month following the month in which eligibility ends for the MAA (Medical Assistance Assumed) or MAF (Medical Assistance to Families) programs. 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, Seniors and People with Disabilities Division Chapter 411

**Rule Caption:** Contracted In-Home Care Agency Services.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
8-20-07	2 p.m.	Human Services Bldg. Rm. 137AB 500 Summer Street NE Salem, OR

**Hearing Officer:** Staff

**Stat. Auth.:** ORS 409.050, 410.070 & 410.090

**Stats. Implemented:** ORS 410.010, 410.020 & 410.070

**Proposed Amendments:** 411-030-0090

**Proposed Repeals:** 411-030-0090(T)

**Last Date for Comment:** 8-24-07, 5 p.m.

**Summary:** The Department of Human Services, Seniors and People with Disabilities Division is proposing to permanently adopt the March 30, 2007 temporary amendments to Oregon Administrative Rule 411-030-0090 that removed the cost restrictions on authorizing contracted In-Home Care Agencies as one of the in-home support service options.

**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

# NOTICES OF PROPOSED RULEMAKING

## Department of Justice Chapter 137

**Rule Caption:** Amends child support rules to implement federal and state legislative changes.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
9-10-07	6-7 p.m.	Klamath County Courthouse 316 Main St. Klamath Falls, OR 97601
9-11-07	2-3 p.m.	2885 Chad Dr. Conference Rm. 2 Eugene, OR
9-12-07	9-10 a.m.	494 State St., Suite 300 Salem, 97301
9-12-07	1:30-2:30 p.m.	Crook County Annex 320 NE Court St. Prineville, OR 97754
9-12-07	4-5 p.m.	10142 SE Washington St. Portland, OR
9-13-07	4-5 p.m.	310 E 6th St. 2nd Redwood Conf. Rm. Medford, OR
9-14-07	4-5 p.m.	1300 NW Wall St. Suite 100, Lewis & Clark Rm. Bend, OR

**Hearing Officer:** Shawn Brenizer, Regina Agerter, Debra Foltz, Janet Hughes, Kathy Duff/Michelle Hunzeker, Diana DelRio, Ava Hounshell

**Stat. Auth.:** ORS 18.005, 25.260, 25.080, 25.270-25.290, 25.321-25.343, 25.414, 25.427, 25.610, 25.625, 107.108, 180.345, 416.455  
**Other Auth.:** 28 CFR 42.405, 45 CFR 302.33, 45 CFR 305.2, 45 CFR 305.33

**Stats. Implemented:** ORS 18.345, 18.645, 25.020, 25.080, 25.081, 25.140, 25.150, 25.164, 25.260, 25.270 - 25.343, 25.372 - 25.427, 25.610, 25.625, 107.108, 107.135, 127.005, 293.250, 411.320, 416.407, 416.415, 416.417, 416.422, 416.425, 418.032, 418.042, 656.234, 657.780, 657.855

**Proposed Adoptions:** 137-055-1800

**Proposed Amendments:** 137-050-0320, 137-050-0330, 137-050-0333, 137-050-0335, 137-050-0340, 137-050-0350, 137-050-0400, 137-050-0410, 137-050-0420, 137-050-0430, 137-050-0450, 137-050-0455, 137-050-0465, 137-050-0475, 137-050-0490, 137-055-1020, 137-055-1060, 137-055-1070, 137-055-1080, 137-055-1140, 137-055-1200, 137-055-1500, 137-055-2045, 137-055-2320, 137-055-2340, 137-055-2360, 137-055-2380, 137-055-3340, 137-055-3410, 137-055-3420, 137-055-3430, 137-055-4060, 137-055-4130, 137-055-4320, 137-055-4340, 137-055-4360, 137-055-4520, 137-055-4620, 137-055-4640, 137-055-5045, 137-055-5110, 137-055-6010, 137-055-6021, 137-055-6022, 137-055-6023, 137-055-6024, 137-055-6025, 137-055-6200

**Last Date for Comment:** 9-14-07, 5 p.m.

**Summary:** The Deficit Reduction Act of 2005 (DEFRA) mandates require amendments to OARS 137-050-0320, 137-050-0330, 137-050-0410, 137-050-0430, 137-055-1020, 137-055-1080, 137-055-3340, 137-055-3420, 137-055-3430, 137-055-4060, 137-055-4620, 137-055-4640 to incorporate the change in periodic review to a mandatory three year for parties receiving TANF; add an annual \$25 fee for non-TANF support cases; add new medical provisions terminology; add a "reasonable in cost" formula for medical child support provisions; and provide criteria for determining medical child support provisions when calculating child support obligations.

Federal changes in the bankruptcy code requires amendments to OARS 137-055-2320, 137-055-2340, 137-055-2360, 137-055-2380, 137-055-4320 and 137-055-4340. The amendments clarify which legal actions are not longer stayed due to bankruptcy proceedings and how the agency will proceed.

Distribution and disbursement terminology has been updated to reflect current federal requirements for Title IV-D agencies in OARS 137-055-1020, 137-055-1060, 137-055-1070, 137-055-1140, 137-055-1200, 137-055-1500, 137-055-2045, 137-055-2320, 137-055-

4520, 137-055-5045, 137-055-5110, 137-055-6010, 137-055-6021, 137-055-6022, 137-055-6023, 137-055-6024, 137-055-6025.

Amendments to OAR 137-055-3410 clarify that the agency will take a new order for child support when an existing order only established paternity and did not address child support.

Amendments to OAR 137-055-4130 delete incorrect provisions in the rule when child support is assigned to the state and the obligor requests reduced income withholding and also updates the statutory authority and statutes implemented cites.

The amendment to OAR 137-055-4360 is a cite change and minor language change only.

The amendment to OAR 137-055-6200 provides correct citations to administrative rules and provides consistency between OAR 137-055-6200 and other distribution and disbursement administrative rules.

Federal law requires agencies to provide meaningful access to programs and services by Limited English Proficiency (LEP) persons and to take responsible steps to provide information in appropriate languages to those persons. The agency is adopting OAR 137-055-1800 to implement this requirement.

In addition to the DEFRA changes above, amendments to the guideline rules as a result of the Guidelines Rule Advisory Committee required four year review of the child support guidelines incorporate the committee's recommendations: OAR 137-050-0320 adds a definition for a child attending school and amends nonjoint child definition to include a child in a one parent order; OAR 137-050-0330 provides a formal method for calculating support for minor children and a child attending school; OAR 137-050-0333 clarifies that the rebuttal list is not an exhaustive list and is not limited to the rebuttals set out in the guidelines; OAR 137-050-0340 makes minor language changes and updates statutory citation; OAR 137-050-0350 updates statutory citation; OAR 137-050-0400 adds the requirement to first subtract any mandatory union dues when determining the nonjoint child credit; OAR 137-050-0420 updates terminology and provides for the inclusion of future child care costs if the costs are documentable and determinable; OARS 137-050-0450 and 137-050-0455 change the current parenting time credit to a 1.5 multiplier beginning at 25 percent parenting time and requires that parenting time be calculated by using a two consecutive year average. The rule is also being amended to allow the administrative law judge to allow a credit based on actual parenting time and clarifies that parenting time is only attributed for time with a minor child; OAR 137-050-0465 is a statutory citation change; OAR 137-050-0475 amends the federal poverty dollar amount to the 2006 figure of \$953; OAR 137-050-0490 adds statutory cite to chapter 25, updates the combined adjusted gross income amount to \$30,000 and adopts Scale B.

The amendment to OAR 137-050-0335 clarifies that changes to the guideline rules are effective for any legal action that is pending when a modification or hearing is requested after the effective date of the rule changes.

**Rules Coordinator:** Shawn Brenizer

**Address:** 494 State Street, Suite 300 Salem, Oregon 97301

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

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**Rule Caption:** Motor Vehicle Advertising.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
8-24-07	10 a.m.	Commerce Bldg. 158 12th Street NE Salem, OR

**Hearing Officer:** Hardy Myers

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

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

**Proposed Amendments:** 137-020-0050

**Last Date for Comment:** 9-21-07

**Summary:** OAR 137-020-0050, known as the "Motor Vehicle Advertising rule" and originally adopted in 1987, has not been substantively amended since 1996. The proposed amendments address changes in the industry and more clearly distinguish between law-

# NOTICES OF PROPOSED RULEMAKING

ful and unlawful conduct in the advertising of used and new cars. The full text of the proposed amendments is available at [www.doj.state.or.us](http://www.doj.state.or.us)

The Department of Justice invites public comment.

**Rules Coordinator:** Carol Riches

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

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

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## **Economic and Community Development Department Chapter 123**

**Rule Caption:** Amendment corrects the grant and loan award amount under which a business is required to enter a First Source Agreement.

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

**Stats. Implemented:** ORS 285B.266

**Proposed Amendments:** 123-090-0050

**Last Date for Comment:** 8-22-07

**Summary:** This amendment provides consistency in the amount of a grant or loan award under which a business firm receiving Strategic Reserve Funds shall enter into a First Source Agreement.

**Rules Coordinator:** Paulina Layton

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

**Telephone:** (503) 986-0036

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

**Rule Caption:** Increases and clarifies staff background check requirements for registration of private alternative programs.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
8-29-07	1-3 p.m.	Rm. 251A, Public Service Bldg. 255 Capitol St. NE Salem, OR

**Hearing Officer:** Randy Harnisch

**Stat. Auth.:** ORS 326.051, 327.125, 336.625

**Stats. Implemented:** ORS 181.539, 326.603, 326.607, 327.109, 336.615 - 336.665, 337.150, 339.141, 339.147, 339.155, 339.250, 339.870, 342.232, 433.235 - 433.284, 659.850, 659.855

**Proposed Amendments:** 581-021-0072

**Last Date for Comment:** 8-29-07, 5 p.m.

**Summary:** The proposed amendments will clarify the requirements for criminal background checks for owner/operators of private alternative education programs/schools, as well as for other instructional staff with direct, unsupervised contact with children.

**Rules Coordinator:** Paula Merritt

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

**Telephone:** (503) 378-3600, ext. 2223

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**Rule Caption:** Establishes requirements for approval of supplemental education service providers required under NCLB.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
8-29-07	1-3 p.m.	Rm. 251A, Public Service Bldg. 255 Capitol St. NE Salem, OR

**Hearing Officer:** Randy Harnisch

**Stat. Auth.:** ORS 326.051

**Stats. Implemented:** NCLB, Title 1A, Sec. 1116(e)

**Proposed Adoptions:** 581-021-0074

**Last Date for Comment:** 8-29-07, 5 p.m.

**Summary:** The proposed rule will establish the requirements for approval of programs that provide supplemental services under section 1116(e) of Title 1A of the No Child Left Behind Act.

**Rules Coordinator:** Paula Merritt

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

**Telephone:** (503) 378-3600, ext. 2223

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

**Rule Caption:** These rules identify emergency communication equipment requirements for ocean charter vessels.

**Stat. Auth.:** ORS 830.110

**Stats. Implemented:** ORS 830.430-830.460, Title 47 CFR

**Proposed Amendments:** 250-015-0023, 250-015-0027

**Last Date for Comment:** 8-31-07

**Summary:** These rules identify emergency location and communication equipment for ocean charter vessels.

**Rules Coordinator:** June LeTarte

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

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

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**Rule Caption:** Permanent closure of the forebay at Round Butte Dam on Lake Billy Chinook.

**Stat. Auth.:** ORS 830.110, 830.175, 830.195

**Stats. Implemented:** ORS 830.110, 830.175

**Proposed Amendments:** 250-020-0161

**Last Date for Comment:** 8-31-07

**Summary:** This rule will permanently close the forebay at Round Butte Dam on Lake Billy Chinook to the public.

**Rules Coordinator:** June LeTarte

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

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

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

**Rule Caption:** Clarify containers prohibited inside athletic facilities.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
8-21-07	10 a.m.	Rogue Rm. Erb Memorial Union University of Oregon Eugene, OR

**Hearing Officer:** Deb Eldredge

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

**Stats. Implemented:** ORS 351.060, 352.004

**Proposed Amendments:** 571-050-0011

**Last Date for Comment:** 8-21-07, 5 p.m.

**Summary:** Clarify containers prohibited inside athletic facilities.

**Rules Coordinator:** Deb Eldredge

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

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

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## **Oregon University System, Western Oregon University Chapter 574**

**Rule Caption:** Revision of process/requirements for coverage for health insurance for student athletes and parking services updates.

**Stat. Auth.:** ORS 351.070, 351.072

**Stats. Implemented:** ORS 351.070, 351.072

**Proposed Amendments:** 574-060-0010, 574-085-0040, 574-085-0090, 574-085-0100, 574-085-0110

**Last Date for Comment:** 8-24-07

**Summary:** Revision of process/requirements for coverage for health insurance for student athletes and parking services updates.

**Rules Coordinator:** Debra L. Charlton

**Address:** Oregon University System, Western Oregon University, 345 N Monmouth Ave., Monmouth, OR 97361

**Telephone:** (503) 838-8175

# NOTICES OF PROPOSED RULEMAKING

## Public Utility Commission Chapter 860

**Rule Caption:** In the Matter of Amending OARs 860-021-0033 and 860-021-0034 implementing HB 2053 and correcting references.

**Stat. Auth.:** ORS 183, 756 & 757

**Stats. Implemented:** ORS 756.310, 756.320 & 756.350

**Proposed Amendments:** 860-021-0033, 860-021-0034

**Last Date for Comment:** 8-24-07, 5 p.m.

**Summary:** This rulemaking implements HB 2053 which changes the calculation of the annual fees payable to the Public Utility Commission by electric companies. Currently regulated electric companies pay an annual fee to the Public Utility Commission based on kWh charge; this rulemaking implements HB 2053 which changes the fee calculation to be revenue based. The rulemaking also makes housekeeping rule reference changes to both 860-021-0033 and 860-021-0034.

**Rules Coordinator:** Diane Davis

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

**Telephone:** (503) 378-4372

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**Rule Caption:** In the Matter of a Rulemaking to Adopt Federal Pipeline Safety Regulation Amendments.

**Stat. Auth.:** ORS 183, 756 & 757

**Stats. Implemented:** ORS 757.039

**Proposed Amendments:** 860-024-0020, 860-024-0021

**Last Date for Comment:** 8-23-07, 5 p.m.

**Summary:** The proposed rules adopt published US Department of Transportation (USDOT) amendments associated with the construction, operation and maintenance of intrastate gas pipelines and liquefied natural gas facilities. The amendments being adopted are from the Code of Federal Regulations, CFR Title 49, Part 192

(5 amendments), Part 193 (1 amendment), and Part 199 (4 amendments).

Pursuant to ORS 757.039(3), the Commission has agreements with USDOT that the Oregon PUC will adopt federal pipeline safety regulations applicable to intrastate gas pipelines and liquefied natural gas facilities. This rulemaking is necessary to update Oregon PUC's gas safety rules to be current with federal gas pipeline safety regulations.

**Rules Coordinator:** Diane Davis

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

**Telephone:** (503) 378-4372

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## Secretary of State, Elections Division Chapter 165

**Rule Caption:** Administrative Discontinuation of a Political Committee by Elections Division.

**Stat. Auth.:** ORS 246.150, 260.046

**Stats. Implemented:** ORS 260.046

**Proposed Amendments:** 165-012-0240

**Last Date for Comment:** 8-22-07

**Summary:** This proposed rule amendment updates the criteria for the Elections Division to administratively discontinue a political committee and provides a requirement for the Elections Division to attempt to notify the committee of the proposed discontinuation no later than 30 days prior to administratively discontinuing the committee.

**Rules Coordinator:** Brenda Bayes

**Address:** Secretary of State, Elections Division, 141 State Capitol, Salem, OR 97310-0722

**Telephone:** (503) 986-1518

# ADMINISTRATIVE RULES

## Board of Geologist Examiners Chapter 809

**Rule Caption:** Board adopts 2007–09 budget of \$467,915.00 and increases numerous fees including renewal fees and exam fees.

**Adm. Order No.:** BGE 2-2007

**Filed with Sec. of State:** 6-25-2007

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

**Notice Publication Date:** 5-1-07

**Rules Amended:** 809-010-0001, 809-010-0025

**Subject:** Board adopted the final budget for the 2007–09 biennium of \$467,915.00. The anticipated expenses within this budget required the Board to approve increases in the renewal fees and other fees of the Board in order to acquire the the necessary revenues to balance the budget. The National Association of State Boards of Geology (ASBOG) is increasing the fee for the practice section of the ASBOG examination, so that examination fee is also increased.

**Rules Coordinator:** Susanna R. Knight—(503) 566-2837

### 809-010-0001

#### Fees

Fees, as established by the Board of Geologist Examiners, are:

(1) Fundamental Section of the national examination for Geologist registration — \$175.00.

(2) Practice Section of the national examination for Geologist certification — \$225.00.

(3) Examination for Engineering Geologist certification — \$200.00.

(4) Geologist-in-Training initial registration and annual renewal — \$50.00.

(5) Geologist initial registration and annual renewal — \$100.00.

(6) Engineering Geologist initial certification and annual renewal — \$75.00. Engineering Geologist must have a current Geologist registration.

(7) Duplicate or replacement of lost, destroyed, or mutilated registration card — \$25.00; duplicate or replacement of lost, destroyed, or mutilated wall certificate — \$25.00.

(8) Restoration fee if postmarked:

(a) One to ninety days after due date: \$25.00;

(b) Ninety-one to one-hundred seventy-nine days after due date: \$50;

(c) Over one-hundred seventy-nine days after due date: \$100.

(9) Renewal of registration by Geologist, if applicant is 70 years of age or over by renewal date — \$15.00.

(10) Renewal of certification by Engineering Geologist, if applicant is 70 years of age or over by renewal date — \$15.00.

(11) Application Fee — \$75.00. This fee is to accompany any application for registration or examination and any reapplication for examination.

(12) Temporary Permit Fee — \$100.00. This fee is to accompany any notification per 672.545(3)(b).

Stat. Auth.: ORS 182.466, 670.310 & 672.705

Stats. Implemented: ORS 672.705

Hist.: GE 1(Temp), f. & ef. 11-3-77; GE 2, f. & ef. 12-13-77; GE 2-1979, f. 10-2-79, ef. 10-3-79; GE 1-1981, f. & ef. 8-3-81; GE 1-1982, f. & ef. 5-14-82; GE 2-1983(Temp), f. 10-14-83, ef. 11-1-83; GE 1-1984, f. & ef. 2-1-84; GE 1-1985, f. & ef. 7-1-85; GE 2-1986, f. & ef. 3-5-86; GE 1-1989, f. 12-18-89, cert. ef. 1-1-90; GE 1-1993(Temp), f. 3-1-93, cert. ef. 3-2-93; GE 2-199; GE 2-1996, f. & cert. ef. 8-30-96; BGE 1-1999, f. & cert. ef. 6-17-99; BGE 2-2001, f. & cert. ef. 3-23-01; BGE 1-2002, f. & cert. ef. 2-6-02; BGE 3-2002, f. & cert. ef. 7-9-02; BGE 6-2004, f. & cert. ef. 8-5-04; BGE 2-2005, f. & cert. ef. 9-28-05; BGE 3-2005, f. & cert. ef. 12-7-05; BGE 2-2007, f. 6-25-07, cert. ef. 7-1-07

### 809-010-0025

#### Operating Budget

The Oregon State Board of Geologist Examiners hereby adopts by reference the 2007–09 Biennial Budget of \$467,915.00 covering the period from July 1, 2007, and ending June 30, 2009. With Board approval, the Administrator of the Board may amend budgeted accounts as necessary within the approved budget of \$467,915.00 for the effective operation of the Board. The Board will not exceed the approved 2007–09 Biennium Budget unless registrants are noticed, a public hearing is convened, and this rule is amended as required by ORS Chapter 182.462(1)(2). Copies of the budget are available from the Board's office.

Stat. Auth.: ORS 670.310, 672.705 & 182.462

Stats. Implemented: ORS 672.705 & 1999 OL Ch. 1084

Hist.: BGE 1-1999, f. & cert. ef. 6-17-99; BGE 1-2001, f. & cert. ef. 3-23-01; BGE 2-2003, f. 6-13-03, cert. ef. 7-1-03; BGE 1-2005, f. & cert. ef. 8-15-05; BGE 2-2007, f. 6-25-07, cert. ef. 7-1-07

## Board of Massage Therapists Chapter 334

**Rule Caption:** Amend 2005–2007 Budget and Amend Examination requirements.

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

**Filed with Sec. of State:** 6-29-2007

**Certified to be Effective:** 6-29-07

**Notice Publication Date:** 6-1-07

**Rules Amended:** 334-001-0012, 334-010-0010

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

334-010-0010, Examination: (4) Applicants are required to take and pass a Board approved written exam and the Oregon practical examination, which includes a written test on Oregon statutes and administrative rules.

**Rules Coordinator:** Michelle Sherman—(503) 365-8657, ext. 4

### 334-001-0012

#### Budget

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

Stat. Auth.: SB 1127, ORS 183 & 687.121

Stats. Implemented: Section 6, (1) & (2)

Hist.: BMT 2-1999(Temp), f. & cert. ef. 9-17-99 thru 3-15-00; BMT 1-2000, f. & cert. ef. 1-12-00; BMT 2-2000, f. & cert. ef. 8-3-00; BMT 1-2001, f. & cert. ef. 5-29-01; BMT 2-2003, f. & cert. ef. 6-17-03; BMT 2-2005(Temp), f. & cert. ef. 6-24-05 thru 6-30-05; BMT 3-2005, f. 6-24-05, cert. ef. 7-1-05; BMT 1-2007, f. & cert. ef. 6-29-07

### 334-010-0010

#### Examination

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Stat. Auth.: ORS 183, 687.121 & SB 1127  
Stats. Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086 & 687.121  
Hist.: HB 88, f. 3-16-56; Renumbered from 333-035-0004; MTB 1-1979, f. & ef. 5-22-79; MTB 2-1982, f. & ef. 7-21-82; MTB 2-1985, f. & ef. 1-23-85; MTB 1-1992, f. & cert. ef. 7-28-92; BMT 2-1998, f. & cert. ef. 7-22-98, Renumbered from 334-010-0021 [Hist.: MTB 1-1990, f. & cert. ef. 4-20-90; MTB 1-1992, f. & cert. ef. 7-28-92, Sections (6) - (20)(h) Renumbered from 334-030-0020]; BMT 1-1999(Temp), f. 6-14-99, cert. ef. 7-4-99 thru 12-31-99; BMT 1-2000, f. & cert. ef. 1-12-00; BMT 2-2000, f. & cert. ef. 8-3-00; BMT 1-2002(Temp), f. & cert. ef. 1-9-02 thru 7-5-02; BMT 2-2002, f. & cert. ef. 5-8-02; BMT 1-2003, f. & cert. ef. 1-24-03; BMT 1-2004, f. & cert. ef. 2-23-04; BMT 4-2005(Temp), f. & cert. ef. 9-19-05 thru 3-12-06; BMT 1-2006, f. & cert. ef. 1-5-06; BMT 2-2007, f. & cert. ef. 6-29-07; BMT 1-2007, f. & cert. ef. 6-29-07

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**Rule Caption:** Adopt 2007–2009 Budget.

**Adm. Order No.:** BMT 2-2007

**Filed with Sec. of State:** 7-3-2007

**Certified to be Effective:** 7-3-07

**Notice Publication Date:** 6-1-07

**Rules Amended:** 334-001-0012

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

**Rules Coordinator:** Michelle Sherman—(503) 365-865,7 ext. 4

## 334-001-0012

### Budget

The Oregon Board of Massage Therapists hereby adopts, and fully incorporates herein, the Oregon Board of Massage Therapists' 2007–2009 Biennium budget of \$1,287,346.

Stat. Auth.: SB 1127, ORS 183 & 687.121  
Stats. Implemented: Section 6, (1) & (2)  
Hist.: BMT 2-1999(Temp), f. & cert. ef. 9-17-99 thru 3-15-00; BMT 1-2000, f. & cert. ef. 1-12-00; BMT 2-2000, f. & cert. ef. 8-3-00; BMT 1-2001, f. & cert. ef. 5-29-01; BMT 2-2003, f. & cert. ef. 6-17-03; BMT 2-2005(Temp), f. & cert. ef. 6-24-05 thru 6-30-05; BMT 3-2005, f. 6-24-05, cert. ef. 7-1-05; BMT 1-2007, f. & cert. ef. 6-29-07; BMT 2-2007, f. & cert. ef. 7-3-07

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## Board of Nursing Chapter 851

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

**Adm. Order No.:** BN 6-2007

**Filed with Sec. of State:** 6-26-2007

**Certified to be Effective:** 6-26-07

**Notice Publication Date:** 5-1-07

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

**Subject:** The Board is authorized by ORS 678.385 and 678.390 to determine by rule and revise periodically the drugs and medicines to be included in the formulary that may be prescribed by a nurse practitioner or clinical nurse specialist under ORS 678.375, including controlled substances listed in Schedules II, III, III N, IV and V. This

amendment adds the May and June 2007 updates to Drug Facts and Comparisons to the formulary, with specific drugs proposed for including or deletion.

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

## 851-056-0012

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) All over-the-counter drugs;

(b) Appliances and devices.

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

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

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

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

(A) I 131;

(B) Gallium Nitrate; and

(C) Mifepristone (Mifeprex); and

(D) Abarelix (Plenaxis).

(d) Cardiovasculars — all drugs except:

(A) Cardioplegic Solution;

(B) Fenoldopam Mesylate (Corlopam); and

(C) Dofetilide (Tikosyn).

(e) Renal and Genitourinary Agents — all drugs;

(f) Respiratory Agents — all drugs;

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

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

(i) Tincture of opium;

(ii) Codeine;

(iii) Hydromorphone;

(iv) Morphine;

(v) Oxycodone, Oxymorphone;

(vi) Topical Cocaine Extracts and Compounds;

(vii) Fentanyl;

(viii) Meperidine;

(ix) Amphetamines;

(x) Methylphenidates;

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- (xi) Pentobarbital;
- (xii) Secobarbital;
- (xiii) Methadone Hydrochloride (in accordance with OAR 851-045-0015(2)(n) and 851-056-0026; and
- (xiv) Levorphanol.
- (B) General Anesthetic Agents — no drugs which are general anesthetic barbiturates, volatile liquids or gases, with the exception of nitrous oxide;
- (C) Chymopapain is excluded;
- (D) Ziconotide (Prialt) is excluded.
- (h) Gastrointestinal Agents — all drugs except: Monoctanoic;
- (i) Anti-infectives, Systemic — all drugs;
- (j) Biological and Immunologic Agents — all drugs except Basiliximab (Simulect);
- (k) Dermatological Agents — all drugs except Psoralens;
- (l) Ophthalmic and Otic Agents — all drugs except:
  - (A) Punctal plugs;
  - (B) Collagen Implants;
  - (C) Indocyanine Green;
  - (D) Hydroxypropyl (Methyl) Cellulose;
  - (E) Polydimethylsiloxane;
  - (F) Fomivirsin Sodium (Vitravene);
  - (G) Verteporfin;
  - (H) Levobetaxolol HCL (Betaxon);
  - (I) Travoprost (Travatan);
  - (J) Bimatoprost (Lumigan);
  - (K) Unoprostone Isopropyl (Rescula);
  - (L) Pegaptanib Sodium (Macugen);
  - (M) Triptan Blue (VisionBlue);
  - (N) Retisert; and
  - (O) Ranibizumab (Lucentis).
- (m) Antineoplastic Agents — all drugs except:
  - (A) NCI Investigational Agents;
  - (B) Samarium Sm53;
  - (C) Denileukin Diftitox (Ontak);
  - (D) BCG, Intravesical (Pacis);
  - (E) Arsenic Trioxide (Trisenox);
  - (F) Ibritumomab Tiuxetan (Zevalin);
  - (G) Tositumomab and Iodine 131 I-Tositumomab (Bexxar);
  - (H) Sclerosol; and
  - (I) Clofarabine (Clolar).
- (n) Diagnostic Aids:
  - (A) All drugs except Arbutamine (GenESA);
  - (B) Thyrotropin Alfa (Thyrogen);
  - (C) Miscellaneous Radiopaque agents — no drugs from this category

except:

- (i) Iopamidol;
- (ii) Iohexol; and
- (iii) Ioxilan (Oxilan).

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

Stat. Auth.: ORS 678.385

Stats. Implemented: ORS 678.385, 678.390

Hist.: BN 10-2006, f. & cert. ef. 10-5-06; BN 2-2007, f. & cert. ef. 3-13-07; BN 4-2007, f. & cert. ef. 5-2-07; BN 6-2007, f. & cert. ef. 6-26-07

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**Rule Caption:** Revised Agency Fees for Nursing Assistants.

**Adm. Order No.:** BN 7-2007

**Filed with Sec. of State:** 6-29-2007

**Certified to be Effective:** 1-1-08

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

**Rules Amended:** 851-002-0040

**Subject:** These rules cover all agency fees for Nursing Assistants.

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

## 851-002-0040

### Nursing Assistant Schedule of Fees

- (1) Certification by Examination — \$106.
- (2) Certification by Endorsement — \$60.
- (3) Reexamination — Manual Skills — \$45.
- (4) Reexamination — Written — \$25.
- (5) Oral Administration of Written Examination — \$35.
- (6) Written Verification of Certification — \$10.
- (7) Duplicate Certificate — \$10.
- (8) CNA Certificate Renewal — \$50.
- (9) CNA Reactivation Fee — \$5.

- (10) CNA Certification for RN or LPN — \$60.
- (11) CNA Certification for Student Nurses — \$60.
- (12) Initial Approval CNA Training Program — \$100.
- (13) Approval of Revised CNA Training Program — \$75.
- (14) Reapproval of CNA Training Program — \$50.
- (15) CNA Primary Instructor Approval — \$10.
- (16) Initial Approval of CNA Program Director — \$25.
- (17) CNA 2 Registration (each category) — \$5.

Stat. Auth.: ORS 678.150 & 678.410

Stats. Implemented: ORS 678.410

Hist.: NB 9-1989(Temp), f. & cert. ef. 11-24-89; NB 5-1990, f. & cert. ef. 5-7-90; NB 7-1990(Temp), f. & cert. ef. 7-11-90; NB 9-1990, f. & cert. ef. 10-9-90; NB 5-1991(Temp), f. & cert. ef. 10-15-91; NB 3-1992, f. & cert. ef. 2-13-92; NB 12-1992, f. 12-15-92, cert. ef. 1-1-93; NB 2-1993, f. 2-8-93, cert. ef. 2-16-93; NB 15-1993, f. 12-27-93, cert. ef. 6-1-94; NB 9-1997, f. 7-22-97, cert. ef. 9-1-97; BN 4-1999, f. 5-21-99, cert. ef. 7-1-99, Renumbered from 851-060-0300; BN 7-1999, f. 8-10-99, cert. ef. 11-1-99; BN 10-1999, f. & cert. ef. 12-1-99; BN 6-2003, f. & cert. ef. 7-7-03; BN 7-2004, f. & cert. ef. 2-26-04; BN 14-2004, f. & cert. ef. 10-26-04; BN 7-2007, f. 6-29-07, cert. ef. 1-1-08

## Board of Pharmacy Chapter 855

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

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

**Filed with Sec. of State:** 6-29-2007

**Certified to be Effective:** 6-29-07

**Notice Publication Date:** 5-1-07

**Rules Amended:** 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

**Rules Repealed:** 855-010-0010, 855-031-0035, 855-041-0090, 855-080-0030, 855-080-0090

**Rules Ren. & Amend:** 855-080-0060 to 855-001-0040

**Subject:** 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 adopted rules is available on the Board website at [www.pharmacy.state.or.us](http://www.pharmacy.state.or.us).

**Rules Coordinator:** Karen MacLean—(971) 673-0001

## 855-001-0000

### Notice of Proposed Rule

Prior to the permanent adoption, amendment, or repeal of any rule, the State Board of Pharmacy shall give notice of its intended action as required in ORS 183.335(1):

(1) In a manner established by rule adopted by the Board under ORS183.341(4), which provides a reasonable opportunity for interested persons to be notified of the agency's proposed action;

(2) In the bulletin referred to in ORS 183.360 at least 21 days prior to the effective date;

(3) To persons who have requested notice pursuant to ORS183.335(8) at least 28 days before the effective date; and

(4) To persons specified in ORS 183.335(15) at least 49 days before the effective date; and

(5) To persons or organizations the Board's Executive Director determines, pursuant to ORS 183.335, are interested persons in the subject

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matter of the proposed rule, or would be likely to notify interested persons of the proposal; and

- (a) Oregon State Pharmacist Association;
- (b) Oregon Society of Health System Pharmacists;
- (6) To the Associated Press and the Capitol Press Room.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 183.335

Hist.: 1PB 42, f. & ef. 4-6-76; 1PB 54, f. & ef. 12-13-77; 1PB 1-1978, f. & ef. 2-21-78; 1PB 7-1978(Temp), f. & ef. 7-1-78; 1PB 9-1978, f. & ef. 10-23-78; BP 1-2001, f. & cert. ef. 3-5-01; BP 4-2002, f. 6-27-02, cert. ef. 7-1-02; BP 1-2005, f. & cert. ef. 2-7-05; BP 1-2007, f. & cert. ef. 6-29-07

## 855-001-0040

### Inspections

(1) The Board or its authorized representative may enter and shall be allowed entry to any drug outlet where drugs are stored, and the premises where the records associated with those drugs are stored, to conduct inspections at reasonable times in a reasonable manner for the purpose of:

(a) Inspecting, copying, and verifying the correctness of records, reports, or other documents required to be kept under the Uniform Controlled Substances Act, the Oregon Pharmacy Act and these rules including, but not limited to, shipping records identifying the name of each carrier used and the date and quantity of each shipment, and storage records identifying the name of each warehouse used and the date and quantity of each;

(b) Inspecting within reasonable limits and a reasonable manner all pertinent equipment, finished and unfinished drugs and other substances or materials, containers, and labeling found at the drug outlet;

(c) Making a physical inventory of all drugs on hand at the premises;

(d) Collecting samples of drugs or ingredients;

(e) Checking of records and information on distribution of drugs by the registrants as they relate to total distribution of the registrant;

(f) All other things appropriate for verification of the records, reports, documents referred to above or otherwise bearing on the provisions of the Uniform Controlled Substances Act, the Oregon Pharmacy Act and these rules.

(2) The inspections hereunder may be conducted in connection with applications for initial or renewal registration or modification or amendment thereof and at such other times where the Board or its authorized representative determines that there is reasonable basis for concluding that inspection is necessitated in order to ensure that there is compliance with the Uniform Controlled Substances Act, the Oregon Pharmacy Act and these rules.

(3) Refusal to allow inspection is grounds for denial, suspension, or revocation of a registration.

Stat. Auth.: ORS 475.125 & ORS 689.205

Stats. Implemented: ORS 689.155

Hist.: 1PB 6-1978(Temp), f. & ef. 7-1-78; 1PB 8-1978, f. & ef. 10-17-78; 1PB 6-1982, f. & ef. 8-6-82; Renumbered from 855-080-0060, BP 1-2007, f. & cert. ef. 6-29-07

## 855-010-0001

### Definitions

(1) "Accredited": In these rules, accredited shall mean a school or college that is currently accredited by the Accreditation Council for Pharmacy Education (ACPE) or that is in a pre-candidate or candidate status with ACPE.

(2) "Board" means Oregon State Board of Pharmacy.

Stat. Auth.: ORS 475.005, 689.205

Stats. Implemented: ORS 689.115

Hist.: 1PB 18, f. & ef. 10-14-64; 1PB 2-1979(Temp), f. & ef. 10-3-79; 1PB 2-1980, f. & ef. 4-3-80; BP 1-2007, f. & cert. ef. 6-29-07

## 855-010-0005

### Meetings

(1) The Board meetings shall be held not less than once every three months as designated by the Board.

(2) The President of the Board shall have power to call special meetings, subject to ORS 689.185, when it may be deemed necessary or upon request of a majority of members.

(3) The Board shall hold an annual meeting each year for the election of officers, the reorganization of the Board and the transaction of other business, which may include but is not limited to:

(a) Approval of ACPE programs;

(b) Approval of preceptor sites;

(c) Approval of accredited schools and colleges of pharmacy;

(d) Review and adopt by reference the Federal list of controlled substances.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.135, 689.151, 689.185, 689.255

Hist.: 1PB 18, f. & ef. 10-14-64; 1PB 2-1980, f. & ef. 4-3-80; PB 1-1989, f. & cert. ef. 1-3-89; BP 1-2007, f. & cert. ef. 6-29-07

## 855-031-0005

### Definitions

(1) An "intern" means any person who has:

(a) Completed the first professional year and is in good academic standing at a school or college of pharmacy that is approved by the Board; or

(b) Is a graduate of school or college of pharmacy that is approved by the Board; or

(c) Holds a certificate from the Foreign Pharmacy Graduate Equivalency Committee (FPGEC), and has passed either the Test of Spoken English (TSE) with a score of not less than 50 or the TOEFL (iBT) test with a score of not less than 26 for the spoken portion; and

(d) Is licensed with the Board as an intern.

(2) A "preceptor" means a pharmacist licensed and in good standing, registered as a preceptor by the Board to supervise the internship training of an intern.

(3) "Internship" means a professional and practical experience program approved by the Board.

(a) "Pharmacy Practice Internship" means experience toward achieving competency in the practice of pharmacy in a registered pharmacy pursuant to ORS 689.151(5), at a site licensed or approved by the Board and for which no academic credit is granted to the intern.

(b) "Clerkship" means experience toward achieving competency in specialty practices of pharmacy in programs developed and administered by a school or college of pharmacy and which must be approved by the Board before the course is offered if internship hours are to be submitted by the intern.

(c) "Other Internship" means experience toward achieving competency in the practice of pharmacy in a program approved in advance by the Board.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.151, 689.255

Hist.: 1PB 2-1979(Temp), f. & ef. 10-3-79; 1PB 2-1980, f. & ef. 4-3-80; PB 7-1990, f. & cert. ef. 12-5-90; PB 3-1991, f. & cert. ef. 9-19-91; PB 1-1994, f. & cert. ef. 2-2-94; PB 1-1996, f. & cert. ef. 4-5-96; Administrative correction 2-15-00; BP 1-2002, f. & cert. ef. 1-8-02; BP 1-2007, f. & cert. ef. 6-29-07

## 855-031-0010

### Internship License Application — Forms

(1) Applications for licensure as an intern and registration as a pharmacy preceptor, and copies of the current Internship Manual may be obtained from the Board office or from the Board web site at [www.pharmacy.state.or.us](http://www.pharmacy.state.or.us).

(2) The license for a qualified intern shall be issued by the Board after the receipt of:

(a) A completed application,

(b) Payment of the fee prescribed in OAR 855-110; and

(c) Current, passport regulation size photograph (full front, head to shoulders).

(3) An intern license shall remain in effect as long as the Board is satisfied that the intern is pursuing a degree in pharmacy and is in good academic standing at a school or college of pharmacy that is approved by the Board. An intern license is valid through the fourth May 31st from the date of issue unless terminated automatically by any one of the following events:

(a) Licensure to practice pharmacy is granted in any state; or

(b) The licensee fails to maintain enrollment or active registration in a pharmacy degree program for a period greater than one year; or

(c) The licensee has been graduated from an accredited school of pharmacy for 12 months.

(4) An intern must surrender their license to the Board within 30 days of one of the above events.

(5) Notwithstanding the requirements of section (3) above, upon written request the Board may waive any of the requirements of this rule if a waiver will further public health and safety. A waiver granted under this section shall only be effective when it is issued in writing.

(6) Licensure as a pharmacist in another state precludes licensure to practice as an intern in the State of Oregon, except for applicants for licensure by examination or by reciprocity who must acquire internship hours to become eligible for licensure, and then only until the required hours have been acquired.

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

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.151, 689.255



# ADMINISTRATIVE RULES

Hist.: 1PB 2-1979(Temp), f. & ef. 10-3-79; 1PB 2-1980, f. & ef. 4-3-80; PB 7-1990, f. & cert. ef. 12-5-90; PB 1-1994, f. & cert. ef. 2-2-94; BP 1-2001, f. & cert. ef. 3-5-01; BP 1-2002, f. & cert. ef. 1-8-02; BP 1-2007, f. & cert. ef. 6-29-07

## 855-031-0015

### Approved Internship Experience Areas

(1) Internship shall be acquired in any one or a combination of the following approved internship experience areas:

- (a) Pharmacy Practice Internship;
- (b) Clerkship; or
- (c) Other Internship.

(2) In order for eligible pharmacy students to receive intern hours for clerkship experiences, a school or college of pharmacy must submit the syllabuses to the Board for approval before offering the course.

(a) The syllabus must show which of the competencies from the school or college of pharmacy competency checklist will be included in the clerkship experience.

(b) For purposes of obtaining intern hours from the clerkship experience, the student must be responsible for licensing as an intern with the Board and maintaining the required Experience Affidavit/Hours Logs.

(c) The student's preceptor in the clerkship courses must also fulfill the responsibilities listed in OAR 855-031-0045.

(d) The preceptor must obtain prior approval from the Board if the preceptor wishes to designate a non-pharmacist to be responsible for the direct supervision of the intern during the clerkship experience.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.151, 689.255

Hist.: 1PB 2-1979(Temp), f. & ef. 10-3-79; 1PB 2-1980, f. & ef. 4-3-80; PB 7-1990, f. & cert. ef. 12-5-90; PB 1-1994, f. & cert. ef. 2-2-94; BP 1-2002, f. & cert. ef. 1-8-02; BP 1-2004, f. & cert. ef. 3-12-04; BP 1-2007, f. & cert. ef. 6-29-07

## 855-031-0020

### Internship Requirements and Responsibilities

(1) Internship must consist of not less than 2000 Board-approved hours.

(2) Not more than 48 hours per week may be credited toward the internship requirement.

(3) The intern must make certain the preceptor is currently registered with the Board.

(4) An intern must be supervised by a licensed pharmacist or other person approved in writing by the Board in order to obtain approved internship hours.

(5) An intern may not work in the practice of pharmacy unless supervised by a licensed pharmacist.

(6) An intern must notify the Board in writing within 15 days of beginning or changing an internship site.

(7) An intern must notify the Board in writing within 15 days of a change in permanent residence.

(8) An intern license must be conspicuously displayed in the internship site at all times.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.151, 689.255

Hist.: 1PB 2-1979(Temp), f. & ef. 10-3-79; 1PB 2-1980, f. & ef. 4-3-80; PB 7-1990, f. & cert. ef. 12-5-90; PB 3-1991, f. & cert. ef. 9-19-91; PB 1-1994, f. & cert. ef. 2-2-94; PB 3-1994, f. & cert. ef. 7-1-94; BP 1-2002, f. & cert. ef. 1-8-02; BP 1-2007, f. & cert. ef. 6-29-07

## 855-031-0030

### Out-of-State Internship Experience

(1) In order for an Oregon intern to obtain credit for internship experience outside the State of Oregon, an intern must:

- (a) Be licensed in the state in which they will practice,
- (b) Meet or exceed the minimum intern requirements of the Oregon Board of Pharmacy;

(c) Report hours worked to the state board of pharmacy or other authorized certifying representative in the state where the hours were earned; and

(d) Request, in writing, the board of pharmacy or other authorized certifying representative of that state to certify the location, type of experience, and the preceptor to the Board.

(2) In order for an out-of-state intern to practice in the State of Oregon, the intern must meet all requirements of these rules.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.151, 689.255

Hist.: 1PB 2-1979(Temp), f. & ef. 10-3-79; 1PB 2-1980, f. & ef. 4-3-80; PB 7-1990, f. & cert. ef. 12-5-90; PB 1-1994, f. & cert. ef. 2-2-94; BP 1-2002, f. & cert. ef. 1-8-02; BP 1-2007, f. & cert. ef. 6-29-07

## 855-031-0033

### Internship Experience in Federal Facilities

(1) In order to obtain internship experience in a federal facility located in Oregon, an intern must be licensed with the Oregon Board of Pharmacy.

(2) A pharmacist acting as a preceptor in a federal facility is not required to be licensed as a pharmacist in Oregon, but is required to be registered as a preceptor with the Oregon Board of Pharmacy.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.151, 689.255

Hist.: PB 1-1996, f. & cert. ef. 4-5-96; BP 1-2002, f. & cert. ef. 1-8-02; BP 1-2007, f. & cert. ef. 6-29-07

## 855-031-0040

### Internship Reports

(1) The Intern Experience Affidavit/Hours Logs must list the actual number of hours worked and the dates covered by those hours.

(2) Each Experience Affidavit/Hours Log must be notarized.

(3) Each internship experience Affidavit/Hours Logs must be signed by the intern and the preceptor.

(4) The intern may report to the Board voluntarily, the preceptor's aptitude and willingness to perform the duties of a preceptor, or must do so upon request by the Board.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.151, 689.255

Hist.: 1PB 2-1979(Temp), f. & ef. 10-3-79; 1PB 2-1980, f. & ef. 4-3-80; PB 7-1990, f. & cert. ef. 12-5-90; PB 1-1994, f. & cert. ef. 2-2-94; PB 1-1996, f. & cert. ef. 4-5-96; BP 1-2002, f. & cert. ef. 1-8-02; BP 1-2007, f. & cert. ef. 6-29-07

## 855-031-0045

### Preceptor Registration and Responsibilities

(1) The registration of a qualified preceptor shall be issued by the Board upon receipt of a completed application. Registration of preceptors is required under ORS 689.005(29).

(2) A preceptor must have been an actively practicing pharmacist for at least one year immediately prior to supervising an intern.

(3) Effective July 1, 2008, a preceptor registration must be renewed annually and is valid through June 30th.

(4) The preceptor may report to the Board voluntarily, the progress and aptitude of an intern under the preceptor's supervision, or must do so upon request of the Board.

(5) The preceptor must provide the intern with internship experience, which in the preceptor's judgment will increase the intern's competency in the practice of pharmacy.

(6) The preceptor must be responsible for supervision of the majority of the intern's hours unless the preceptor has obtained prior approval pursuant to OAR 855-031-0015(2)(d). The preceptor must designate on the Internship Experience Affidavit/Hours Log the pharmacists who acted as supervisor during the preceptor's absence.

(7) The preceptor must certify the Internship Experience Affidavit/Hours Log. A separate Affidavit/Hours Log must be filed when the intern changes preceptors.

(8) A pharmacist must not supervise more than one intern simultaneously at a pharmacy practice site.

(9) A pharmacist must not supervise more than one intern simultaneously at a clerkship site without prior written approval of the Board. To apply for approval, the preceptor must submit a form provided by the Board, which shall include:

- (a) The course syllabus;
- (b) Proposed ratio of interns to supervising pharmacist;
- (c) Any other documentation requested by the Board.

(10) The preceptor must verify that the intern is currently licensed with the Board.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.151

Hist.: 1PB 2-1979(Temp), f. & ef. 10-3-79; 1PB 2-1980, f. & ef. 4-3-80; PB 7-1990, f. & cert. ef. 12-5-90; PB 1-1994, f. & cert. ef. 2-2-94; PB 1-1996, f. & cert. ef. 4-5-96; BP 1-2002, f. & cert. ef. 1-8-02; BP 1-2004, f. & cert. ef. 3-12-04; BP 1-2007, f. & cert. ef. 6-29-07

## 855-031-0050

### Eligibility for Exams

(1) Interns are eligible to take the State licensure exam, North American Pharmacist Licensure Examination (NAPLEX), upon graduation and notification by the school or college of pharmacy that their degree has been conferred.

(2) Interns are eligible to take the Multistate Pharmacy Jurisprudence Examination (MPJE) upon:

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(a) Completion of internship experience requirements, including filing Internship Experience Affidavit/Hours Logs totaling 2000 hours as required under OAR 855-031-0040 for the Board's approval; and

(b) Eligibility to take the NAPLEX.

(3) It is the responsibility of the intern to contact the Board of Pharmacy to request an application packet to take the national licensure exams.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.255

Hist.: 1PB 2-1979(Temp), f. & ef. 10-3-79; 1PB 2-1980, f. & ef. 4-3-80; PB 5-1990, f. & cert. ef. 4-12-90; PB 7-1990, f. & cert. ef. 12-5-90; PB 1-1994, f. & cert. ef. 2-2-94; BP 1-2002, f. & cert. ef. 1-8-02; BP 1-2007, f. & cert. ef. 6-29-07

## 855-031-0055

### Pharmacist Licensure — Payment of Fees

Upon meeting all requirements for pharmacist licensure, and before practicing pharmacy in the State of Oregon, a person must:

(1) Complete an application for licensure,

(2) Pay the annual license fee as prescribed in OAR 855-110, and

(3) Obtain a license, which will expire on June 30 following the date of issue.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.135, 689.255

Hist.: 1PB 2-1979(Temp), f. & ef. 10-3-79; 1PB 2-1980, f. & ef. 4-3-80; PB 1-1989, f. & cert. ef. 1-3-89; PB 5-1990, f. & cert. ef. 4-12-90; PB 7-1990, f. & cert. ef. 12-5-90; BP 1-2002, f. & cert. ef. 1-8-02; BP 1-2007, f. & cert. ef. 6-29-07

## 855-041-0120

### Absence of Pharmacist

(1) General. During such times as hospital pharmacy services are not available, arrangements shall be made in advance by the director for provision of drugs to the medical staff and other authorized personnel of the hospital by use of night cabinets and/or by access to the pharmacy under the standing order of the director.

(2) Night Cabinets. If night cabinets are used, the following shall prevail:

(a) In the absence of a registered pharmacist, medication for inpatients shall be obtained from a locked cabinet(s) or other enclosure(s) located outside the pharmacy to which only a licensed nurse may obtain access by key or combination, and which is sufficiently secure to deny access to unauthorized persons. One licensed nurse and only one in any given shift may have access to the night cabinet and may remove drugs there from. Such nurse shall be designated in writing by the appropriate committee of the hospital and shall, prior to being permitted to obtain access to the night cabinet, receive thorough education and training in the proper methods of access, removal of drugs, and records and procedures required. Such education and training shall be given by the director of pharmacy or designees, who shall require, at a minimum, the following records and procedures:

(A) Drugs can only be removed from the night cabinet on a practitioner's written order, or verbal order, which has been reduced to writing;

(B) The practitioner's order shall be left in the night cabinet so that it will be found by a pharmacist and verified for accuracy. The order shall be initialed by both the licensed nurse and the certifying pharmacist.

(b) The director shall, in conjunction with the appropriate committee of the hospital facility, develop inventory listings of those drugs to be included in such cabinet(s) and shall insure that:

(A) Such drugs are available therein, properly labeled as designated in OAR 855-041-0130(7);

(B) Only prepackaged drugs are available therein, in amounts sufficient for immediate therapeutic requirements;

(C) Whenever access to such cabinet(s) shall have been gained, written medical staff orders and proofs of use, if applicable, are provided;

(D) All drugs therein are inventoried no less than once per week;

(E) A complete audit of all activity concerning such cabinet(s) is conducted no less than once per month; and

(F) Written policies and procedures are established to implement the requirements of section (2) of this rule.

(3) Access to Pharmacy. Whenever any drug is not available from floor supplies or night cabinets, and such drug is required to treat the immediate needs of a patient whose health would otherwise be jeopardized, such drug may be obtained from the pharmacy in accordance with the requirements of this section. One registered nurse supervisor and only one in any given shift may have access to the pharmacy and may remove drugs there from. Such nurse shall be designated in writing by the appropriate committee of the hospital and shall, prior to being permitted to obtain access to the pharmacy, receive thorough education and training in the proper methods of access, removal of drugs, and records and procedures required. Such education and training shall be given by the director of pharmacy or

designees, who shall require, at a minimum, the following records and procedures:

(a) Drugs can only be removed from the pharmacy on a practitioner's written order, or verbal order, which has been reduced to writing;

(b) The practitioner's order shall be left with either the container from which the drug was removed or an identical unit dose and both placed conspicuously so that it will be found by a pharmacist and verified for accuracy. The order shall be initialed by both the nurse supervisor and the certifying pharmacist.

(4) Emergency Outpatient Medication. Hospitals that provide for the dispensing of emergency pharmaceuticals to outpatients during hours when normal community or outpatient hospital pharmacy services are not available may:

(a) Allow a designated nurse supervisor on the original written order of a practitioner as provided in ORS 689.605 to dispense medications pursuant to the following requirements, which shall be in the form of pharmacist's standing orders:

(A) A written order of a practitioner authorized to prescribe a drug is presented;

(B) The medication is prepackaged by a pharmacist and contains:

(i) Name, address and telephone number of the hospital;

(ii) Name of drug, strength, and number of units, when a generic name is used, the label shall also contain the name of the manufacturer or distributor;

(iii) Accessory cautionary information as required for patient safety;

(iv) An expiration date after which the patient should not use the medication.

(C) No more than an emergency supply, as defined by the PIC in the hospital policy and procedures, is provided to the patient.

(D) The container is labeled by the nurse supervisor before presenting to the patient and shows the following:

(i) Name of patient;

(ii) Directions for use to the patient;

(iii) Date;

(iv) Identifying number;

(v) Name of prescribing practitioner;

(vi) Initials of the supervisor.

(E) The original written order by the prescriber is retained for verification by the pharmacist after completion by the nurse supervisor and shall bear:

(i) Name and address of patient;

(ii) Date of issuance;

(iii) Units issued;

(iv) Initials of supervisor issuing medication.

(F) The original written order is verified by the pharmacist, initialed, dated and filed separately for a period of three years for Board inspection.

(b) Allow practitioners, as provided in ORS 689.225, who are members of the hospital's medical staff, to dispense an emergency supply of medications to patients examined by them in the institution pursuant to the following requirements, which shall be in the form of pharmacist's standing orders:

(A) A written order of a practitioner authorized to prescribe a drug is documented in the patient's medical record;

(B) The medication is prepackaged by a pharmacist and contains:

(i) Name, address and telephone number of hospital;

(ii) Name of drug, strength, and number of units. When a generic name is used, the label shall also contain the name of the manufacturer or distributor;

(iii) Accessory cautionary information as required for patient safety;

(iv) An expiration date after which the patient should not use the medication.

(C) The container is labeled by the practitioner before presenting to the patient and bears the following:

(i) Name of patient;

(ii) Directions for use to the patient;

(iii) Date;

(iv) Identifying number;

(v) Name of prescribing practitioner.

(D) A record of the dispensing is completed by the practitioner for verification by the pharmacists, retained for three years for Board inspection, and shall bear:

(i) Name of patient;

(ii) Date of issuance;

(iii) Medication dispensed;

(iv) Units issued;

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(v) Name of practitioner.

(c) Allowed controlled substances to be dispensed to outpatients by the examining practitioner only after the patient has been examined by the practitioner and a legitimate medical need for a controlled substance has been determined.

(5) Emergency Kits:

(a) Emergency Kit Drugs Defined. Emergency kit drugs are those drugs which may be required to meet the immediate therapeutic needs of inpatients and which are not available from any other authorized source in sufficient time to prevent risk of harm to patients by delay resulting from obtaining such drugs from such other source;

(b) Supply Pharmacist. All emergency kit drugs shall be prepared by a licensed pharmacist;

(c) Drugs Included. The director of pharmacy and the medical staff of the hospital shall jointly determine and prepare a list of drugs, by identity and quantity, to be included in emergency kits. Such list of drugs shall be reviewed annually by the appropriate medical staff committee;

(d) Storage. Emergency kits shall be stored in areas to prevent unauthorized access and to insure a proper environment for preservation of the drugs within them, as required in official compendia;

(e) Labeling — Interior. All drugs contained in emergency kits shall be labeled in accordance with OAR 855-041-0130(7);

(f) Labeling — Exterior. The exterior of emergency kits shall be labeled to clearly and unmistakably indicate that it is an emergency drug kit and it is for use in emergencies only; such label shall also contain a listing of the name, strength and quantity of the drugs contained therein and an expiration date;

(g) Expiration Date. The expiration date of an emergency kit shall be the earliest expiration date on any drug supplied in the kit. Upon the occurrence of the expiration date, the supplying pharmacist shall open the kit and replace expired drugs;

(h) Removal of Drugs. Drugs shall be removed from emergency kits by authorized personnel only, pursuant to a valid order or by the supply pharmacist;

(i) Notifications. Whenever an emergency kit is opened or has expired, the supply pharmacist shall be notified and the pharmacist shall restock and reseal the kit within a reasonable time to prevent risk of harm to patients.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.155, 689.605

Hist.: 1PB 2-1980, f. & ef. 4-3-80; PB 12-1989, f. & cert. ef. 8-11-89; PB 4-1991, f. & cert. ef. 9-19-91; BP 1-2007, f. & cert. ef. 6-29-07

## 855-041-0500

### Qualifications

(1) A pharmacist may administer vaccines and immunizations to persons who are at least 18 years of age as provided by these rules. For the purposes of this rule, a person is at least 18 years of age on the day of the person's eighteenth birthday.

(2) A pharmacist may administer influenza vaccines to persons who are at least 15 years of age. For the purposes of this rule, a person is at least 15 years of age on the day of the person's fifteenth birthday.

(3) A pharmacist may administer vaccines or immunizations under section one or section two of this rule only if:

(a) The pharmacist has completed a course of training accredited by the Centers for Disease Control and Prevention, the American Council on Pharmaceutical Education or a similar health authority or professional body approved by the Board and the Oregon Department of Human Services;

(b) The pharmacist holds a current basic Cardiopulmonary Resuscitation (CPR) certification issued by the American Heart Association or the American Red Cross or any other equivalent program that contains a hands-on training component and is valid for not more than three years, and documentation of the certification is placed on file in the pharmacy;

(c) The vaccines and immunizations are administered in accordance with an administration protocol approved by the Oregon Department of Human Services; and

(d) The pharmacist has a current copy of the CDC reference, "Epidemiology and Prevention of Vaccine-Preventable Diseases."

(4) No pharmacist may delegate the administration of vaccines to another person.

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

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.645

Hist.: BP 7-2000, f. & cert. ef. 6-29-00; BP 3-2006, f. & cert. ef. 6-9-06; BP 1-2007, f. & cert. ef. 6-29-07

## 855-050-0070

### Prescription Drugs

(1) The following are prescription drugs:

(a) Drugs required by federal law to be labeled with either of the following statements:

(A) "Caution: Federal law prohibits dispensing without prescription"

(B) "Caution: Federal law restricts this drug to be used by or on the order of a licensed veterinarian"; or

(C) "Rx only"

(b) Drugs designated as prescription drugs by the Oregon Board of Pharmacy

(2) The Oregon Board of Pharmacy designates the following drugs as prescription drugs:

(a) Preparations containing codeine or salts of codeine

(b) Preparations containing opium/paregoric

(3) No person shall sell, give away, barter, transfer, purchase, receive or possess prescription drugs except upon the prescription of a practitioner.

(4) The following are exempt from the prohibition of section (3) of this rule:

(a) Manufacturers

(b) Wholesalers;

(c) Institutional and retail drug outlets;

(d) Practitioners.

(5) Individuals who purchase, receive, or possess a prescription drug for the purpose of administration or delivery to a patient are exempt from the prohibition against purchasing, receiving, or possessing prescription drugs contained in section (3) of this rule and ORS 689.765(6).

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.155, 689.765

Hist.: PB 3-1990, f. & cert. ef. 4-5-90; PB 9-1990, f. & cert. ef. 12-5-90; PB 4-1991, f. & cert. ef. 9-19-91; BP 1-2002, f. & cert. ef. 1-8-02; BP 7-2004, f. & cert. ef. 11-8-04; BP 4-2006, f. 6-9-06, cert. ef. 7-1-06; BP 14-2006(Temp), f. 12-29-06, cert. ef. 1-1-07 thru 6-29-07; BP 1-2007, f. & cert. ef. 6-29-07

## 855-080-0015

### Definitions

As used in these rules:

(1) "Act" means the Uniform Controlled Substances Act, ORS Chapter 475, and rules thereunder;

(2) "CFR" means Code of Federal Regulations;

(3) The term "registration" or variants thereof means the annual registration required of manufacturers, distributors and dispensers of controlled substances under ORS 475.125, and the term "registrants" or variants thereof refers to persons so registered; provided that where references of this nature are used in CFR sections referred to in these rules, the reference is to the registration requirements and registrants under the Federal Controlled Substances Act, and Title 21, CFR.

(4) "USC" means United States Code;

(5) Terms not defined in this rule have the definitions set forth in ORS 475.005.

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

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 475.035 & 475.940

Hist.: 1PB 6-1978(Temp), f. & ef. 7-1-78; 1PB 8-1978, f. & ef. 10-17-78; 1PB 6-1982, f. & ef. 8-6-82; PB 5-1991, f. & cert. ef. 9-19-91; BP 3-2002(Temp), f. & cert. ef. 3-1-02 thru 8-23-02; BP 4-2002, f. 6-27-02, cert. ef. 7-1-02; BP 1-2007, f. & cert. ef. 6-29-07

## 855-080-0021

### Schedule I

(1) Schedule I consists of the drugs and other substances, by whatever official, common, usual, chemical, or brand name designated, listed in 21CFR part 1308.11, and unless specifically excepted or unless listed in another schedule, any quantity of the following substances, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

(a) Benzylfentanyl;

(b) Thenyfentanyl;

(c) N-Benzylpiperazine (BZP);

(d) Trifluoromethylphenyl piperazine (TFMPP);

(e) 1,4-butanediol.

(2) Exceptions. The following are exceptions to subsection (1) of this rule:

(a) 1, 4-butanediol and gamma-butyrolactone when in the possession of a person for the purpose of its sale to a legitimate manufacturer of industrial products and the person is in compliance with the Drug Enforcement Administration requirements for List I Chemicals.

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(b) 1,4-butanediol and gamma-butyrolactone when in the possession of a person for the purpose of the legitimate manufacture of industrial products.

Stat. Auth.: ORS 689.205  
Stats. Implemented: ORS 475.035 & 475.940  
Hist.: PB 4-1987, f. & ef. 3-30-87; PB 8-1987, f. & ef. 9-30-87; PB 10-1987, f. & ef. 12-8-87; PB 15-1989, f. & cert. ef. 12-26-89; PB 9-1990, f. & cert. ef. 12-5-90; PB 5-1991, f. & cert. ef. 9-19-91; PB 1-1992, f. & cert. ef. 1-31-92 (and corrected 2-7-92); PB 1-1994, f. & cert. ef. 2-2-94; PB 1-1996, f. & cert. ef. 4-5-96; PB 1-1997, f. & cert. ef. 9-22-97; BP 4-2000, f. & cert. ef. 2-16-00; BP 9-2000, f. & cert. ef. 6-29-00; BP 2-2002(Temp), f. & cert. ef. 2-4-02 thru 7-31-02; BP 3-2002(Temp), f. & cert. ef. 3-1-02 thru 8-23-02; BP 4-2002, f. & cert. ef. 7-1-02; BP 5-2002, f. & cert. ef. 11-14-02; BP 1-2003, f. & cert. ef. 1-14-03; BP 1-2007, f. & cert. ef. 6-29-07

## 855-080-0022 Schedule II

Schedule II consists of the drugs and other substances by whatever official, common, usual, chemical, or brand name designated, listed in 21 CFR part 1308.12.

Stat. Auth.: ORS 689.205  
Stats. Implemented: ORS 475.035  
Hist.: PB 4-1987, f. & ef. 3-30-87; PB 8-1987, f. & ef. 9-30-87; PB 10-1987, f. & ef. 12-8-87; PB 15-1989, f. & cert. ef. 12-26-89; PB 9-1990, f. & cert. ef. 12-5-90; PB 5-1991, f. & cert. ef. 9-19-91; PB 1-1992, f. & cert. ef. 1-31-92 (and corrected 2-7-92); PB 1-1994, f. & cert. ef. 2-2-94; PB 1-1996, f. & cert. ef. 4-5-96; PB 1-1997, f. & cert. ef. 9-22-97; BP 3-1999(Temp), f. & cert. ef. 8-9-99 thru 1-17-00; BP 4-2000, f. & cert. ef. 2-16-00; BP 4-2006, f. & cert. ef. 7-1-06; BP 1-2007, f. & cert. ef. 6-29-07

## 855-080-0023 Schedule III

Schedule III consists of the drugs and other substances by whatever official, common, usual, chemical, or brand name designated, listed in 21 CFR part 1308.13; and

- (1) Products containing pseudoephedrine or the salts of pseudoephedrine as an active ingredient.
- (2) Products containing ephedrine or the salts of ephedrine as an active ingredient.
- (3) Products containing phenylpropanolamine or the salts of phenylpropanolamine as an active ingredient.

Stat. Auth.: ORS 689.205  
Stats. Implemented: ORS 475.035  
Hist.: PB 4-1987, f. & ef. 3-30-87; PB 11-1989, f. & cert. ef. 7-20-89; PB 5-1991, f. & cert. ef. 9-19-91; PB 1-1992, f. & cert. ef. 1-31-92 (and corrected 2-7-92); BP 3-1999(Temp), f. & cert. ef. 8-9-99 thru 1-17-00; BP 4-2000, f. & cert. ef. 2-16-00; BP 9-2000, f. & cert. ef. 6-29-00; BP 4-2006, f. & cert. ef. 7-1-06; BP 1-2007, f. & cert. ef. 6-29-07

## 855-080-0024 Schedule IV

Schedule IV consists of:

- (1) The drugs and other substances, by whatever official, common, usual, chemical, or brand name designated, listed in 21 CFR part 1308.14, unless specifically excepted or listed in another schedule: and
- (2) Products containing carisoprodol or the salts of carisoprodol as an active ingredient.

Stat. Auth.: ORS 689.205  
Stats. Implemented: ORS 475.035  
Hist.: PB 4-1987, f. & ef. 3-30-87; PB 5-1991, f. & cert. ef. 9-19-91; PB 1-1992, f. & cert. ef. 1-31-92 (and corrected 2-7-92); PB 1-1995, f. & cert. ef. 4-27-95; PB 1-1996, f. & cert. ef. 4-5-96; PB 1-1997, f. & cert. ef. 9-22-97; BP 4-2000, f. & cert. ef. 2-16-00; BP 9-2000, f. & cert. ef. 6-29-00; BP 1-2007, f. & cert. ef. 6-29-07

## 855-080-0026 Schedule V

Schedule V consists of the drugs and other substances, by whatever official, common, usual, chemical, or brand name designated, listed in 21 CFR part 1308.15.

Stat. Auth.: ORS 689.205  
Stats. Implemented: ORS 475.035  
Hist.: PB 4-1987, f. & ef. 3-30-87; PB 5-1991, f. & cert. ef. 9-19-91; BP 1-2007, f. & cert. ef. 6-29-07

## 855-080-0031

### Registration Requirements

Manufacturers, distributors, and pharmacies or other drug outlets are required to register with the Board under the Uniform Controlled Substances Act.

Stat. Auth.: ORS 689.155, 689.205  
Stats. Implemented: ORS 475.125  
Hist.: 1PB 6-1982, f. & ef. 8-6-82; BP 4-2006, f. & cert. ef. 7-1-06; BP 1-2007, f. & cert. ef. 6-29-07

## 855-080-0065 Security

(1) Applicants for registration and registrants must comply with the security requirements of 21 CFR 1301.02, 1301.71 through 1301.76 and

1301.90 through 1301.93, which apply to their registration classification. The requirements of 21 CFR 1301.75 and 1301.76 relating to "practitioners" are applicable to applicants and registrants who are drug dispensers.

(2) The security requirements of subsection one of this rule apply to all "controlled substances," as defined in these rules, except ephedrine, pseudoephedrine and phenylpropanolamine.

(3) Applicants and registrants must guard against theft and diversion of ephedrine, pseudoephedrine and phenylpropanolamine.

[Publications: Publications referenced are available from the agency.]  
Stat. Auth.: ORS 689.205  
Stats. Implemented: ORS 475.135  
Hist.: 1PB 6-1978(Temp), f. & ef. 7-1-78; 1PB 8-1978, f. & ef. 10-17-78; 1PB 6-1982, f. & ef. 8-6-82; PB 5-1991, f. & cert. ef. 9-19-91; BP 4-2006, f. & cert. ef. 7-1-06; BP 1-2007, f. & cert. ef. 6-29-07

## 855-080-0070

### Records and Inventory

All registered persons shall, as applicable to the registration classification, keep records and maintain inventories in conformance with 21 U.S.C. Section 827; 21CFR 1304.02 through 1304.11; 1304.21 through 1304.26; 1304.31 through 1304.33; except that a written inventory of all controlled substances shall be taken by registrants annually within 365 days of the last written inventory. All such records shall be maintained for a period of three years.

[Publications: Publications referenced are available from the agency.]  
Stat. Auth.: ORS 475.035, 689.205  
Stats. Implemented: ORS 475.165  
Hist.: 1PB 6-1978(Temp), f. & ef. 7-1-78; 1PB 8-1978, f. & ef. 10-17-78; 1PB 6-1982, f. & ef. 8-6-82; 1PB 1-1986, f. & ef. 6-5-86; PB 10-1987, f. & ef. 12-8-87; PB 5-1991, f. & cert. ef. 9-19-91; PB 1-1994, f. & cert. ef. 2-2-94; BP 4-2006, f. & cert. ef. 7-1-06; BP 1-2007, f. & cert. ef. 6-29-07

## 855-080-0080

### Special Exceptions

The provisions of 21 CFR 1307.11 through 1307.13 are applicable under the Act.

[Publications: Publications referenced are available from the agency.]  
Stat. Auth.: ORS 689.205  
Stats. Implemented: ORS 475.035  
Hist.: 1PB 6-1978(Temp), f. & ef. 7-1-78; 1PB 8-1978, f. & ef. 10-17-78; PB 5-1991, f. & cert. ef. 9-19-91; BP 1-2007, f. & cert. ef. 6-29-07

## 855-080-0085

### Prescription Requirements

(1) Except as provided in sections (2) and (3) of this rule, the provisions of 21 CFR 1306.01 through 1306.27 and 1304.03(d) shall be complied with the registrants, practitioners and pharmacists as specified therein in the issuance, preparation, labeling dispensing, recordkeeping and filing of prescriptions for controlled substances.

(2) The provisions of 21 CFR 1306.11(a) under section (1) of this rule are amended by deleting "which is a prescription drug as determined under the Federal Food, Drug, and Cosmetic Act."

(3) The provisions of 21 CFR 1306.21 through 1306.27 under section (1) of this rule shall be deemed to apply also to controlled substances listed in Schedule V.

(4) Controlled substances in Schedules III, IV, and V which are prescription drugs determined by the Board pursuant to ORS 475.185(3) are those prescription drugs as determined under the Federal Food, Drug, and Cosmetic Act. Such drugs are "Legend Drugs" and bear the legend "Caution: Federal law prohibits dispensing without a prescription", or an equivalent legend. In addition, any preparation containing any amount of codeine or its salts, opium, or paregoric in Schedules III, IV, or V is a prescription drug as determined by the Board pursuant to ORS 475.185(3).

(5) "Emergency Situations" as referred to in ORS 475.185(2) mean the same as specified in 21 CFR 290.10.

[Publications: Publications referenced are available from the agency.]  
Stat. Auth.: ORS 689.205  
Stats. Implemented: ORS 475.185, 475.188  
Hist.: 1PB 6-1978(Temp), f. & ef. 7-1-78; 1PB 8-1978, f. & ef. 10-17-78; 1PB 6-1982, f. & ef. 8-6-82; PB 15-1989, f. & cert. ef. 12-26-89; PB 5-1991, f. & cert. ef. 9-19-91; BP 1-2007, f. & cert. ef. 6-29-07

## 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 14-2007

**Filed with Sec. of State:** 6-27-2007

**Certified to be Effective:** 6-28-07

**Notice Publication Date:**

# ADMINISTRATIVE RULES

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

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

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

## 839-025-0700

### Prevailing Wage Rate Determination/Amendments to Determination

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

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

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

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

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

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

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

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

(h) 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 May 18, 2007).

(i) 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 June 1, 2007).

(j) 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 June 22, 2007).

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

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

Stats. Implemented: ORS.279C.815

Hist.: BLI 7-1998(Temp), f. & cert. ef. 10-29-98 thru 4-27-99; BLI 1-1999, f. 1-8-99, cert. ef. 1-15-99; BLI 4-1999, f. 6-16-99, cert. ef. 7-1-99; BLI 6-1999, f. & cert. ef. 7-23-99; BLI 9-1999, f. 9-14-99, cert. ef. 10-1-99; BLI 16-1999, f. 12-8-99, cert. ef. 1-1-00; BLI 4-2000, f. & cert. ef. 2-1-00; BLI 9-2000, f. & cert. ef. 3-1-00; BLI 10-2000, f. 3-17-00, cert. ef. 4-1-00; BLI 22-2000, f. 9-25-00, cert. ef. 10-1-00; BLI 26-2000, f. 12-14-00 cert. ef. 1-1-01; BLI 1-2001, f. & cert. ef. 1-5-01; BLI 3-2001, f. & cert. ef. 3-15-01; BLI 4-2001, f. 3-27-01, cert. ef. 4-1-01; BLI 5-2001, f. 6-21-01, cert. ef. 7-1-01; BLI 8-2001, f. & cert. ef. 7-20-01; BLI 14-2001, f. 9-26-01, cert. ef. 10-1-01; BLI 16-2001, f. 12-28-01, cert. ef. 1-1-02; BLI 2-2002, f. 1-16-02, cert. ef. 1-18-02; BLI 8-2002, f. 3-25-02, cert. ef. 4-1-02; BLI 12-2002, f. 6-19-02, cert. ef. 7-1-02; BLI 16-2002, f. 12-24-02 cert. ef. 1-1-03; BLI 1-2003, f. 1-29-03, cert. ef. 2-14-03; BLI 3-2003, f. & cert. ef. 4-1-03; BLI 4-2003, f. 6-26-03, cert. ef. 7-1-03; BLI 5-2003,

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

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

**Adm. Order No.:** BLI 15-2007

**Filed with Sec. of State:** 6-28-2007

**Certified to be Effective:** 6-28-07

**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).

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(h) 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 May 18, 2007).

(i) 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 June 1, 2007).

(j) 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

# ADMINISTRATIVE RULES

June 22, 2007).

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

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

Stats. Implemented: ORS.279C.815

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

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

**Adm. Order No.:** BLI 16-2007

**Filed with Sec. of State:** 6-29-2007

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

**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 July 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 July 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 July 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 July 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 June 22, 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 July 1, 2007*, are available from any office of the Wage and Hour Division of the Bureau of Labor and Industries. The offices are located in Eugene, Medford, Portland and Salem and are listed in the blue pages of the phone book. Copies are also available on the bureau's webpage at [www.oregon.gov/boli](http://www.oregon.gov/boli) or may be obtained from the Prevailing Wage Rate

Coordinator, Prevailing Wage Rate Unit, Wage and Hour Division, Bureau of Labor and Industries, 800 NE Oregon Street #1045, Portland, Oregon 97232; (971) 673-0839.

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

Stats. Implemented: ORS.279C.815

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

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

**Adm. Order No.:** BLI 17-2007

**Filed with Sec. of State:** 7-2-2007

**Certified to be Effective:** 7-2-07

**Notice Publication Date:**

**Rules Amended:** 839-025-0750

**Subject:** The rule adopts prevailing rates of wage as determined by the Commissioner of the Bureau of Labor and Industries for specified residential projects for the dates specified.

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

## 839-025-0750

### Residential Prevailing Wage Rate Determinations

(1) Pursuant to ORS 279C.815, the Commissioner of the Bureau of Labor and Industries has determined that the wage rates stated in the following residential rate determinations are the prevailing rates of wage for workers upon said public works projects for the periods of time specified:

(a) *Special Prevailing Wage Rate Determination Extension for Residential Project, New Winds Project, Project #2006-02*, dated August 15, 2006, for the period of July 1, 2007 through December 31, 2007.

(2) Copies of the rates referenced in section (1) of this rule are available from any office of the Wage and Hour Division of the Bureau of Labor and Industries. The offices are located in Eugene, Medford, Portland and Salem and listed in the blue pages of the phone book. Copies may also be obtained from the Prevailing Wage Rate Coordinator, Prevailing Wage Rate Unit, Wage and Hour Division, Bureau of Labor and Industries, 800 NE Oregon Street #1045, Portland, Oregon 97232; (971) 673-0839.

Stat. Auth.: ORS 279C.815

Stats. Implemented: ORS 279C.815

Hist.: BLI 5-1999, f. 6-30-99, cert. ef. 7-1-99; BLI 7-1999, f. 8-26-99, cert. ef. 9-15-99; BLI 8-1999, f. & cert. ef. 9-8-99; BLI 10-1999, f. 9-14-99, cert. ef. 9-17-99; BLI 11-1999, f. 9-22-99, cert. ef. 9-27-99; BLI 6-2000, f. 2-14-00, cert. ef. 2-15-00; BLI 12-2000, f. 5-24-00, cert. ef. 7-1-00; BLI 18-2000, f. & cert. ef. 9-1-00; BLI 21-2000, f. 9-15-00, cert. ef. 9-22-00; BLI 23-2000, f. & cert. ef. 9-25-00; BLI 24-2000, f. 10-30-00, cert. ef. 11-1-00; BLI 2-2001, f. & cert. ef. 1-24-01; BLI 6-2001, f. 6-21-01, cert. ef. 7-1-01; BLI 7-2001, f. 7-20-01, cert. ef. 7-24-01; BLI 9-2001, f. 7-31-01, cert. ef. 8-1-01; BLI 10-2001, f. 8-14-01, cert. ef. 8-15-01; BLI 11-2001, f. & cert. ef. 8-22-01; BLI 13-2001, f. 9-26-01, cert. ef. 10-1-01; BLI 6-2002, f. 3-14-02, cert. ef. 3-15-02; BLI 7-2002, f. 3-22-02, cert. ef. 3-25-02; BLI 11-2002, f. & cert. ef. 5-23-02; BLI 13-2002, f. 6-26-02 cert. ef. 7-1-02; BLI 14-2002, f. 8-23-02, cert. ef. 10-1-02; BLI 2-2003, f. & cert. ef. 3-28-03; BLI 2-2004, f. 4-23-04, cert. ef. 5-1-04; BLI 3-2004, f. 5-18-04, cert. ef. 5-19-04; BLI 4-2004, f. & cert. ef. 5-24-04; BLI 5-2004, f. 6-23-04, cert. ef. 6-24-04; BLI 7-2004, f. 7-14-04, cert. ef. 7-15-04; BLI 13-2004, f. & cert. ef. 10-19-04; BLI 14-2004, f. 10-29-04 cert. ef. 11-1-04; BLI 16-2004, f. 11-8-04, cert. ef. 11-10-04; Renumbered from 839-016-0750, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05; BLI 9-2005, f. 4-15-05, cert. ef. 4-18-05; BLI 10-2005, f. & cert. ef. 5-2-05; BLI 11-2005, f. 5-31-05, cert. ef. 6-1-05; BLI 12-2005, f. & cert. ef. 6-21-05; BLI 13-2005, f. 6-30-05, cert. ef. 7-1-05; BLI 14-2005, f. & cert. ef. 7-22-05; BLI 15-2005, f. 8-9-05, cert. ef. 8-10-05; BLI 17-2005, f. 8-26-05, cert. ef. 8-29-05; BLI 23-2005, f. 10-26-05, cert. ef. 10-28-05; BLI 25-2005, f. 12-22-05, cert. ef. 12-23-05; BLI 6-2006, f. 3-9-06, cert. ef. 3-13-06; BLI 22-2006, f. 6-16-06 cert.

# ADMINISTRATIVE RULES

ef. 7-1-06; BLI 27-2006, f. 7-17-06, cert. ef. 7-18-06; BLI 30-2006, f. 8-16-06, cert. ef. 8-18-06; BLI 31-2006, f. 9-8-06, cert. ef. 9-11-06; BLI 44-2006, f. 12-18-06, cert. ef. 1-1-07; BLI 17-2007, f. & cert. ef. 7-2-07

## Construction Contractors Board Chapter 812

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

**Adm. Order No.:** BLI 18-2007

**Filed with Sec. of State:** 7-10-2007

**Certified to be Effective:** 7-12-07

**Notice Publication Date:**

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

**Subject:** Adjust the license agent fee for the Access and Habitat deer and elk raffle hunt fee structure and for the bighorn sheep raffle hunt fee structure.

**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 July 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 July 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 July 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 June 22, 2007).

(c) Amendments/Corrections to July 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 July 6, 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 July 1, 2007*, are available from any office of the Wage and Hour Division of the Bureau of Labor and Industries. The offices are located in Eugene, Medford, Portland and Salem and are listed in the blue pages of the phone book. Copies are also available on the bureau's webpage at [www.oregon.gov/boli](http://www.oregon.gov/boli) or may be obtained from the Prevailing Wage Rate Coordinator, Prevailing Wage Rate Unit, Wage and Hour Division, Bureau of Labor and Industries, 800 NE Oregon Street #1045, Portland, Oregon 97232; (971) 673-0839.

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

Stats. Implemented: ORS.279C.815

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

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

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

**Filed with Sec. of State:** 6-28-2007

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

**Notice Publication Date:** 6-1-07

**Rules Amended:** 812-005-0800, 812-009-0160

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

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

**Rules Coordinator:** Catherine Dixon—(503) 378-4621, ext. 4077

### 812-005-0800

#### Schedule of Penalties

The agency may assess penalties, not to exceed the amounts shown in the following guidelines:

(1) \$600 for advertising or submitting a bid to do work as a contractor in violation of ORS 701.055(1) and OAR 812-003-0120, which may be reduced to \$200 if the respondent becomes licensed or to \$50 if the advertisement or bid is withdrawn immediately upon notification from the agency that a violation has occurred and no work was accepted as a result of the advertisement or bid; and

(2) \$700 per offense without possibility of reduction for advertising or submitting a bid to do work as a contractor in violation of ORS 701.055(1) and OAR 812-003-0120, when one or more previous violations have occurred, or when an inactive, lapsed, invalid, or misleading license number has been used; and

(3) \$1,000 per offense for performing work as a contractor in violation of ORS 701.055(1) when the Board has no evidence that the person has worked previously without having a license and no consumer has suffered damages from the work, which may be reduced to \$700 if the respondent becomes licensed within a specified time; and

(4) \$5,000 per offense for performing work as a contractor in violation of ORS 701.055(1), when an owner has filed a complaint for damages caused by performance of that work, which may be reduced to \$700 if the contractor becomes licensed within a specified time and settles or makes reasonable attempts to settle with the owner; and

(5) \$5,000 per offense for performing work as a contractor in violation of ORS 701.055(1), when one or more violations have occurred, or when an inactive, lapsed, invalid, or misleading license number has been used; and

(6) \$500 per offense for failure to respond to the agency's request for the list of subcontractors required in ORS 701.055(11); and

(7) \$1,000 per offense for hiring a unlicensed subcontractor; and

(8) For failing to provide an "Information Notice to Owners about Construction Liens" as provided in ORS 87.093, when no lien has been filed, \$200 for the first offense, \$400 for the second offense, \$600 for the third offense, \$1,000 for each subsequent offense. Any time a lien has been filed upon the improvement, \$1,000.

(9) Failure to include license number in advertising or on contracts, in violation of OAR 812-003-0120: First offense \$100, second offense \$200, subsequent offenses \$400.

(10) Failure to list with the Construction Contractors Board a business name under which business as a contractor is conducted in violation of OAR 812-003-0260: First offense \$50, second offense \$100, subsequent offenses \$200.

(11) Failure to use a written contract as required by ORS 701.055(14), \$200; when a claim has been filed, \$400; second and subsequent offenses, \$1,000.

(12) Violation of ORS 701.055(13), failure to provide a Consumer Notification form; \$100 first offense; \$500 second offense; \$1,000 third offense; and \$5,000 for subsequent offenses. Civil penalties shall not be reduced unless the agency determines from clear and convincing evidence that compelling circumstances require a suspension of a portion of the penalty in the interest of justice. In no event shall a civil penalty for this offense be reduced below \$100.

# ADMINISTRATIVE RULES

(13) Failure to conform to information provided on the application in violation of ORS 701.075(4), issuance of a \$5,000 civil penalty, and suspension of the license until the contractor provides the agency with proof of conformance with the application and the terms of the application:

(a) If the violator is a limited contractor working in violation of the conditions established pursuant to OAR 812-003-0130, the licensee shall be permanently barred from licensure in the Limited Contractor category;

(b) If the violator is a licensed developer working in violation of the conditions established pursuant to ORS 701.005(8), the licensee shall be permanently barred from licensure in the Licensed Developer category.

(14) Knowingly assisting an unlicensed contractor to act in violation of ORS chapter 701, \$1,000.

(15) Failure to comply with any part of ORS Chapters 316, 656, or 657, 701.035, 701.075 or 701.078, as authorized by ORS 701.100, \$1,000 and suspension of the license until the contractor provides the agency with proof of compliance with the statute.

(16) Violating an order to stop work as authorized by ORS 701.225(3), \$1,000 per day.

(17) Working without a construction permit in violation of ORS 701.135, \$1,000 for the first offense; \$2,000 and suspension of CCB license for three (3) months for the second offense; \$5,000 and permanent revocation of CCB license for the third and subsequent offenses.

(18) Failure to comply with an investigatory order issued by the Board, \$500 and suspension of the license until the contractor complies with the order.

(19) Violation of ORS 701.135(1)(k) by engaging in conduct as a contractor that is dishonest or fraudulent and injurious to the welfare of the public: first offense, \$1,000, suspension of the license or both; second and subsequent offenses, \$5,000, per violation, revocation or suspension of the license until the fraudulent conduct is mitigated in a manner satisfactory to the agency or both.

(20) Engaging in conduct as a contractor that is dishonest or fraudulent and injurious to the welfare of the public by:

(a) Not paying prevailing wage on a public works job; or

(b) Violating the federal Davis-Bacon Act; or

(c) Failing to pay minimum wages or overtime wages as required under state and federal law; or

(d) Failing to comply with the payroll certification requirements of ORS 279C.845; or

(e) Failing to comply with the posting requirements of ORS 279C.840: \$1,000 and suspension of the license until the money required as wages for employees is paid in full and the contractor is in compliance with the appropriate state and federal laws.

(21) Violation of ORS 701.135(1)(k) by engaging in conduct as a contractor that is dishonest or fraudulent and injurious to the welfare of the public, as described in subparagraphs (19) or (20), where more than two violations have occurred: \$5,000 and revocation of the license.

(22) When, as set forth in ORS 701.135(1)(g), the number of licensed contractors working together on the same task on the same job site, where one of the contractors is licensed exempt under ORS 701.035(2)(b), exceeded two sole proprietors, one partnership, or one limited liability company, penalties shall be imposed on each of the persons to whom the contract is awarded and each of the persons who award the contract, as follows: \$1,000 for the first offense, \$2,000 for the second offense, six month suspension of the license for the third offense, and three-year revocation of license for a fourth offense.

(23) Performing home inspections without being an Oregon certified home inspector in violation of OAR 812-008-0030(1): \$5,000.

(24) Using the title Oregon certified home inspector in advertising, bidding or otherwise holding out as a home inspector in violation of OAR 812-008-0030(3): \$5,000.

(25) Failure to conform to the Standards of Practice in violation of OAR 812-008-0202 through 812-008-0214: \$750 per offense.

(26) Failure to conform to the Standards of Behavior in OAR 812-008-0201(2)-(8): \$750 per offense.

(27) Offering to undertake, bidding to undertake or undertaking repairs on a structure inspected by an owner or employee of the business entity within 12 months following the inspection in violation of ORS 701.355: \$5,000 per offense.

(28) Failure to include certification number in all written reports, bids, contracts, and an individual's business cards in violation of OAR 812-008-0201(4): \$400 per offense.

(29) Violation of work practice standards for lead-based paint activity pursuant to OAR 812-007-0070: \$5,000 per violation and suspension of the lead-based paint business endorsement for up to one year.

(30) Violation of ORS 279C.590:

(a) Imposition of a civil penalty on the contractor of up to ten percent of the amount of the subcontract bid submitted by the complaining subcontractor to the contractor or \$15,000, whichever is less; and

(b) Imposition of a civil penalty on the contractor of up to \$1,000; and  
(c) Placement of the contractor on a list of contractors not eligible to bid on public contracts established to ORS 701.227(4), for a period of up to six months for a second offense if the offense occurs within three years of the first offense;

(d) Placement of the contractor on a list of contractors not eligible to bid on public contracts established to ORS 701.227(4), for a period of up to one year for a third or subsequent offense if the offense occurs within three years of the first offense.

(31) Violation of ORS 701.175, inclusion of provisions in a contract that preclude a homeowner from filing a breach of contract complaint with the Board: \$1,000 for the first offense, \$2,000 for the second offense, and \$5,000 for the third and subsequent offenses.

(32) Violation of ORS 701.055(11)(a), failure to maintain the list of subcontractors: \$1,000 for the first offense; \$2,000 for the second offense, and \$5,000 for the third and subsequent offenses.

(33) Violation of 701.135(1)(e), knowingly providing false information to the Board: \$1,000 and suspension of the license for up to three months for the first offense; \$2,000 and suspension of the license for up to one year for the second offense; and \$5,000 and permanent revocation of license for the third offense.

Stat. Auth.: ORS 183.310 - 183.500, 670.310, 701.235 & 701.992  
Stats. Implemented: ORS 87.093, 279C.590, 701.005, 701.055, 701.075, 701.078, 701.100  
Hist.: IBB 4-1982, f. & ef. 10-7-82; IBB 1-1983, f. & ef. 3-1-83; Renumbered from 812-011-0080(13); IBB 3-1983, f. 10-5-83, ef. 10-15-83; IBB 3-1984, f. & ef. 5-11-84; IBB 3-1985, f. & ef. 4-25-85; BB 1-1987, f. & ef. 3-5-87, BB 1-1988(Temp), f. & cert. ef. 1-26-88; BB 2-1988, f. & cert. ef. 6-6-88; CCB 1-1989, f. & cert. ef. 11-1-89; CCB 2-1990, f. 5-17-90, cert. ef. 6-1-90; CCB 3-1990(Temp), f. & cert. ef. 7-27-90; CCB 4-1990, f. 10-30-90, cert. ef. 11-1-90; CCB 3-1991, f. 9-26-91, cert. ef. 9-29-91; CCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; CCB 2-1992, f. & cert. ef. 4-15-92; CCB 4-1992, f. & cert. ef. 6-1-92; CCB 5-1993, f. 12-7-93, cert. ef. 12-8-93; CCB 2-1994, f. & cert. ef. 1-1-95; CCB 3-1995, f. 9-7-95, cert. ef. 9-9-95; CCB 4-1995, f. & cert. ef. 10-5-95; CCB 3-1996, f. & cert. ef. 8-13-96; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 7-1999(Temp), f. & cert. ef. 11-1-99 thru 4-29-00; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 13-2000(Temp), f. & cert. ef. 11-13-00 thru 5-11-01; CCB 2-2001 f. & cert. ef. 4-6-01; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 1-2002(Temp), f. & cert. ef. 3-1-02 thru 8-26-02; CCB 2-2002, f. & cert. ef. 3-1-02; CCB 7-2002, f. 6-26-02 cert. ef. 7-1-02; CCB 8-2002, f. & cert. ef. 9-3-02; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04; CCB 6-2004, f. 6-25-04, cert. ef. 9-1-04; CCB 9-2004, f. & cert. ef. 12-10-04; CCB 5-2005, f. 8-24-05, cert. ef. 1-1-06; ; Renumbered from 812-005-0005, CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06; CCB 2-2006, f. & cert. ef. 1-26-06; CCB 7-2006, f. & cert. ef. 6-23-06; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07; CCB 4-2007, f. 6-28-07, cert. ef. 7-1-07

## 812-009-0160

### Order Based on Hearing, Limitation on Order

(1) "Order" as used in sections (2) to (5) of this rule means a proposed and final order an administrative law judge is authorized to issue under section (6) of this rule or a final order an administrative law judge is authorized to issue under OAR 812-009-0200.

(2) Subject to sections (7) and (8) of this rule, if a complaint is referred for a hearing to determine the amount, if any, that a respondent owes a complainant, the administrative law judge may not issue an order in an amount greater than the total amount the complainant alleges the respondent owes the complainant in:

(a) The most recent statement of damages or amended statement of damages filed under OAR 812-004-0540, 812-004-0550 or 812-009-0020; or

(b) The Breach of Contract Complaint filed under OAR 812-004-0340, if no statement of damages was filed.

(3) If a complaint is referred for a hearing to determine whether any portion of a judgment is within the agency's jurisdiction, the administrative law judge may not issue an order requiring payment of an amount greater than the amount of the judgment.

(4) An order issued by an administrative law judge may direct specific performance on the part of the respondent, order the respondent to pay monetary damages to the complainant or dismiss the complaint.

(5) An administrative law judge must consider any amounts due to the respondent from the complainant under the terms of the contract and reduce the amount of an order by that amount.

(6) Except as provided in section (8) of this rule and OAR 812-009-0200, an administrative law judge must issue a proposed and final order under OAR 137-003-0645(4) that must automatically become a final order 21 days after the date of issue without further notice unless:

(a) A party files timely exceptions under OAR 812-009-0400;



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(b) The agency requests that the administrative law judge hold further hearing or revise or amend the proposed order under OAR 137-033-0655(1);

(c) The administrative law judge withdraws and corrects the order under OAR 137-003-0655(1);

(d) The agency issues an amended proposed order under OAR 137-003-0655(3); or

(e) The agency notifies the parties and the administrative law judge that the agency will issue the final order.

(7) If a limitation on damages under section (2) of this rule is based on a statement of damages or Breach of Contract Complaint that includes an itemization of complaint items and the total of those items is different from the total damages the complainant alleges is due from the respondent, the limitation on damages must be based on the larger of the two totals.

(8) If a limitation of damages under section (2) of this rule is based on a statement of damages or Breach of Contract Complaint that does not include a request for an award of the complaint processing fee allowed as damages under OAR 812-004-0250, the limitation on damages allowed under section (2) of this rule shall be increased by the amount of the complaint processing fee paid by the complainant under OAR 812-004-0110 and 812-004-0400.

(9) If a complaint is referred for a hearing solely to determine if the Board has jurisdiction over the complaint and the administrative law judge finds that the Board has jurisdiction over the complaint, the administrative law judge must issue an intermediate order that the Board resume processing the complaint. The Board may accept the order to resume processing or issue a proposed and final order under OAR 137-003-0060 to dismiss the complaint for lack of jurisdiction.

Stat. Auth.: ORS 670.310, 701.145 & 701.235

Stats. Implemented: ORS 183.415, 183.450, 183.460, 183.464, 183.470, 701.145 & 701.147  
Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 1-2000(Temp), f. 1-20-00, cert. ef. 1-24-00 thru 7-22-00; CCB 3-2000(Temp), f. 3-10-00, cert. ef. 3-10-00 thru 7-22-00; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 8-2000(Temp), f. 7-21-00, cert. ef. 7-21-00 thru 1-15-01; CCB 9-2000, f. & cert. ef. 8-24-00; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 10-2002, f. & cert. ef. 11-20-02; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 8-2004, f. & cert. ef. 10-1-04; CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07; CCB 4-2007, f. 6-28-07, cert. ef. 7-1-07

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

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

**Filed with Sec. of State:** 6-28-2007

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

**Notice Publication Date:** 6-1-07

**Rules Adopted:** 812-002-0673

**Rules Amended:** 812-001-0160, 812-001-0200, 812-002-0220, 812-003-0130, 812-004-0110, 812-004-0500, 812-004-0520, 812-004-0540, 812-004-0600, 812-006-0450

**Subject:** 812-001-0160 is amended to change the words “tape recordings” to “recordings” since the agency does not record meetings on tape any more; and to clarify that the hourly charge for staff work on public records requests includes time spent on copying

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

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

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

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

812-004-0110 is amended to adopt the January 24, 2007 version of the Department of Health and Human Services Poverty Guidelines

used to establish eligibility for a waiver of the complaint processing fee.

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

**Rules Coordinator:** Catherine Dixon—(503) 378-4621, ext. 4077

## 812-001-0160

### Requests for Information; Charges for Records

(1) The agency shall provide certification of license or non-license relating to a specific entity upon written request and payment of required fee. This certification will include the following information:

- License numbers.
- Name of licensed entity and any assumed business names on file with the agency.
- Type of business entity.
- Category of license.
- Class of independent contractor license status.
- Personal names of owner, partners, joint venturers, members, corporate officers, or trustees.

(g) The dates in the license history and the action that took place on those dates.

(2) The agency may make the following charges for records:

- \$20 for each certification that an entity has or has not been licensed with the Construction Contractors Board.
- \$20 for certified copies of documents.
- \$5 for the first 20 copies made and 25 cents per page thereafter.
- \$20 for duplicate recordings of, Board meetings and Appeal Committee meetings.

(e) \$20 for duplicate tape recordings of a three hour agency hearing or arbitration and \$10 for duplicate recordings of each additional 90 minutes or fraction thereof of the hearing or arbitration.

(f) Charge as determined by preparation time and production cost for mailing labels of licensees.

(g) \$10 per half-hour unit or portion of a half-hour unit for research or copying of records for each request from a person beginning with the 31st minute of research or copying time.

Stat. Auth.: ORS 293.445, 670.310 & 701.235

Stats. Implemented: ORS 192.430, 293.445, 701.235 & 701.250

Hist.: 1BB 1-1983, f. & ef. 3-1-83; 1BB 3-1984, f. & ef. 5-11-84; 1BB 3-1985, f. & ef. 4-25-85; BB 3-1987, f. 12-30-87, cert. ef. 1-1-88; BB 2-1988, f. & cert. ef. 6-6-88; BB 2-1989, f. 6-29-89, cert. ef. 7-1-89; CCB 1-1989, f. & cert. ef. 11-1-89; CCB 2-1990, f. 5-17-90, cert. ef. 6-1-90; CCB 2-1992, f. & cert. ef. 4-15-92; CCB 1-1995, f. & cert. ef. 2-2-95; CCB 3-1995, f. 9-7-95, cert. ef. 9-9-95; CCB 1-1996, f. 4-26-96, cert. ef. 5-1-96; CCB 1-1997, f. & cert. ef. 5-15-97; CCB 4-1998, f. & cert. ef. 4-30-98; Administrative correction 7-28-98; CCB 6-1998, f. 8-31-98, cert. ef. 9-1-98; CCB 1-1999, f. 3-29-99, cert. ef. 4-1-99; CCB 3-1999(Temp), f. & cert. ef. 6-29-99 thru 12-25-99; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 14-2000, f. & cert. ef. 12-4-00; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 2-2004, f. 2-27-04, cert. ef. 3-1-04; CCB 7-2004, f. 8-26-04, cert. ef. 9-1-04; CCB 9-2004, f. & cert. ef. 12-10-04; CCB 3-2005, f. & cert. ef. 8-24-05; Renumbered from 812-001-0015, CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06; CCB 6-2006, f. 5-25-06, cert. ef. 6-1-06; CCB 5-2007, f. 6-28-07, cert. ef. 7-1-07

## 812-001-0200

### Consumer Protection Notices

(1) The Construction Contractors Board adopts the form entitled “Information Notice to Owner About Construction Liens,” as revised February 3, 2006. This form may be obtained from the agency.

(2) The Construction Contractors Board adopts the form “Information Notice to Property Owners About Construction Responsibilities” as revised June 26, 2007.

(3) The Construction Contractors Board adopts the form “Notice of Compliance with Homebuyer Protection Act (HPA) as revised December 16, 2003.

(4) The Construction Contractors Board adopts the form “Model Features for Accessible Homes” dated December 6, 2005.

Stat. Auth.: ORS 87.093, 670.310, 701.055, 701.235 & 701.530

Stats. Implemented: ORS 87.093, 701.055, 701.235 & 701.530

Hist.: 1BB 4-1981, f. 11-24-81, ef. 1-1-82; 1BB 3-1982, f. 6-4-82, ef. 1-1-83; 1BB 1-1983, f. & ef. 3-1-83; Renumbered from 812-011-0076; 1BB 3-1983, f. 10-5-83, ef. 10-15-83; BB 2-1987, f. & ef. 7-2-87; CCB 1-1989, f. & cert. ef. 11-1-89; CCB 5-1992, f. 7-31-92, cert. ef. 8-1-92; CCB 1-1999, f. 3-29-99, cert. ef. 4-1-99; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 6-2000(Temp), f. 5-22-00, cert. ef. 5-22-00 thru 11-17-00; CCB 9-2000, f. & cert. ef. 9-24-00; CCB 7-2002, f. 6-26-02 cert. ef. 7-1-02; CCB 11-2002, f. 12-20-02, cert. ef. 12-23-02; CCB 3-2003(Temp), f. & cert. ef. 3-11-03 thru 9-6-03; CCB 4-2003, f. & cert. ef. 6-3-03; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04; CCB 12-2003(Temp), f. & cert. ef. 12-9-03 thru 6-6-04; CCB 13-2003(Temp), f. 12-19-03, cert. ef. 1-1-04 thru 6-14-04; CCB 2-2004, f. 2-

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27-04, cert. ef. 3-1-04; CCB 4-2004, f. 5-28-04, cert. ef. 6-1-04; CCB 5-2004(Temp), f. & cert. ef. 6-1-04 thru 11-28-04; CCB 7-2004, f. 8-26-04, cert. ef. 9-1-04; Renumbered from 812-001-0020, CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06; CCB 1-2006(Temp), f. & cert. ef. 1-11-06 thru 7-10-06; CCB 5-2006, f. & cert. ef. 3-30-06; CCB 5-2007, f. 6-28-07, cert. ef. 7-1-07

## 812-002-0220

### Date Contractor Incurred Indebtedness

"Date the contractor incurred the indebtedness" as used in ORS 701.143, has the following meanings:

(1) For a material complaint, this date is the date of delivery or the date the purchaser takes possession of the materials that are the subject of the complaint. If the delivery date is unknown, the date of the invoice applies except in the case of special or custom ordered materials, the date of order constitutes the date of indebtedness.

(2) For an employee complaint or employee trust complaint, this date is the date the employee performed the work that is the subject of the complaint.

(3) For a subcontractor complaint, this date is the date the subcontractor ceases to perform the work at issue in the complaint, substantially completes the work or submits a request for payment for the work, whichever occurs first.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.143 & 701.145

Hist.: CCB 4-1998, f. & cert. ef. 4-30-98; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 2-2005, f. 6-29-05, cert. ef. 7-1-05; CCB 5-2007, f. 6-28-07, cert. ef. 7-1-07

## 812-002-0673

### Signed by Respondent

"Signed by respondent," as used in OAR 812-004-0340, means signed by the respondent, if the respondent is a sole proprietorship, or an owner, officer, employee or authorized agent of the respondent.

Stat. Auth.: ORS 670.310, 701.147 & 701.235

Stats. Implemented: ORS 701.147

Hist.: CCB 5-2007, f. 6-28-07, cert. ef. 7-1-07

## 812-003-0130

### License Categories

The following are license categories as provided in ORS 701.005:

(1) General Contractor — All structures. A person licensed in this category may:

(a) Bid or perform work on three or more unrelated building trades or crafts on all types of structures, and

(b) Bid or perform the work of a Specialty Contractor — All Structures.

(2) General Contractor — Residential Only. A person licensed in this category may:

(a) Bid or perform work on three or more unrelated building trades or crafts on residential structures or small commercial properties only; and

(b) Bid or perform the work of a Specialty Contractor — Residential-Only.

(3) Specialty Contractor — All structures. A person licensed in this category may:

(a) Bid or perform work on two or less unrelated building trades or crafts with no dollar limit on all types of structures.

(b) If three or more unrelated trades or crafts are performed or sub-contracted out, the entire contract price cannot exceed \$2,500.

(4) Specialty Contractor — Residential Only. A person licensed in this category may:

(a) Bid or perform work on two or less unrelated building trades or crafts with no dollar limit on all residential structures or small commercial properties only.

(b) If three or more unrelated trades or crafts are performed or sub-contracted out, the entire contract price cannot exceed \$2,500.

(5) Limited Contractor. A person licensed in this category may:

(a) Bid or perform Specialty Contractor, General Contractor, residential, small commercial and large commercial construction work, as long as all of the following conditions are met:

(A) The licensee's annual gross business sales do not exceed \$40,000.

(B) The licensee does not enter into a contract in which the contract price exceeds \$5,000.

(C) If the contract price in a contract for work performed by the licensee is based on time and materials, the amount charged by the licensee shall not exceed \$5,000.

(D) The licensee consents to inspection by the Construction Contractors Board of its Oregon Department of Revenue tax records to verify compliance with paragraph (5)(a)(A) of this rule.

(E) For purposes of this section, "contract" includes a series of agreements between the licensee and a person for work on any single work site within a one-year period.

(6) Inspector. A person licensed in this category may:

(a) Bid or perform inspections, but may not construct, alter, repair, add to, subtract from, improve, move, wreck or demolish for another, any building, highway, road, railroad, excavation or other structure, project, development or improvement attached to real estate or do any part thereof, or act as a contractor performing construction management on a project that involves any of these activities.

(7) Licensed Developer. A person licensed in this category may arrange for construction work on property they own or have an interest in as long as they meet the conditions in ORS 701.005(8).

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.005, 701.055, 701.058 & 701.085

Hist.: CCB 9-2004, f. & cert. ef. 12-10-04; CCB 6-2006, f. 5-25-06, cert. ef. 6-1-06; CCB 5-2007, f. 6-28-07, cert. ef. 7-1-07

## 812-004-0110

### Complaint Processing Fee; Waiver of Fee

(1) The complaint processing fee authorized under ORS 701.147 is \$50 for a complaint filed under ORS 701.145. There is no complaint processing fee for a complaint filed under ORS 701.146.

(2) The agency must collect the processing fee under OAR 812-004-0400.

(3) A complainant may request that the agency waive the complaint processing fee described in section (1) of this rule by submitting a properly executed waiver request. The waiver request must be submitted on a form provided by the agency.

(4) The agency may waive the complaint processing fee if the waiver request submitted by the complainant shows that:

(a) The complainant is an individual;

(b) The complainant has no significant assets except the home that is the subject of the complaint and one automobile; and

(c) The complainant's gross income does not exceed the 2007 Department of Health and Human Services Poverty Guidelines published in the Federal Register, Vol. 72, No. 15, January 24, 2007, pp. 3147-3148.

(5) A complainant, who requests a waiver of the complaint processing fee under section (3) of this rule, must certify that the information on the request is true.

(6) The agency may require that the complainant pay a complaint processing fee of \$97 if the agency finds that the complainant provided false information on a request for a waiver of the complaint processing fee submitted under section (3) of this rule.

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

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.146 & 701.147

Hist.: CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04; CCB 14-2003(Temp), f. 12-24-03, cert. ef. 1-1-04 thru 6-18-04; CCB 2-2004, f. 2-27-04, cert. ef. 3-1-04; CCB 4-2004, f. 5-28-04, cert. ef. 6-1-04; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07; CCB 5-2007, f. 6-28-07, cert. ef. 7-1-07

## 812-004-0500

### Closure of Complaint After Settlement

If the complainant and respondent agree to a settlement, the following apply:

(1) The agency must notify the complainant that the complainant must notify the agency in writing whether the terms of the settlement have been fulfilled within 30 days from the date shown on the settlement for completion of the terms of the settlement. This notice must comply with the requirements of OAR 812-004-0260.

(2) If the complainant notifies the agency that the terms of the settlement agreement have been fulfilled, the agency must close the complaint.

(3) If the complainant does not notify the agency as required under section (1) of this rule, the agency may close the complaint under OAR 812-004-0260.

Stat. Auth.: ORS 670.310, & 701.235

Stats. Implemented: ORS 701.145

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 1-2000(Temp), f. 1-20-00, cert. ef. 1-24-00 thru 7-22-00; CCB 3-2000(Temp), f. 3-10-00, cert. ef. 3-10-00 thru 7-22-00; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 2-2001, f. & cert. ef. 4-6-01; CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07; CCB 5-2007, f. 6-28-07, cert. ef. 7-1-07

## 812-004-0520

### Processing of Complaint Submitted to Court, Arbitrator or Other Entity

(1) "Court, arbitrator or other entity" has the meaning given that phrase in division 2 of this chapter.

(2) The agency may suspend processing a complaint if:

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(a) The respondent submits a complaint against the complainant to a court, arbitrator or other entity that relates to same facts and issues contained in the complaint filed against the respondent, including but not limited to a breach of contract complaint or a suit to foreclose a lien involving the same contract at issue in the complaint;

(b) The complainant submits a complaint against respondent to a court, arbitrator or other entity that relates to same facts and issues contained in the complaint filed against respondent; or

(c) The agency requires the complainant to submit the complaint to a court because the agency determined that a court is the appropriate forum for the adjudication of the complaint because of the nature or complexity of the complaint.

(d) The complainant in an owner complaint involving a residential structure submits copies of a notice of defect required under ORS 701.565 and the registered mail receipt for the notice and the notice of defect relates to the same facts and issues contained in the complaint.

(3) If the agency suspends processing a complaint under section (2) of this rule, the agency must notify the complainant on the date it suspends processing the complaint that processing has been suspended. The following provisions apply to the agency and the complainant if processing is suspended:

(a) The notice of suspension of processing must include notice of the requirements contained in subsections (3)(b) and (d) of this rule and must comply with the requirements of OAR 812-004-0260.

(b) Beginning six months after the date that the agency suspends processing the complaint and no less frequently than every sixth month thereafter, the complainant must deliver to the agency a written report describing the current status of the action before the court, arbitrator or other entity or with regard to the notice of defect.

(c) The agency may, at any time, demand from the complainant a written report describing the current status of the action before the court, arbitrator or other entity or with regard to the notice of defect. The demand must be in writing and must comply with the requirements of OAR 812-004-0260. The complainant must deliver a written response to the agency within 30 days from the date the agency mails the demand letter.

(d) Within 30 days from the date of final action by the court, arbitrator or other entity, the complainant must deliver to the agency a certified copy of the final judgment; a copy of the arbitration award or decision by another entity and a copy of the complaint or other pleadings on which the judgment, award or decision is based.

(e) If the complainant complies with subsections (3)(b), (c) and (d) of this rule, the agency may resume processing the complaint. If the complainant does not comply with subsections (3)(b), (c) or (d) of this rule, the agency may close the complaint under OAR 812-004-0260.

(4) If the agency suspends processing a complaint under subsection (2)(a) of this rule, the following provisions apply in addition to the provisions in section (3) of this rule:

(a) The agency must notify the complainant that the complainant must file the complaint as a counter-suit, complaint or counter-claim in the court, arbitration or other proceedings and submit evidence, including a copy of the counter-suit, complaint or counter-claim, to the agency that the complainant has done so within 30 days from mailing of the notice. The notice must comply with the requirements of OAR 812-004-0260.

(b) If the complainant does not submit the evidence as required under subsection (4)(a) of this rule, the agency may close the complaint under OAR 812-004-0260.

(5) If the agency suspends processing a complaint under subsection (2)(c) of this rule, the following provisions apply in addition to the provisions in section (3) of this rule:

(a) The agency must notify the complainant, in a notice that complies with the requirements of OAR 812-004-0260, that agency has suspended processing the complaint and that the complainant must:

(A) File the complaint as a complaint in a court of competent jurisdiction within 90 days from notice that the agency has suspended processing the complaint; and

(B) Submit evidence, including a copy of the complaint, to the agency that the complainant complied with paragraph (5)(a)(A) of this rule within 21 days of filing the complaint.

(b) If the complainant does not submit the evidence as required under subsection (5)(a) of this rule, the agency may close the complaint under OAR 812-004-0260.

(6) If the agency resumes processing a complaint under section (3) of this rule:

(a) The agency must accept a final judgment, award or decision of the court, arbitrator or other entity as the final determination of the merits of the complaint.

(b) Based on the judgment, award or decision, the agency must issue a proposed default order to pay damages or to dismiss or refer the complaint to the Office of Administrative Hearings for arbitration or a contested case hearing. The following apply to proceedings under subsection (6)(b) of this rule:

(A) The provisions of OAR 812-004-0560 and 812-004-0590 apply to a proposed default order or a referral to the Office of Administrative Hearings.

(B) A proposed default order to pay damages issued under section (6) of this rule must include a statement of the portion of the final judgment, award or decision of the court, arbitrator or other entity that the agency finds is within the jurisdiction of the agency.

(C) If the agency refers the complaint to the Office of Administrative Hearings for arbitration or a contested case hearing, the arbitrator or administrative law judge must determine the portion of the final judgment, award or decision, if any, that is within the jurisdiction of the agency.

(7) At its discretion and with the agreement of the complainant and respondent, the agency may hold an on-site meeting under OAR 812-004-0450 before suspending complaint processing under section (2) of this rule if the agency finds that an on-site meeting may help the parties to resolve the complaint.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 183.415, 183.460, 701.145, 701.146 & 701.147

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 2-2001, f. & cert. ef. 4-6-01; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 2-2003, f. & cert. ef. 3-4-03; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 8-2004, f. & cert. ef. 10-1-04; CCB 3-2005, f. & cert. ef. 8-24-05; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07; CCB 5-2007, f. 6-28-07, cert. ef. 7-1-07

## 812-004-0540

### Establishing Monetary Damages and Issuing Proposed Default Order or Referral for Hearing

(1) A complainant may seek monetary damages if the agency has not closed the complaint and:

(a) The complainant disagrees with the resolution recommended by the agency;

(b) The respondent cannot or will not comply with the recommended resolution; or

(c) The parties signed a settlement agreement but, through no fault of the complainant, the respondent failed to satisfy one or more terms of the settlement agreement, and the complainant so advises the agency in writing within 30 days from the date the settlement agreement was to have been completed.

(2) If the complainant seeks monetary damages or the agency so requests, the complainant must file a statement of damages stating the amount the complainant alleges the respondent owes the complainant, limited to complaint items listed in the Breach of Contract Complaint and those complaint items added up to and through any initial on-site meeting. The agency may require the complainant to submit, in support of the amount alleged:

(a) One or more estimates from licensed contractors for the cost to correct the complaint items; or

(b) Other bases for a monetary award.

(3) If the agency does not hold an on-site meeting, the agency may issue a proposed default order or refer the complaint for an arbitration or contested case hearing under section (4) of this rule after each party to the complaint has had an opportunity to provide evidence supporting its position with regard to the complaint. The agency may require that the complainant file a statement of damages and supporting evidence described under section (2) of this rule, except that the statement of damages must be limited to complaint items listed in the Breach of Contract Complaint.

(4) After the agency receives documents required under sections (2) or (3) of this rule, the agency may:

(a) Issue a proposed default order proposing dismissal of the complaint under OAR 812-004-0550(2) or payment of an amount by the respondent to the complainant; or

(b) Refer the complaint to the Office of Administrative Hearings for an arbitration or contested case hearing to determine the validity of the complaint and whether the amount of damages alleged, or some lesser amount is proper.

(5)(a) The agency may issue a proposed default order that the respondent pay damages to the complainant only if the record of the complaint supports an award of damages under OAR 812-004-0535.

# ADMINISTRATIVE RULES

(b) The agency may issue a proposed default order that is not described in subsections (5)(a) or (6)(a) of this rule only if the record of the complaint contains evidence that persuades the agency of the existence of facts necessary to support the order.

(6)(a) If the record of a complaint supports an award of damages to the complainant under OAR 812-004-0535 and the respondent pays the complainant the amount of those damages after the complainant submits to the agency the complaint processing fee required under OAR 812-004-0110, the agency may issue a proposed default order proposing that the respondent reimburse the complainant the amount of the processing fee paid.

(b) Subsection (6)(a) of this rule does not apply if the respondent paid damages to the complainant to satisfy a written settlement agreement that the complainant signed.

(c) Before issuing a proposed default order under subsection (6)(a) of this rule, the agency must notify the respondent of the agency's intent to issue the proposed order and allow the respondent 30 days to submit written evidence that the respondent reimbursed the complaint processing fee to the complainant.

(7) The provisions of OAR 812-004-0560 apply to a proposed default order or a referral to the Office of Administrative Hearings issued under this rule.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 183.415, 183.460, 183.470, 701.145 & 701.147

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 1-2000(Temp), f. 1-20-00, cert. ef. 1-24-00 thru 7-22-00; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 2-2001, f. & cert. ef. 4-6-01; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 10-2002, f. & cert. ef. 11-20-02; Hist.: CCB 2-2003, f. & cert. ef. 3-4-03; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 2-2004, f. 2-27-04, cert. ef. 3-1-04; CCB 9-2004, f. & cert. ef. 12-10-04; CCB 3-2005, f. & cert. ef. 8-24-05; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07; CCB 5-2007, f. 6-28-07, cert. ef. 7-1-07

## 812-004-0600

### Payment from Surety Bonds

(1) The agency may notify the surety company of complaints pending.

(2) The agency must notify the surety company of complaints ready for payment. This notice constitutes notice that payment is due on the complaints. A complaint is ready for payment when all of the following have occurred:

(a)(A) A final order was issued in a contested case and 30 days have elapsed to allow the respondent time to pay the order; or

(B) An arbitration award was issued and is ready for payment under OAR 812-010-0470 and 30 days have elapsed to allow the respondent time to pay the award;

(b) The agency has received no evidence that the respondent has complied with the award or final order;

(c) The agency has not granted a stay of enforcement of the final order or award pending judicial review by the Court of Appeals; and

(d) All other complaints filed against the respondent within the same 90-day filing period under ORS 701.150 have either been resolved, been closed or have reached the same state of processing as the subject complaint.

(3) Except as provided in section (5) of this rule, complaints related to a job that are satisfied from a surety bond must be paid as follows:

(a) If a surety bond was in effect when the work period began, payment must be made from that surety bond.

(b) If no surety bond was in effect when the work period began, but a surety bond subsequently became effective during the work period of the contract, payment must be made from the first surety bond to become effective after the beginning of the work period.

(c) A surety bond that is liable for a complaint under subsection (3)(a) or (b) of this rule is liable for all complaints related to the job and subsequent surety bonds have no liability for any complaint related to the job.

(4) Except as provided in section (5) of this rule, if during a work period the amount of a surety bond is changed and a complaint is filed relating to work performed during that work period, the complainant may recover from the surety bond up to the amount in effect at the time the contract was entered into.

(5) If the respondent maintains multiple surety bonds, the following apply:

(a) If multiple surety bonds were in effect when the work period began, payment must be made from all surety bonds in effect.

(b) If no surety bond was in effect when the work period began, but multiple surety bonds subsequently became effective during the work period of the contract and the effective dates of the surety bonds are substantially the same, payment must be made from multiple surety bonds.

(c) Payment to satisfy a complaint made under section (5) of this rule from a surety bond must be in the same proportion that the penal sum of the surety bond bears to the total of the penal sums of the multiple surety bonds.

(6) If more than one complaint must be paid from a surety bond under section (3) of this rule or multiple surety bonds under section (5) of this rule and the total amount due to be paid exceeds the total amount available from those surety bonds, payment on a complaint must be made in the same proportion that the amount due on that complaint bears to the total due on all complaints that must be paid.

(7) The full penal sum of a bond must be available to pay complaints under this rule, notwithstanding that the penal sum may exceed the bond amount required under OAR 812-003-0170.

(8) Unless the order provides otherwise, if an award or a final order provides that two or more respondents are jointly and severally liable for an amount due to a complainant and payment is due from the surety bonds of the respondents, payment must be made in equal amounts from each bond subject to payment. If one or more of the bonds is or becomes exhausted, payment must be made from the remaining bond or in equal amounts from the remaining bonds. If one of the respondents liable on the complaint makes payment on the complaint, that payment shall reduce the payments required from that respondent's bond under this section by an amount equal to the payment made by the respondent.

(9) A surety company may not condition payment of a complaint on the execution of a release by the complainant.

(10) Inactive status of the license of the respondent does not excuse payment by a surety company required under this rule.

Stat. Auth.: ORS 670.310, 701.150 & 701.235

Stats. Implemented: ORS 701.150

Hist.: 1BB 6-1980, f. & ef. 11-4-80; 1BB 3-1981, f. 10-30-81, ef. 11-1-81; 1BB 1-1983, f. & ef. 3-1-83; Renumbered from 812-011-0075; 1BB 6-1984(Temp), f. & ef. 9-18-84; 1BB 3-1985, f. & ef. 4-25-85; BB 3-1987, f. 12-30-87, ef. 1-1-88; BB 2-1988, f. & cert. ef. 6-6-88; CCB 1-1989, f. & cert. ef. 11-1-89; CCB 4-1997, f. & cert. ef. 11-3-97; CCB 1-1998, f. & cert. ef. 2-6-98; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98, Renumbered from 812-004-0070; CCB 1-1999, f. 3-29-99, cert. ef. 4-1-99; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 2-2001, f. & cert. ef. 4-6-01; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 4-2002(Temp), f. & cert. ef. 5-23-02 thru 11-19-02; CCB 8-2002, f. & cert. ef. 9-3-02; CCB 6-2004, f. 6-25-04, cert. ef. 9-1-04; CCB 8-2004, f. & cert. ef. 10-1-04; CCB 9-2004, f. & cert. ef. 12-10-04; CCB 2-2005, f. 6-29-05, cert. ef. 7-1-05; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07; CCB 5-2007, f. 6-28-07, cert. ef. 7-1-07

## 812-006-0450

### Experience

In order for an RMI to demonstrate experience under ORS 701.078(1)(b)(B):

(1) The individual must be listed on the agency's current license records as having been a sole proprietor, partner, venturer, member, corporate officer, trustee, or designated RMI of a business licensed under ORS chapter 701 before July 1, 2000;

(2) The license of the business described in section (1) of this rule has not lapsed, or if lapsed, has lapsed for not more than the 24 month period prior to the date of the application; and

(3) The individual must have been listed as a sole proprietor, partner, venturer, member, corporate officer, trustee, or designated RMI of the business described in section (1) of this rule within the 24 month period prior to date of the application.

Stat. Auth.: ORS 670.310, 701.072 & 701.235

Stats. Implemented: ORS 701.072 & 701.078

Hist.: CCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; CCB 5-1992, f. 7-31-92, cert. ef. 8-1-92; CCB 3-1993, f. & cert. ef. 6-9-93; CCB 4-1993, f. 8-17-93, cert. ef. 8-18-93; CCB 5-1993, f. 12-7-93, cert. ef. 12-8-93; CCB 1-1994, f. 6-23-94, cert. ef. 7-1-94; CCB 2-1994, f. 12-29-94, cert. ef. 1-1-95; CCB 2-1995, f. 6-6-95, cert. ef. 6-15-95; CCB 1-1998, f. & cert. ef. 2-6-98; CCB 1-1999, f. 3-29-99, cert. ef. 4-1-99; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 9-2000, f. & cert. ef. 8-24-00; CCB 4-2001(Temp), f. & cert. ef. 5-18-01 thru 11-13-01; Administrative correction 11-20-01; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 7-2002, f. 6-26-02 cert. ef. 7-1-02; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04; CCB 9-2004, f. & cert. ef. 12-10-04; CCB 6-2006, f. 5-25-06, cert. ef. 6-1-06; Renumbered from 812-006-0020, CCB 10-2006, f. 9-5-06, cert. ef. 10-1-06; CCB 5-2007, f. 6-28-07, cert. ef. 7-1-07

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## Department of Administrative Services,

### Budget and Management Division

#### Chapter 122

**Rule Caption:** This rule establishes expenditure limits allowing state agencies without a 2007-09 legislatively adopted budget to continue operating after June 30, 2007.

**Adm. Order No.:** BMD 1-2007(Temp)

**Filed with Sec. of State:** 6-25-2007

**Certified to be Effective:** 6-29-07 thru 7-31-07

**Notice Publication Date:**

# ADMINISTRATIVE RULES

## Rules Adopted: 122-001-0035

**Subject:** This rule establishes expenditure limits allowing state agencies without a 2007-09 legislatively adopted budget to continue operating after June 30, 2007.

**Rules Coordinator:** Cheryl Knottingham—(503) 378-2349, ext 325

## 122-001-0035

### Continuing Resolution for State Agency Expenditure Limitations

(1) A state agency, as defined in Senate Bill 5548 (Oregon Laws 2007), may incur obligations and authorize expenditures to continue operations into the 2007–2009 biennium at:

(a) The agency's 2005–2007 eighth quarter allotment level; or

(b) A higher or lower level as approved by the Budget and Management Division;

(c) In establishing an alternative expenditure level, the Budget and Management Division shall consider pending legislative budget direction.

(2) Each state agency without a legislatively adopted budget as of June 29, 2007, shall send a signed letter of verification to the Budget and Management Division on or before July 1, 2007, acknowledging:

(a) The agency does not have a legislatively adopted budget as of June 29, 2007;

(b) The continuing resolution ends July 31, 2007 or when an adopted budget is signed by the Governor;

(c) Expenditures will not be authorized above the level established pursuant to section (1) of this rule;

(d) Expenditures incurred under the continuing resolution will be part of the 2007–2009 adopted budget and not permanently charged against 2005–2007 expenditure limitation or appropriation; and

(e) The agency will not begin new programs or hire new staff positions until an adopted budget is signed by the Governor.

(3) Upon receipt of the signed verification letter, the Budget and Management Division shall establish an allotment level pursuant to section (1) of this rule. The Budget and Management Division shall notify each agency of the action taken.

Stat. Auth.: ORS 184.340

Stats. Implemented: OL 2007 (Senate Bill 5548)

Hist.: BMD 1-2007(Temp), f. 6-25-07, cert. ef. 6-29-07 thru 7-31-07

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## Department of Agriculture Chapter 603

**Rule Caption:** Brand Inspection Fees.

**Adm. Order No.:** DOA 10-2007(Temp)

**Filed with Sec. of State:** 6-20-2007

**Certified to be Effective:** 7-1-07 thru 12-21-07

**Notice Publication Date:**

**Rules Amended:** 603-014-0055, 603-014-0065, 603-014-0095, 603-014-0135

**Rules Suspended:** 603-014-0100

**Subject:** These temporary rule are established to reflect changes made by the 2007 Legislative Assembly through SB236 to provide funding for the Brand Inspection program of the Oregon Department of Agriculture. These rules amend Service Fee and Service Fee Exemptions to establish a \$25 service fee and to modify or remove exceptions from the service fee. Amends Brand Inspection Fee to increase brand inspection fees for cattle and hides to \$0.85. Removes the Claims for Brand Inspection Fee Refund. Amends Brand Inspection System for Cattle Hides.

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

## 603-014-0055

### Service Fee

(1) The service fee provided for in ORS 604.046(2) shall apply anytime a livestock inspector travels specifically with the intent to conduct a brand inspection.

(2) The service fee is \$25 per travel location.

Stat. Auth.: ORS 561.190

Stats. Implemented: ORS 604.046(2)

Hist.: DOA 14-1999, f. & cert. ef. 6-30-99; DOA 12-2006, f. 6-7-06 cert. ef. 7-1-06; DOA 10-2007(Temp), f. 6-20-07, cert. ef. 7-1-07 thru 12-21-07

## 603-014-0065

### Service Fee Exemptions

The service fee required by OAR 603-014-0055 shall not apply to the following:

(1) Cattle and Equine that are presented for inspection at place where a livestock inspector is present and the owner or occupant of that place allows the use of their property to conduct the inspection. The service charge may or may not have already been paid by the person who caused the inspector to be at that place.

(2) At auction markets where multiple inspectors are required to adequately inspect cattle before their sale, only one service fee will be charged per sale.

Stat. Auth.: ORS 561.190

Stats. Implemented: ORS 604.046(2)

Hist.: DOA 14-1999, f. & cert. ef. 6-30-99; DOA 10-2007(Temp), f. 6-20-07, cert. ef. 7-1-07 thru 12-21-07

## 603-014-0095

### Brand Inspection Fee

(1) The brand inspection fee for cattle [and cattle hides], as provided by ORS 604.066(2), shall be 85¢ per head.

(2) The brand inspection fee for cattle hides shall be \$0.85 per hide.

(3) The brand inspection fee for self inspection (E certificates) on cattle shall be \$0.85 per head.

(4) The charge for cattle transportation certificates, as authorized by ORS 561.180(4), shall be \$1.50 per book.

Stat. Auth.: ORS 561.180, 604.027 & 607.261

Stats. Implemented: ORS 604.066

Hist.: AD 15-1982, f. & ef. 11-1-82; AD 13-1983, f. 10-19-83, ef. 11-1-83; AD 3-1985, f. 1-23-85, ef. 2-1-85; AD 12-1989, f. & cert. ef. 9-1-89; AD 6-1992, f. & cert. ef. 6-3-92; DOA 8-2003, f. 1-14-03 cert. ef. 1-15-03; DOA 10-2007(Temp), f. 6-20-07, cert. ef. 7-1-07 thru 12-21-07

## 603-014-0100

### Claims for Brand Inspection Fee Refund

A claim for brand inspection fee refund and owner's affidavit made pursuant to the provisions of ORS Chapter 604 shall be on a form furnished by the Department. Each claim and affidavit shall be accompanied by a copy of the brand inspection certificate authorizing the movement of the identical livestock for which a refund of brand inspection fees is claimed.

Stat. Auth.: ORS 561

Stats. Implemented: ORS 604.066

Hist.: AD 574, f. & ef. 3-17-59; AD 22-1981, f. & ef. 10-7-81; Suspended by DOA 10-2007(Temp), f. 6-20-07, cert. ef. 7-1-07 thru 12-21-07

## 603-014-0135

### Brand Inspection System for Cattle Hides

As provided by ORS 604.046(6), the system for brand inspection of cattle hides resulting from custom slaughtering operations shall be as follows:

(1) Custom slaughtering establishments shall prepare the certificates and reports required by ORS 603.045[, at the times and in the manner set forth in 603-028-0610]. All hides shall be identified by application of a back tag or other identification device approved in writing by the Department. The back tag or device must be affixed to the hide with back tag glue or other manner approved in writing by the Department.

(2) Custom slaughtering establishments shall disclose to the Department the identities and locations of the rendering plants or hide buyers to which they sell or deliver cattle hides resulting from their slaughtering operations. Brand inspection of cattle hides may then be performed at these identified places. In the event custom slaughtering establishments retain the cattle hides resulting from their slaughtering operations, or in the event the cattle hides are disposed of to tanneries, or to rendering plants or tanneries located outside this state, brand inspection of cattle hides shall then be performed at the custom slaughtering establishments with the fees therefore based upon the number of cattle hides inspected. The brand inspection of cattle hides may be random, select or complete, depending upon the number of hides available for inspection and the degree of ownership verification, but not less than 25% annually.

(3) As provided by ORS 561.275, all rendering plants licensed under ORS 601.050, hide buyers and all custom slaughtering establishment licensed under ORS 603.025, shall make their records relating to their acquisition and disposition of cattle hides available to the Department upon its request.

(4) The fee for brand inspection of cattle hides shall be that set forth in OAR 603-014-0095. The fee for such inspections performed at rendering plants identified under section (2) of this rule shall be deducted from the sales prices due the custom slaughtering establishments from whom the cattle hides were obtained, and remitted to the Department on or before the fifth day of the month following the acquisition of such cattle hides.

Stat. Auth.: ORS 561 & 604

Stats. Implemented: ORS 604.071(5)

# ADMINISTRATIVE RULES

Hist.: AD 13-1983, f. 10-19-83, ef. 11-1-83; AD 9-1987, f. & ef. 6-24-87; DOA 15-1999, f. & cert. ef. 6-30-99; DOA 26-2000, f. & cert. ef. 10-6-00; DOA 10-2007(Temp), f. 6-20-07, cert. ef. 7-1-07 thru 12-21-07

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**Rule Caption:** License fee increase on commercially used weighing and measuring instruments and devices.

**Adm. Order No.:** DOA 11-2007(Temp)

**Filed with Sec. of State:** 6-25-2007

**Certified to be Effective:** 7-1-07 thru 12-21-07

**Notice Publication Date:**

**Rules Amended:** 603-027-0030

**Subject:** This temporary rule amends OAR 603-027-0030 to increase the license fees that are applied to commercially used weighing and measuring instruments and devices in Oregon. Failure to act will immediately result in decreased consumer protection, complaint investigations, and device examinations, elimination of National Voluntary Laboratory Program (NVLAP) accreditation and National Type Evaluation Program (NTEP) scale evaluations, and decreased assurance of fair competition for businesses. In essence, consumers and businesses in Oregon will lose assurance of equity in the marketplace.

The maximum license fees were increased by the 2007 Legislative Assembly through Senate Bill (SB) 238, which relates to ORS 618.141 and includes an emergency clause to immediately increase the license fees. Timing of the Legislative action came very near the end of the 2006-2007 license period of June 30, 2007. Action on this temporary rule prevents billing confusion and supplemental billing notices. Immediately implementing the increased license fees allows the ODA Measurement Standards Division to operate a fully staffed and viable weighing and measuring instrument and device examination and certification program in Oregon to help assure a fair marketplace for businesses and consumers.

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

## 603-027-0030

### License Fees and Categories

The annual license fees for weighing or measuring instruments or devices, as provided for in ORS 618.136 and 618.141 are as follows:

- (1) Discrete Weighing Devices (mfr. rated capacity):
  - (a) 0–400 pounds — \$37.00;
  - (b) 401–1,160 pounds — \$76.00;
  - (c) 1,161–7,500 pounds — \$153.00;
  - (d) 7,501–60,000 pounds — \$230.00;
  - (e) Over 60,000 pounds — \$230.00;
- (2) Static Railroad Track Scales — \$1000.00.
- (2) Continuous Weighing Systems (mfr. rated capacity):
  - (a) Under 10 tons/hour — \$290.00;
  - (b) 10–150 tons/hour — \$450.00;
  - (c) 151–1,000 tons/hour — \$900.00;
  - (d) Over 1,000 tons/hour — \$2000.00;
  - (e) In motion railroad track scales — \$1000.00.
- (3) Liquid Fuel Metering Devices for Noncorrosive Fuels Contained at Atmospheric Pressure (max. device flowrate):
  - (a) Under 20 gal/min — \$30.00;
  - (b) 20–150 gal/min — \$153.00;
  - (c) Over 150 gal/min — \$230.00.
- (4) Special Liquid Fuel Measuring Equipment:
  - (a) Liquefied Petroleum Gas meters:
    - (A) 1” pipe diameter or under — \$230.00;
    - (B) Over 1” pipe diameter — \$230.00.
  - (b) Liquefied Petroleum Gas Vapor-Measuring Devices:
    - (A) 1” pipe diameter or under — \$15.00;
    - (B) Over 1” pipe diameter — \$20.00.

Stat. Auth.: ORS 561 & 618

Stats. Implemented: ORS 618.136 & 618.141

Hist.: AD 1025(15-74), f. 4-30-74, ef. 7-1-74; AD 1083(6-76), f. 3-5-76, ef. 7-1-76; AD 13-1977, f. & ef. 6-17-77; AD 18-1977, f. & ef. 8-19-77; AD 5-1983, f. & ef. 5-4-83; AD 7-1984, f. & ef. 4-18-84; AD 8-1990, f. 4-5-90, cert. ef. 7-1-90; AD 3-1992, f. & cert. ef. 4-9-92; AD 12-1996, f. & cert. ef. 12-10-96; DOA 10-2002, f. & cert. ef. 3-7-02; DOA 11-2007(Temp), f. 6-25-07, cert. ef. 7-1-07 thru 12-21-07

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

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

**Filed with Sec. of State:** 7-2-2007

**Certified to be Effective:** 7-2-07

**Notice Publication Date:** 6-1-07

**Rules Amended:** 603-028-0005, 603-028-0300, 603-028-0850, 603-028-0860

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

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

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

## 603-028-0005

### Definitions

In addition to the provisions and definitions set forth in ORS Chapters 616 and 619, a meat and meat products establishment is subject to the definitions set forth in OAR 603-025-0010.

(1) “Fat Content” means the amount of fat contained in a meat or meat product as determined by laboratory procedures and methods recommended and accepted by the Association of Official Analytical Chemists (AOAC).

(2) “Ground Beef” or “Chopped Beef” means chopped, fresh or frozen beef with a maximum fat content of 30 percent of the finished product weight.

(3) “Lean Ground Beef” means chopped, fresh or frozen beef with a maximum fat content of 22 percent of the finished product weight.

(4) “Extra Lean Ground Beef” means chopped, fresh or frozen beef with a maximum fat content of 16 percent of the finished product weight.

(5) “Hamburger” means chopped fresh or frozen beef with a maximum fat content of 30 percent of the finished product weight not containing corn syrup solids, corn syrup, or glucose syrup as seasoning, in excess of two percent of the finished product weight and with or without other beef fat.

(6) “Meat (species) Patty” or “Meat (species) Patty Mix” means a ground or chopped meat product, from one or more fresh or frozen meats, with a maximum fat content of 30 percent of the finished product weight, and a maximum added extender content of ten percent (on a dry weight basis) of the finished product weight. It may contain the following as additional optional ingredients:

(a) Water;

(b) Corn syrup solids, corn syrup, or glucose syrup as seasoning, not in excess of two percent of the finished product weight;

(c) Binders;

(d) Extenders (cereals, whey protein, soy protein, textured vegetable protein etc.), but if such is textured vegetable protein, it shall be fortified. Rehydrated extenders shall contain 70 percent or less water.

(7) “Fabricated (species) Steak”, or Formed (species) Steak”, “Shaped (species) Steak”, or “Molded (species) Steak” means a fabricated, formed, comminuted meat product from fresh or frozen meat of the species identified, with a maximum fat content of 30 percent of the finished product weight, and without the addition of water, extenders or binders. It may contain the following as additional optional ingredients:

(a) Other fat of the same species;

(b) Hydrolyzed plant protein or other flavorings.

(8) “Fresh Pork Sausage” means a coarse or finely comminuted meat product, from fresh or frozen pork meat, with a maximum fat content of 50 percent of the finished product weight, and may contain added seasonings (condimental substances), and added water or ice (to facilitate chopping or mixing) not to exceed three percent of the total ingredients used.

(9) “Fresh Beef Sausage” means a coarse or finely comminuted meat product, from fresh or frozen beef meat, with a maximum fat content of 30 percent of the finished product weight, and may contain added seasonings (condimental substances), and added water or ice (to facilitate chopping or mixing) not to exceed three percent of the total ingredients used.

(10) “Breakfast Sausage” means a coarse or finely comminuted meat product from fresh or frozen meat or meat-by-products, with a maximum fat content of 50 percent of the finished product weight, and may contain

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added seasonings (condimental substances), added water or ice (to facilitate chopping or mixing) not to exceed three percent of the total ingredients used, and extenders (cereals, whey protein, soy protein, textured vegetable protein or plant protein, etc.) not to exceed 3.5 percent of the finished product weight. If textured vegetable protein is used, it shall be fortified.

(11) "Beef Barbecue", "Barbecued Pork", or a similar barbecued product means a meat product cooked by the direct action of dry heat for a sufficient period of time to assume the usual characteristics of a barbecued article, including the formation of a brown crust on the surface and the rendering of surface fat. Such product may be basted or injected with a sauce during the cooking process.

(12) Only the terms "Lean" or "Extra Lean" may be used to describe the products identified in sections (4) and (5) of this rule.

(13) If beef cheek meat (trimmed beef cheeks) is used in the products identified in sections (3), (4), (5) and (6) of this rule, the amount of such shall not exceed 25 percent of the finished product weight, and if in excess of natural proportions, shall be declared on the package label or bulk display placard.

(14) Domesticated elk means North American wapiti (*Cervus canadensis*), Manitoban elk (*Cervus elaphus manitobensis*), Rocky Mountain elk (*Cervus elaphus nelsoni*), Roosevelt elk (*Cervus elaphus roosevelti*) and Tule elk (*Cervus elaphus nannodes*) that are born and raised in captivity.

Stat. Auth.: ORS 561, 616 & 619  
Stats. Implemented: ORS 603.085, 619.031 & 619.046  
Hist.: AD 1005(19-73), f. 12-5-73, ef. 12-25-73; AD 21-1990, f. & cert. ef. 11-27-90; DOA 13-2002, f. & cert. ef. 4-11-02; DOA 12-2007, f. & cert. ef. 7-2-07

## 603-028-0300

### Packaging

(1) Package coverings or wrapping of meat or meat products shall not be of a color, design, fabrication, or kind as to be misleading or deceptive with respect to the color, quality, nature, or kind of meat or meat product.

(2) Transparent or semi-transparent package wrappers, casings, or coverings of cured, cured and smoked, or cured and cooked sausage products, and sliced ready-to-eat meat products may be color-tinted or bear red designs, not to exceed 50 percent of such package wrapper, casing, or covering. However, the transparent or semi-transparent portion of the principal display panel shall be free of any color-tinting or red designs, and such principal display panel shall provide at least 20 percent unobstructed, clear space, consolidated in one area, so that the true color, quality, nature, or kind of meat product is visible.

(3) Meat or meat products shall not be packaged in such a manner as to hide from view undesirable or less costly portions, cuts or portions, cuts or portions of cuts of the meat, or meat products contained therein.

(4) Sliced bacon, other than that which is canned or packaged at the time of offering for retail sale, shall only be packaged in containers which provide the retail customer with a clear, unobstructed view of a substantial portion of a slice of bacon similar to that packaged therein, and such bacon shall not be packaged in such a manner as to make the whole package appear to be of better quality than it actually is.

(5) Except as otherwise provided in this rule, Meat and Meat Products shall be labeled in accordance with OAR 603-025-0020(17), 603-025-0080 and 603-025-0190, the Federal Wholesome Meat Act and the provisions contained in the **Code of Federal Regulations** specified in **Title 9, Part 319**, and at retail shall be labeled as recommended in the **1973 Uniform Retail Meat Identity Standards** published by the National Livestock and Meat Board.

(6) A meat or meat product labeled with descriptive, comparative or superlative terms as to fat content, shall also be labeled with a qualifying statement indicating the percentage of fat content thereof. A reasonable variation between fat content in descending order shall be maintained if more than one such descriptive, comparative or superlative term is used. A bulk display placard may be used in lieu of labeling in this respect.

(7) The term "fresh" shall not be used on labels of a meat or meat product which:

- (a) Contains any added nitrites, nitrates, or other preservatives;
- (b) Has been salted for preservation, pickled, irradiated, heated or smoked;
- (c) Has been frozen and thawed prior to retail sale.

(8) Pet animal food meat products shall be additionally labeled "**Not For Human Consumption**".

(9) Packaged fryers, whole or cut-up, not including giblets, shall be labeled "**whole fryer without giblets**". Packaged fryer parts labeled as specific parts shall not contain other parts of lesser value unless labeled to that

effect ("**breast with portion of ribs**"; "**thighs with portion of backs**"; etc.).

(10) A meat and meat product advertisement shall conform with the requirements of sections (5), (6), and (7) of this rule, except for the ingredient declaration.

(11) A bulk display of meat or meat products shall include a clearly visible and legible placard prominently displayed immediately adjacent to such display, and such placard shall be of such a color contrast that it may be easily read. Such placard shall contain:

- (a) The product name;
- (b) A declaration of price per unit of weight;
- (c) A percentage of fat if meeting the requirements of section (6) of this rule;
- (d) Other statement as may be required by these regulations.

[Publications: Publications referenced are available from the agency.]  
Stat. Auth.: ORS 561, 616 & 619  
Stats. Implemented: ORS 603.085, 619.031 & 619.046  
Hist.: AD 1005(19-73), f. 12-5-73, ef. 12-25-73; AD 21-1990, f. & cert. ef. 11-27-90; DOA 12-2007, f. & cert. ef. 7-2-07

## 603-028-0850

### Licensing Requirements for Game Meat Processing

(1) An establishment, not otherwise licensed under ORS 603.025(4)(b) or (d), that desires to process game meat to be used by the establishment or other charitable organization for human consumption under the provisions of ORS 619.095(1), shall obtain and maintain a license to operate a custom processing establishment under ORS 603.025(4)(d). In order to obtain and maintain such a license, the establishment shall be constructed, operated, maintained and equipped in accordance with OAR 603-028-0825.

(2) In order to assist the State Department of Fish and Wildlife and the State Police in carrying out their inspections as to the fitness of game meat for human consumption under ORS 619.095(1), and the designation of approved charitable organizations or public institutions by the State Department of Fish and Wildlife under ORS 619.095(2)(a), the Department shall furnish such state agencies with the names of the establishments licensed to process game meat, on a semi-annual basis.

Stat. Auth.: ORS 561, ORS 616 & ORS 619  
Stats. Implemented: ORS 603.085, ORS 619.031 & ORS 619.046  
Hist.: AD 5-1984, f. & ef. 4-17-84; AD 21-1990, f. & cert. ef. 11-27-90; DOA 12-2007, f. & cert. ef. 7-2-07

## 603-028-0860

### Game Meat Inspection Procedures

(1) In order to qualify to inspect game meat for the purpose of determining its fitness for human consumption, under the provisions of ORS 619.095, employees of the State Department of Fish and Wildlife and of the State Police shall be certified to have successfully completed one of the inspectional training courses conducted by the Department. The certification shall be valid for three years from issuance. The certification may be renewed by submitting an application therefore and attending an inspectional refresher course conducted by the Department.

(2) The inspection of game meat and the determination of its fitness for human consumption shall be carried out in accordance with the training provided by the Department, as applicable to the inspection of game meat, (in consideration of the differences between game meat animals and domestic meat animals), and may include but not be limited to a visual examination of the animal carcass and, if examined after processing of the carcass, of the muscle tissue, heart, lungs, liver, spleen, mesentery and lymph nodes for discoloration, bruises, abscesses or other evidence of disease, and for excessive parasite lesions.

Stat. Auth.: ORS 561 & 619  
Stats. Implemented: ORS 603.085, 619.031 & 619.046  
Hist.: AD 5-1984, f. & ef. 4-17-84; DOA 12-2007, f. & cert. ef. 7-2-07

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

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

**Filed with Sec. of State:** 7-2-2007

**Certified to be Effective:** 7-5-07

**Notice Publication Date:** 6-1-07

**Rules Amended:** 603-076-0005, 603-076-0016

**Subject:** House Bill 3811 (2001) established the legal framework for state-supervised price negotiations for perennial ryegrass. HB 3461 (2005) broadened the original legislation to include other grass species, such as tall fescue and annual ryegrass, if growers of these other crops form cooperatives or bargaining associations to represent

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Stat. Auth.: ORS 62.015, 62.848, 646.535 & 646.740  
Stats. Implemented: ORS 62.015, 62.845, 62.848, 646.535, 646.740  
Hist.: DOA 25-2001, f. & cert. ef. 11-6-01; DOA 13-2007, f. 7-2-07, cert. ef. 7-5-07

growers in voluntary price negotiations with dealers who have contracts with those growers. The proposed rule:

- 1) updates the rule to reflect the change in the 2005 law to enable ODA to supervised price negotiations for other grass species if asked;
- 2) implements a "pre-mediation agreement" by participating parties to negotiate in good faith and pay an upfront participation fee as a cost of service as specified in the statute; and
- 3) stipulates that the negotiated price will be settled by October 1 of each year, with adjustments occurring after harvest of the following year.

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

## 603-076-0005

### Definitions

As used in these regulations, unless the context requires otherwise:

(1) "Dealer" and "grass seed dealer" has the same meaning provided by the definition of grass seed dealers under ORS 646.515(3).

(2) "Grower Bargaining Association" refers to any growers association legally organized in accordance with Federal Capper-Volstead Laws (7 U.S.C. 291-292) and state law (ORS 646.515 to 646.545) for incorporation as a grower cooperative or bargaining unit for perennial ryegrass, annual ryegrass, or tall fescue grass seed.

(3) "Mediate" or "mediation" has the same meaning as ORS 36.110(5).

(4) "Price negotiation," "negotiate," or "bargain" means to discuss the terms of a contract price and related issues, and attempt to come to terms.

(5) "Director" means the Director of Agriculture or a designee of the Director of Agriculture.

(6) "Department" means the Oregon Department of Agriculture.

(7) "Active supervision," "active state supervision," and "actively supervise" means the Department's regulatory oversight of the price discussions among dealers, and price negotiations between dealers and grower representatives of a grower bargaining association for the purpose of arriving at a negotiated price for the sale of seed under production contracts meeting quality standards developed by the association (such as TournamenT<sup>®</sup> Quality for perennial ryegrass).

(8) "Negotiated price" means the proposed price agreed upon by representatives of a grower bargaining association and seed dealers for production contracted seed meeting standards developed by the association (such as TournamenT<sup>®</sup> Quality for perennial ryegrass).

(9) "Established price" means the price set and approved by the Director as the minimum price at which production contracted seed meeting standards developed by the growers association shall be sold to seed dealers.

(10) "TournamenT<sup>®</sup> Quality perennial ryegrass seed" means turf-type perennial ryegrass seed produced by a member of the PRBA meeting TournamenT<sup>®</sup> Quality mechanical standards, each lot of which meets the Oregon certified mechanical standards (for purity and germination) and which lot is free, in a 5-gram sample, of contamination of certain grasses classified as "coarse grasses" or "undesirable grass seed (UGS)" which include the following species: bentgrass, bermudagrass and giant bermudagrass, *Poa trivialis*, meadow fescue, orchardgrass, redtop, timothy, velvetgrass, and grass of the bromus and wheatgrass species; and which lot is free, in a 50-gram sample, of *Poa annua* and noxious weeds listed in the Oregon Seed Certification Handbook.

(11) "State action immunity" means immunity liability under the federal antitrust laws and the Oregon Antitrust Act for conduct that is carried out pursuant to a regulatory program in which competition in certain areas of the perennial ryegrass industry is displaced by regulations and active state supervision in accordance with ORS 62.015, 62.845, 62.848, 646.535 and 646.740.

(12) "Parties" or "party" means grass seed producers, grass seed grower associations, grass seed cooperatives, or seed dealers who are participants in the state regulatory program for establishing prices on grass seed produced in Oregon.

(13) "Bargaining Council" means the collective group of dealers and growers from the bargaining association, who voluntarily meet under the auspices of the department for the purposes of price negotiations.

(14) "Regulatory program" means the state regulatory program described in ORS 62.015, 62.845, 62.848, 646.535 and 646.740 that is actively supervised by the Director of Agriculture, and that authorizes parties to engage in bargaining and negotiations to establish the price and terms of grass seed products produced under contract and sold to seed dealers.

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

## 603-076-0016

### Active State Supervision of Grass Seed Price Negotiations

It is the intent of the department that the process of state supervised price negotiations for grass seed will assist in the efficiency of price discovery, the generation of credible data on which to make pricing decisions, and good faith negotiations by all parties. To ensure that the Director is actively supervising the conduct of the grower representatives and the seed dealers under the regulatory program in accordance with the requirements of the federal antitrust laws and the Oregon Antitrust Act:

(1) All parties involved in supervised negotiations shall sign a pre-negotiation agreement, developed by the department, which provides that each party will:

(a) Negotiated in good faith, considering all relevant data presented;

(b) Develop, share, or document all information requested by the department for consideration and deliberation by the Bargaining Council, to include, but not limited to: acres under contract, inventory, yields, import/export information, and market issues;

(c) Pay the \$100 participation fee as outlined in Section 9(b); and,

(d) Agree to have a preliminary negotiated price established by a date certain prior to fall planting; exceptions to the date by which a price is established may be modified by the department in order to accommodate special circumstances at the director's discretion.

(2) The Director or the director's designee shall attend all meetings between the grower association and seed dealer representatives pursuant to the regulatory program and shall monitor and, if necessary, mediate the price negotiations between the representatives at these meetings.

(3) Minutes of all meetings between representatives of the growers association and the seed dealers will be created and maintained by the Department. Bargaining Council sessions supervised by the department are not subject to public meeting laws; however, the minutes of the Bargaining Council are a public document.

(4) Within two (2) days after the final meeting of the Bargaining Council between the representatives of the growers association and seed dealers, the Bargaining Council shall either:

(a) Submit to the Director, prior to October 1 of each year, for review and approval, a preliminary negotiated price effective for the upcoming crop year; or

(b) Notify the Director that the bargaining representatives cannot arrive at a negotiated price, and either: (1) ask for a suggested price from the Director which the representatives may further consider, or (2) suggest to the Director a specified price range for consideration, from which the Director shall determine the price that represents the interests of the state and the industry based on the information and facts available.

(5) Within two (2) days after the parties' submission under section (4), the Director shall approve an established price, or reject the parties' negotiated price and direct the parties to continue their negotiations. The Director may request any information deemed necessary from the parties to understand, review and approve the established price. The Director shall immediately notify the parties of the decision under this section in writing.

(6) In approving the established price, the Director shall consider the negotiated price reached by the representatives of the growers association and the seed dealers. The Director may also consider grass seed inventories for the respective type of seed under consideration, acres contracted, production factors, competitive factors, local, national and world market prices, the influence of imported product on prices, and any other factors the Director deems necessary to approve the established price.

(7) The Director must approve the established price and any adjustments to established prices previously approved by the Director before the established prices shall be implemented by the parties.

(8) Pricing adjustments after October 1 of any year, as approved under Section 4(A), will be based on objective data, and may include a pricing formula agreed to by the Bargaining Council. The final price will be established by October 1 of the harvest year. The final price of year(x) may become the preliminary price of the following year(x+1).

(9) The authorizing legislation establishes that the parties to the negotiations shall reimburse the Department for costs associated with supervising and administering the regulatory program. The Department will provide the parties with an itemized list of costs associated with program supervision, and cost recovery shall be as follows:

(a) Department consultative fees for Attorney General counsel directly related to supervising the regulatory program shall be divided evenly between the parties and reimbursed to the Department;



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(b) All parties to the negotiations will be assessed a fee of \$100 towards the cost of state supervision of the negotiations at the onset of the supervised pricing provided by the department. Costs above the total collected from the parties for this \$100 flat fee will be evenly divided between all parties for payment to the department;

(c) Total costs for the department's supervisory role will include: \$45.00 per hour for time devoted to administration and supervision of the regulatory program, plus associated travel costs (mileage at state rates, and travel time) and expenses (copies, etc.).

Stat. Auth.: ORS 62.846(2)(3)(4)  
Stats. Implemented: ORS 62.015, 62.845, 646.535 & 646.740  
Hist.: DOA 25-2001, f. & cert. ef. 11-6-01; DOA 13-2007, f. 7-2-07, cert. ef. 7-5-07

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**Department of Community Colleges  
and Workforce Development  
Chapter 589**

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

**Adm. Order No.:** DCCWD 2-2007

**Filed with Sec. of State:** 7-6-2007

**Certified to be Effective:** 7-6-07

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

**Rules Amended:** 589-002-0100

**Subject:** Authority for distribution of the Community College Support Fund (CCSF) is granted by OAR 589-002-0100. This rule amendment revises the method for disbursing CCSF monies for Contracted Out-of-District (COD) programs. This rule amendment ties the disbursement of CCSF monies to the number of Full-Time Equivalent (FTE) students served by Contracted Out-of-District programs in the prior year.

**Rules Coordinator:** Linda Hutchins—(503) 378-8648, ext 474

## 589-002-0100

### Distribution of Community College Support Fund

(1) Purpose Statement:

(a) It is in the state's interest to support a strong local community college system that meets local, regional and state economic and workforce development needs. Short- and long-term interests include the consideration of such things as comparable District funding capability, maintaining small districts as a means of educational access and stable, predictable funding. Oregon's Community College distribution formula is designed to provide a financial foundation to support undergraduate and lower-division education, professional technical education, remedial education, local response to workforce training and other educational services necessary at the local and state level;

(b) The State Board through the authority vested in it by ORS 341.626, uses this rule to state clearly and concisely what the statewide interests are for Oregon community colleges and students through the adoption of a policy-driven distribution formula. The overarching policy levers, chosen by the State Board, have been structured to support access and quality and to do so with equity for Oregon students;

(c) The State Board, the Department, and the seventeen Oregon Community Colleges plan to pursue equalization of resources regardless of funding levels. This goal is reflected in the following principles:

(A) An expectation that equalization will be achieved in six years;

(B) Significant additional funds in a biennium compared to the previous biennium will benefit every college. The State Board will determine what level is significant on a biennial basis;

(C) Historic share of total public resources will be based on the immediate previous year for every year, with the exception of 2005-06. For 2005-06, historic share of public resources will be based on the average of 2003-04 and 2004-05;

(D) Buffered FTE will be used in the formula. The buffering is accomplished by using a three-year weighted average as defined in Section (8)(b);

(E) If significant additional resources are available compared to the previous biennium, equalization can go faster. The State Board will determine what level is significant on a biennial basis;

(F) The resource level available compared to the previous biennium may impact the pace of progress toward equalization.

(2) For purposes of this rule, the following definitions apply:

(a) "Total Public Resources." The Community College Support Fund formula considers 100% of the next year's imposed property tax revenue and the General Fund appropriation from the legislature.;

(b) "Property tax revenues" is defined as the amount determined by the Department of Revenue to be imposed on local property following the application of limits imposed by sections 11(b)(1) through 11(b)(3), Article XI, of the Oregon Constitution, and those limits imposed by legislation implementing Ballot Measure 50. This amount becomes the basis for operation of the funding formula without regard to uncollectible taxes, or taxes collected from previous years. Taxes levied or imposed by a community college district to provide a public library system established prior to January 1, 1995 shall be excluded from the definition of property taxes in this rule. Property tax revenues raised through voter approval of any local option or capital construction levy are not to be included as a resource to be distributed through the funding formula;

(c) "Community College Support Fund" is defined as those funds received through the State's General Fund appropriation and distributed to the community colleges for the purpose of funding educational programs;

(d) "Full-Time Equivalent (FTE) Enrollment" is defined as 510 clock hours for all coursework and for all terms including a fall 12-week term. For an 11 week fall term, the following calculation will be used; 11/12 of 510 hours or 467.5 hours;

(e) "Total Weighted Reimbursable FTE" is defined as the sum of 40% of first year prior to current FTE, 30% of second year prior to current FTE, and 30% of third year prior to current FTE;

(f) "Historic Share of Public Resources" is defined as the percent of statewide non-base total public resources allocated to each Oregon community college in the prior period. With the exception of 2005-06, historic share of public resources is calculated by dividing each college's total public resources from the prior year, exclusive of the base, by Total Weighted Reimbursable FTE from the prior year. For 2005-06, historic share of public resources is calculated by dividing each college's average total public resources from the 2003-04 and 2004-05 fiscal years, exclusive of the base, by the amount of frozen reimbursable FTE used in both the 2003-04 and 2004-05 fiscal years;

(g) "Equalization" is defined as equal public resource support per Weighted Reimbursable FTE, regardless of institution, and exclusive of the base. Equalization is measured by dividing Total Public Resources, exclusive of the base, by Weighted Reimbursable FTE.

(3) The Community College Support Fund shall be distributed in equal payments as follows:

(a) For the first year of the biennium, August 15, October 15, January 15, and April 15;

(b) For the second year of the biennium, August 15, October 15, and January 15;

(c) The final payment of each biennium is deferred until July 15 of the following biennium as directed by Senate Bill 1022 of the Third Special Session of the 71st Oregon Legislative Assembly;

(d) Should any of the dates set forth above occur on a weekend, payment shall be made on the next business day;

(e) All payments made before actual property taxes imposed by each district are certified by the Oregon Department of Revenue shall be based on the Department's best estimate of quarterly entitlement using property tax revenue projections. Payments shall be recalculated each year as actual property tax revenues become available from the Oregon Department of Revenue and any adjustments will be made in the final payment(s) of the fiscal year.

(4) Districts shall be required to submit enrollment reports in the format specified by the Commissioner, including numbers of clock hours realized for all coursework, in a term-end enrollment report by the Friday of the sixth week following the close of each term. If reports are outstanding at the time of the quarterly payments, payment to the district(s) not reporting may be delayed at the discretion of the Commissioner. All payments made before actual Full-Time Equivalent enrollment data are available shall be based on the Department's best estimate of quarterly entitlement using enrollment data from previous years. Payments shall be recalculated each year as actual Full-Time Equivalent enrollment data become available and any adjustments will be made in the fiscal year.

(5) Reimbursement from the Community College Support Fund shall be made for professional technical, lower division collegiate, developmental education and other courses approved by the State Board in accordance with OAR 589-006-0100 through 589-006-0400. State reimbursement is not available for hobby and recreation courses as defined in OAR 589-006-0400.

(6) Residents of the state of Oregon and the states of Idaho, Washington, Nevada, and California shall be counted as part of each Community College's Total Reimbursable FTE base but only for those students who take part in coursework offered within Oregon's boundaries.

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(7) State funding for community college district operations is appropriated by the legislature on a biennial basis to the Community College Support Fund. For each biennium the amount of state funds available for distribution through the funding formula shall be calculated based on the following:

(a) Funds to support corrections programs shall be subtracted from the amount allocated to the Community College Support Fund before the formula is calculated. The amount available for corrections shall be equal to the funding amount in the preceding biennium, except as adjusted to reflect the same percentage increase or decrease realized in the overall Community College Support Fund appropriation. Funding for individual corrections programs will be determined in consultation with the Department of Corrections;

(b) Funds to support contracted out-of-district (COD) programs shall be subtracted from the amount allocated to the Community College Support Fund before the formula is calculated. The amount available for COD's shall be equal to the number of reimbursable COD FTE from the prior year multiplied by the amount of Community College Support Funds per FTE for the prior year;

(c) The State Board may establish a Strategic Fund:

(A) There are two basic categories for these funds. Incentivized statewide initiatives and activities and requests from individual Districts for assistance in meeting new requirements and expectations stemming from legislative change;

(B) The Commissioner will use a committee of stakeholders and Department staff to determine overall priorities for funding that consider the State Board work plan and initiatives;

(C) Strategic Funds provided to incentivize statewide activities or assist Community Colleges in meeting legislative expectations are provided only for the biennium in which funding is approved. Strategic Funds allocated for either purpose will not be considered in the distribution of funds through the formula described in Section 8 for the current biennium or future biennia;

(D) Any unused monies remaining in the current biennium's Strategic Fund will be allocated through the formula described in Section 8 at the end of the biennium;

(E) The Commissioner will review, rank, and approve proposals to incentivize statewide activities. After each proposal is approved, the Commissioner will provide the State Board with a report detailing the purpose of the activity, the amount of Strategic Fund monies approved, and the proposal's merit as assessed under the following parameters:

(i) Purpose of the proposal;

(ii) How does the activity support the initiatives and work plans of the Department and the State Board;

(iii) Does the activity relate to the Department's Key Performance Measures or other program-specific measures?

(iv) Is the funding one time (for this biennium) or will additional funding be needed in the future?

(v) If future funding is needed, how will those resources be obtained? Is the activity sustainable?

(vi) What is the activity's impact on the State three years from now? Five years from now?

(vii) What change is anticipated?

(viii) How will progress be measured?

(F) The Department will bring all requests for assistance in meeting new requirements or expectations stemming from legislative change to the State Board for discussion and consideration;

(G) The Department will assess the requests for assistance in meeting new requirements or expectations of the Legislature based on the following parameters:

(i) Purpose of the proposal;

(ii) How will the funds be used? To sustain or increase enrollment (not supplanting existing funds)?

(iii) Is the funding one time (for this biennium) or will additional funding be needed in the future?

(iv) If future funding is needed, how will those resources be obtained? Is the activity sustainable?

(v) What is the proposal's impact on the Community College three years from now? Five years from now?

(vi) How will progress be measured?

(H) The Department will provide a recommendation and reasoning to the State Board on whether the request merits funding.

(c) Funds to support targeted investments such as distributed learning shall be subtracted from the amount allocated to the Community College Support Fund before the formula is calculated. The amount available for

these investments shall be equal to the funding amount in the preceding biennium, except as adjusted to reflect the same percentage increase or decrease realized in the overall Community College Support Fund appropriation;

(d) Funds remaining in the Community College Support Fund shall be divided equally between the two years of the biennium, and will be distributed in equal payments as described in Section 3 and through a distribution formula as described in Section 8;

(8) Distribution of funds to Community College Districts from the Community College Support Fund shall be accomplished through a formula, based on the following factors:

(a) Base Payment. Each community college district shall receive a base payment of \$600 for each Weighted Reimbursable FTE up to 1,100 and \$300 per FTE for unrealized enrollments between actual Weighted Reimbursable FTE and 1,100 FTE. The base payment may be adjusted by the State Board each biennium. The base payment for each District will be adjusted according to the size of the District. District size for purposes of this adjustment will be determined each year by the FTE set forth in section (8)(b) of this rule. The base payment adjustments shall be:

(A) 0–750 FTE 1.3513;

(B) 751–1,250 FTE 1.2784;

(C) 1,251–1,750 FTE 1.2062;

(D) 1,751–2,250 FTE 1.1347;

(E) 2,251–2,750 FTE 1.0641;

(F) 2,751–3,250 FTE 1.0108;

(G) 3,251–3,750 FTE 1.0081;

(H) 3,751–4,250 FTE 1.0054;

(I) 4,251–4,999 FTE 1.0027;

(J) 5,000 or more FTE 1.000.

(b) Student-Centered Funding: The formula is designed to progress toward a distribution of funds based on Weighted Reimbursable FTE students. The equalized amount per Weighted Reimbursable FTE is determined by dividing total public resources — excluding base payments, contracted out-of-district payments, and any other payments directed by the State Board or the Legislature — by Total Weighted Reimbursable FTE. The Department shall make the calculation based on submission of FTE reports by the districts and in accordance with established FTE principles:

(A) A three-year weighted average of Total Reported Reimbursable FTE by the Community Colleges will be used;

(B) For 2005–06 through 2007–08: FTE will be “thawed” from its current level one year at a time, beginning in 2005–06 when actual 2003–04 FTE is included in the formula. Beginning in 2007–08, the weighted average of FTE will consider only actual FTE. The “frozen” 96,027 total reimbursable FTE statewide was set by the State Board in 2002–03:

(i) The calculation for 2005–2006 Total Reimbursable FTE is 2003–04 actual enrollments (weighted at 40%); 2002–03 enrollments set at 96,027 (weighted at 30%); 2001–02 enrollments set at 96,027 (weighted at 30%);

(ii) The calculation for 2006–07 Total Reimbursable FTE is 2004–05 actual enrollments (weighted at 40%); 2003–04 actual enrollments (weighted at 30%); 2002–03 enrollments set at 96,027 (weighted at 30%);

(iii) The calculation for 2007–08 Total Weighted Reimbursable FTE is 2006–07 actual enrollments (weighted at 40%); 2005–06 actual enrollments (weighted at 30%); 2004–05 actual enrollments (weighted at 30%).

(C) All future calculations will use a three-year weighted average with first year prior to current actual enrollment weighted at 40%, second year prior to current actual enrollment weighted at 30% and third year prior to current actual enrollment weighted at 30%.

(c) Equalization. The State Board of Education expects to achieve Equalization in funding for all community college students in six years:

(A) Progress to Equalization is defined as: On an individual Community College level, progress toward Equalization will close the gap between non-base total public resource support per Weighted Reimbursable FTE and fully equalized non-base total public resource support per Weighted Reimbursable FTE by some fraction per year;

(B) The proposed model calculates how far each Community College's non-base allocation is from full equity every year, then moves incrementally toward Equalization each year. Each Community College makes the same percentage movement to Equalization each year unless the harm limit (described in Section (8)(d)) is invoked. Community Colleges at or near equity do not move much in real dollars under the equity adjustment. Community Colleges further from equity move more in real dollars under the equity adjustment;

(C) In early years, the focus is on stability as Community Colleges adjust to Equalization. A smaller proportion of funds is distributed through

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Equalization and a larger proportion is distributed based on historic share of public resources. As the timeframe progresses, this proportion reverses, and in later years more funds are distributed through Equalization.

(d) Harm Limit. The harm limit is designed to prevent individual Community Colleges from losing more than a certain percent of non-base total public resources from one year to the next due to Equalization. The harm limit does not limit losses in total public resources due to changes in FTE enrollment, changes in the General Fund appropriation, or changes in public resources. The harm limit is determined by combining the percent change in state appropriation funds from one year to the next with an adjustment percent determined by the State Board each year. In determining the adjustment, and therefore the total harm limit that results from combining the adjustment with the percent change in resources, the Board should consider the following issues:

(A) The total harm limit must not unnecessarily impede progress toward Equalization in the expected six-year period;

(B) The total harm limit should be adequate to ameliorate unreasonable negative effects of Equalization.

(e) Distribution of Significant Additional State Resources. In a biennium when significant additional state resources are available compared to the state appropriation in the previous biennium, in each year of the biennium:

(A) Fifty percent of additional state resources will be allocated through the Equalization methodology;

(B) The remaining fifty percent of additional state resources will be allocated based on the Community College's historic share of public resources;

(C) The State Board will determine on a biennial basis what level of additional resources is considered significant;

(D) The State Board retains the authority to alter the percent of significant additional state resources allocated according to equity and historic share of public resources for each biennium, beginning in 2007-09.

(9) State general fund and local property taxes for territories annexed or formed effective June 1, 1996, or later shall not be included in the funding formula for the first three years of service. Additionally, the FTE generated in newly annexed territories shall not impact the funding formula during the first three years of service. Beginning in the fourth year, funding will be distributed through the formula as outlined in this rule.

Stat. Auth.: ORS 326.051 & 341.626

Stats. Implemented: ORS 341.015, 341.022, 341.317, 341.440, 341.525, 341.528, 341.626 & 341.665

Hist.: 1EB 9-1979, f. & ef. 6-11-79; EB 12-1991, f. & cert. ef. 7-19-91; Renumbered from 581-043-0260; ODE 27-2000, f. & cert. ef. 10-30-00; DCCWD 1-2001, f. & cert. ef. 3-21-01, Renumbered from 581-041-0200; DCCWD 2-2001, f. & cert. ef. 5-7-01; DCCWD 3-2002, f. & cert. ef. 6-5-02; DCCWD 7-2002(Temp), f. & cert. ef. 12-16-02 thru 6-5-03; DCCWD 3-2003, f. & cert. ef. 5-14-03; DCCWD 1-2004, f. & cert. ef. 7-1-04; DCCWD 1-2005, f. & cert. ef. 7-13-05; DCCWD 2-2006(Temp), f. & cert. ef. 6-15-06 thru 11-30-06; DCCWD 6-2006, f. 10-3-06, cert. ef. 10-4-06; DCCWD 8-2006, f. 12-13-06, cert. ef. 12-15-06; DCCWD 2-2007, f. & cert. ef. 7-6-07

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

**Rule Caption:** Adopt beverage service pressure vessel inspection frequency rules.

**Adm. Order No.:** BCD 7-2007

**Filed with Sec. of State:** 7-13-2007

**Certified to be Effective:** 9-1-07

**Notice Publication Date:** 6-1-07

**Rules Amended:** 918-225-0570

**Rules Repealed:** 918-225-0405, 918-225-0580

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

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

### 918-225-0570

#### Boiler and Pressure Vessel Inspection Schedules

Unless the division grants special permission, all inspectors must comply with the following minimum inspection schedule:

(1) Power boilers must be inspected:

(a) Internally — every year, when physical construction of the boiler allows; and

(b) Externally — every year, while under pressure.

(2) Cast iron boilers must be inspected externally — every two years, while under pressure.

(3) Low pressure steam boilers must be inspected:

(a) Internally — every two years, when physical construction of the boiler allows; and

(b) Externally — every two years, while under pressure.

(4) Hot water heating and hot water supply boilers must be inspected:

(a) Internally — every six years, when physical construction of the boiler allows; and

(b) Externally — every two years, while under pressure.

(5) Pressure vessels containing anhydrous ammonia intended for use as fertilizer must be inspected externally every three years.

(6) Fixed pressure vessels, containing only air, not located at a place of public assembly, not exceeding 20 cubic feet in volume, and operated at gauge pressures of not more than 200 pounds per square inch must be inspected:

(a) Internally — subject to section (11) of this rule; and

(b) Externally — every six years.

(7) Co2 vessels and hydro-pneumatic pressure vessels, used for beverage service, not exceeding 20 cubic feet in volume, and operated at gauge pressures of not more than 300 pounds per square inch must be inspected:

(a) Internally — subject to section (11) of this rule; and

(b) Externally every six years.

(8) Pressure vessels, not classified in sections (5), (6), and (7) of this rule, and subject to internal corrosion or erosion must be inspected:

(a) Internally — every two years, subject to section (11) of this rule; and

(b) Externally — every two years.

(9) Unfired pressure vessels, not classified in sections (5), (6) and (7) of this rule, and not subject to internal corrosion must be inspected externally — every two years.

(10) Pressure piping systems containing refrigerants, steam or pressurized condensate: Inspection during fabrication, installation, repair or alteration for verification of compliance with material, welding, brazing and structural support requirements. The inspector may require other tests to verify quality of weldments. This rule does not apply to welded repair of pressure piping under OAR 918-225-0720.

(11) The inspector may waive an internal inspection, under sections (5), (6) and (7) of this rule if the inspector believes from alternate inspection methods an internal inspection is not necessary to verify the safe condition of the vessel.

(12) An inspector may require additional internal or external inspections, or tests, other than those required in this rule, if the inspector has reason to believe that the boiler or pressure vessel does not meet minimum safety standards.

(13) Failure to comply with sections (1) through (12) of this rule may cause inspections to be performed by a deputy inspector per ORS 480.570(5) as directed by the chief inspector.

Stat. Auth.: ORS 480.545, 480.550, 480.560

Stats. Implemented: ORS 480.545, 480.550, 480.560

Hist.: DC 17, f. 7-31-72, ef. 8-15-72; DC 12-1980, f. & ef. 9-12-80; BCA 1-1987, f. & ef. 7-1-87; Renumbered from 814-025-0075; BCA 22-1992(Temp), f. 12-15-92, cert. ef. 1-1-93; BCA 4-1993, f. & cert. ef. 4-5-93; BCA 36-1993, f. 12-30-93, cert. ef. 1-1-94; Renumbered from 918-225-0175; BCD 18-1996, f. & cert. ef. 9-17-96; BCD 18-1997, f. 12-3-97, cert. ef. 1-1-98; BCD 36-2000, f. 12-29-00, cert. ef. 1-1-01; BCD 15-2006, f. 12-29-06, cert. ef. 1-1-07; BCD 7-2007, f. 7-13-07, cert. ef. 9-1-07

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

**Adm. Order No.:** BCD 8-2007

**Filed with Sec. of State:** 7-13-2007

**Certified to be Effective:** 10-1-07

**Notice Publication Date:** 6-1-07

**Rules Amended:** 918-400-0660

**Subject:** These rules implement House Bill 2180 (2005), which prioritize elevator inspection frequencies for certain lifts, dumbwaiters and limited use limited application ("LULA") elevators.

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

### 918-400-0660

#### Operating Permits

Operating permits that expire on or before September 30, 2007 are not affected by these rules.

(1) Operating permits are issued periodically based on the inspection intervals established by the division in Table I-A, effective October 1, 2007.

(2) The division uses the following criteria to set elevator inspection intervals, which may include but are not limited to the following:

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- (a) Accidents and injuries;
  - (b) Commercial and public assembly structures;
  - (c) Special residency occupancies, schools, hospitals;
  - (d) Type of elevator;
  - (e) Passenger or freight conveyances;
  - (f) Construction only purpose elevators; and
  - (g) Environmental conditions.
- (3) The division may refuse to issue an operating permit if:
- (a) Inspections are not satisfactorily completed; or
  - (b) Permit fees have not been received.

(4) The elevator-operating permit, or copy of the permit must be posted in clear view in the elevator. A sign may be substituted providing the sign indicates the on-site location where the actual operating permit may be inspected during normal business hours.

[Publications: Publications referenced are available from the agency.]  
Stat. Auth.: ORS 460.085  
Stats. Implemented: ORS 460.055, 460.065, 460.085, 460.125  
Hist.: DC 25-1982, f. & ef. 12-16-82; Renumbered from 814-030-0040; BCA 41-1991(Temp), f. 12-13-91, cert. ef. 12-15-91; BCA 7-1992, f. & cert. ef. 4-10-92; BCD 18-1995, f. & cert. ef. 12-15-95; Renumbered from 918-400-0065; BCD 13-1999, f. & cert. ef. 10-1-99, Renumbered from 918-400-0420; BCD 8-2006, f. 6-30-06, cert. ef. 7-1-06; BCD 8-2007, f. 7-13-07, cert. ef. 10-1-07

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

**Rule Caption:** Amend consumer finance rules that conflict with new laws effective July 1, 2007.

**Adm. Order No.:** FCS 2-2007(Temp)

**Filed with Sec. of State:** 6-29-2007

**Certified to be Effective:** 7-1-07 thru 12-27-07

**Notice Publication Date:**

**Rules Amended:** 441-730-0000, 441-730-0010, 441-730-0270, 441-730-0275, 441-730-0310

**Subject:** Newly enacted laws, all of which contain emergency clauses making the laws effective July 1, 2007, modify fees, terms, and other provisions for consumer finance loans, including payday and title loans. Some rules that implement existing laws and provide examples for calculating fees and refunds will be inaccurate as of July 1. To prevent any confusion on the part of licensees or potential harm to consumers, conflicting language is being amended.

**Rules Coordinator:** Shelley Greiner—(503) 947-7484

### 441-730-0000

#### Statutory Authority; Purpose

(1) OAR 441-730-0000 to 441-730-0320 are adopted pursuant to the rulemaking authority granted the Director by ORS 725.320, and 725.505.

(2) The purpose of the rules is to provide revised consumer finance rules. The rules are considered necessary to assure the proper conduct of the business regulated, to enforce the Consumer Finance Act and to protect the public.

Stat. Auth.: ORS 725.320, 725.505  
Stats. Implemented: ORS 725  
Hist.: BB 14, f. & ef. 11-15-76; Renumbered from 805-075-0005; FCS 12-1988, f. 7-20-88, cert. ef. 8-1-88; FCS 13-2001, f. & cert. ef. 12-27-01; FCS 5-2006, f. & cert. ef. 12-21-06; FCS 2-2007(Temp), f. 6-29-07, cert. ef. 7-1-07 thru 12-27-07

### 441-730-0010

#### Definitions

(1) "Annual Percentage Rate" means the annual percentage rate that every licensee is required by Regulation Z of the Federal Truth in Lending Act (Title I of the Consumer Credit Protection Act) to disclose to each of its credit customers.

(2) "Borrower" means a natural person.

(3) "Charges" means any one or more of the fees, premiums or other charges described by ORS 725.340(2)(a), (3) and (4), and other items charged to a borrower's account; but the term does not include interest or deferral charges.

(4) "Consumer Finance Licensee" means a person issued a license under ORS 725.140 to make loans described in OAR 441-730-0015(1).

(5) "Deferral charges" means the additional charge assessed by a Consumer Finance licensee made for deferring all unpaid installments as provided by ORS 725.340(2)(b). Deferral charges do not apply to loans with a single payment payback feature.

(6) "Director" means the director of the Department of Consumer and Business Services.

(7) "Extension" has the same meaning as "renewal" defined in section (15) of this rule.

(8) "Formalized grading system" means a formula or computer program that determines the creditworthiness of individual borrowers based on information regarding the borrower's financial condition, such as the borrower's income, assets, debts and financial obligations, and the nature and value of any collateral used to secure the loan.

(9) "Fully amortized" means characterized by periodic payments, that if made as scheduled, result in full repayment of the principal and interest owed on a loan by the end of the loan term.

(10) "License" means a Consumer Finance license or a Short-Term Personal Loan license issued under ORS 725.140.

(11) "Licensee" means a person licensed as a Consumer Finance licensee or a Short-Term Personal Loan licensee.

(12) "Loan" means a loan that is subject to the Oregon Consumer Finance Act.

(13) "Loan underwriting" means a written or otherwise documented evaluation of the assumption of risk preceding the granting of a loan to a specific borrower, and may be fulfilled through use of a formalized grading system. Loan underwriting may be based on one or more of the following:

(a) Credit information furnished by the borrower, such as employment history, income, and outstanding obligations;

(b) A financial statement that includes income, assets and debts;

(c) Publicly available information concerning the borrower, that may include the borrower's credit report;

(d) The borrower's credit needs and willingness and ability to pay, including the nature and value of any collateral used to secure the loan.

(14) "Periodic Payments" means loan repayments scheduled for monthly or more frequent periods of time.

(15) "Person" means a natural person or an organization, including a corporation, partnership, proprietorship, association, limited liability company or cooperative.

(16) "Renewal" of a loan means granting a borrower the right to postpone repayment of a Short-Term Personal Loan.

(17) "Roll-over" has the same meaning as "renewal" defined in section (16) of this rule.

(18) "Same day transaction" means a Short-Term Personal Loan made on the same day that a previous Short-Term Personal loan is paid-off and will be treated as a "renewal" defined in section (16) of this rule.

(19) "Short-Term Personal Loan" means:

(a) A Payday Loan as defined in ORS 725.600;

(b) A Title Loan as defined in ORS 725.600; or

(c) Any other loan made by a person in the business of making Short-Term personal loans designated by rule or order of the director.

(20) "Short-term personal loan licensee" means a person issued a license under ORS 725.140 who engages in the business of making payday loans or title loans as defined in ORS 725.600.

Stat. Auth.: ORS 725.320 & 725.505  
Stats. Implemented: ORS 725.110, 725.140, 725.340, 725.360, 725.600, 725  
Hist.: BB 14, f. & ef. 11-15-76; BB 5-1982, f. 9-1-82, ef. 9-15-82; Renumbered from 805-075-0007; FCS 12-1988, f. 7-20-88, cert. ef. 8-1-88; FCS 2-2000, f. & cert. ef. 2-15-00; FCS 2-2001, f. 1-22-01, cert. ef. 3-22-01; FCS 6-2001(Temp), f. 6-29-01, cert. ef. 7-1-01 thru 12-25-01; FCS 13-2001, f. & cert. ef. 12-27-01; FCS 2-2004, f. & cert. ef. 8-5-04; FCS 5-2006, f. & cert. ef. 12-21-06; FCS 2-2007(Temp), f. 6-29-07, cert. ef. 7-1-07 thru 12-27-07

### 441-730-0270

#### Conditions Applicable to Short-Term Personal Loans

(1) The following conditions apply to all Short-Term Personal Loan licensees making Payday loans.

(a) Interest shall not be compounded.

(b) Lenders must calculate daily interest based upon a 365/366 day year pursuant to OAR 441-730-0160(2) and may not calculate daily interest based upon a 360-day year.

(c) Lenders must comply with the Equal Credit Opportunity Act (ECOA), 15 USC 1691, and shall provide the applicant with a written notice of the reason for declining a loan. The notice may be provided to the applicant at the time the loan is declined or the notice may be mailed to the applicant. A copy of the notice must be retained in the files. Exceptions to providing notice contained within ECOA are available to the lender under this rule.

(d) The Annual Percentage Rate shall be posted prominently inside the lender's office where customers can easily see it.

(e) The loan agreement shall have the following information displayed prominently in bold print on the first page of the agreement:

(A) The APR;

(B) The amount of the loan;

(C) The amount of interest/finance charge if paid when due,

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(D) The total amount due on the due date; and

(E) The due date. Compliance with the disclosure requirements of Truth In Lending, 15 U.S.C. et seq., and Regulation Z 12 C.F.R. Part 2226 will satisfy the requirements of this section.

(f) After any payment made, in full or in part, on any loan, the licensee shall:

(A) give to the person making such a payment a signed, dated receipt showing the amount paid and the balance due on the loan.

(B) An electronic receipt, a canceled check, or other written instrument approved by the director may substitute for the receipt requirements of subsection (A).

(g) A Short-Term Personal Loan licensee may not make a payday loan to an applicant without forming a good faith belief that the applicant has the ability to repay the loan. A licensee who meets the provision of section (2) of this rule will be deemed to be in compliance with this section.

(h) If a Short-Term Personal Loan licensee permits a borrower to renew or extend a Payday loan after the due date, the extension or renewal shall be effective on the due date of the loan and no late charge shall be permitted.

(i) A Short-Term Personal Loan licensee may not renew or extend a Payday loan more than two times. If the borrower is unable to repay the loan after the second renewal or extension, the lender may not assess further charges, but may institute collection efforts to recover the balance of the loan.

(j) A Short-Term Personal Loan licensee may not make a "same day transaction" with a borrower who has renewed or extended the Payday loan two times. The lender must wait seven days from the date an outstanding payday loan expires before making a new Payday loan to that borrower.

**Example:** A borrower borrows \$350 for 31 days on July 3 at 36% interest and a \$30 maximum origination fee. Unable to pay off the loan on August 3, the borrower pays the \$30 origination fee and \$10.70 interest (\$350 x 0.36 divided by 365 x 31), receives back the original check for \$390.10 and renews the loan with a new due date of September 3, giving the lender a check for \$360.70. Unable to repay the loan on September 3, the borrower again pays the \$10.70 interest and renews the loan with a new due date of October 4. If the borrower is unable to repay the loan on October 4, no further renewal is allowed, and no new loan may be made to the borrower until October 11. In those cities requiring a 25% principal reduction on a renewal, the renewal amount and interest would be adjusted to accommodate that requirement.

(k) If a Short-Term Loan licensee permits a borrower to renew or extend a Payday Loan after the due date, the extension or renewal shall be effective on the due date of the loan and no late charge shall be permitted.

(L) A Short-Term Loan licensee making Payday Loans may not conduct business at a location at which liquor or lottery tickets are sold or where gambling devices are operated.

(m) If a licensee requests or accepts more than one check or bank draft to secure a single Payday Loan and the borrower defaults, the lender may not charge more than one Non-Sufficient Fund charge, but may recover any cost charged by any non-affiliated financial institution for the checks.

(n) Payday Lenders who do not deliver the note marked "Paid or Renewed" to a borrower in compliance with ORS 725.360(4)(d) must state in the loan agreement that the borrower's canceled check will evidence payment of the loan. The lender must mark the note "Paid" or "Renewed" and retain the note in the file. An electronic transmission may fulfill the requirements of this section if the loan is made using an electronic medium and the consumer has consented to use of electronic transmission.

(o) Payday lenders who do not cash the borrower's check must return the note marked "Paid" and may not rely on subsection (o) of section (1) of this rule. The lender must also mark the check "Void" and return it to the borrower with the note marked "Paid".

(p) Payday lenders must provide consumers, at the time application is made, with a written statement, in a form approved by the Director, which clearly describes the results of any default or late payment.

(2) A Short-Term Personal Loan licensee making a Payday loan will be presumed to have complied with the provisions of subsection (g) of section 1 of this rule if the licensee:

(a) Requires the applicant to evidence a source of funds to repay the loan such as pay stubs, bank statements or similar record or evidence of employment or income;

(b) Establishes the amount of salary or earnings of the applicant and the date of the month on which compensation is received by the applicant or on which the applicant receives funds;

(c) Solicits the applicant for information on the number, amounts and dates of maturity on outstanding loans on which the applicant is the payor or guarantor;

(d) Lends no more than 25% of the consumer's monthly net income to an applicant that earns \$60,000 a year or less. This limitation does not apply to loans made to applicants who have a net income in excess of

\$60,000 a year. If a loan is based upon anticipated receipt of funds from other sources, the licensee must so note in the file and may lend no more than 25% of the total anticipated funds received by the applicant during the loan period.

(e) If the licensee has established a preexisting business relationship with the borrower in which the licensee has entered into a loan or loans within the previous 12 months that have been satisfactorily repaid in full, the licensee may rely on that preexisting relationship to form the good faith belief required under Subsection (g) of Section 1 of this rule.

(f) Solicits information on the number, amount and dates of maturity of existing outstanding loans.

(3) A licensee is not required to perform the due diligence in section (2) of this rule for every transaction, but may rely on prior experience, within 12 months, with repeat customers to take advantage of the presumption of compliance and subsection (g) of section (1) of this rule.

(4) A Payday Loan lender may not use a contract evidencing a Payday Loan that contains any of the following provisions:

(a) A hold harmless clause;

(b) A confession of judgment or other waiver of the right to notice and opportunity to be heard in the event of suit or process.

(c) A provision in which the borrower agrees not to assert any claim or defense arising out of the contract against the licensee or any holder in due course.

(d) An executory waiver or a limitation of exemption from attachment, execution, or other process on real or personal property held, owned by, or due to the borrower, unless the waiver applies solely to property subject to a security interest executed in connection with the loan.

Stat. Auth.: ORS 725.320 & 725.505

Stats. Implemented: ORS 725.360

Hist.: FCS 2-2000, f. & cert. ef. 2-15-00; FCS 2-2001, f. 1-22-01, cert. ef. 3-22-01; FCS 6-2001(Temp), f. 6-29-01, cert. ef. 7-1-01 thru 12-25-01; FCS 13-2001, f. & cert. ef. 12-27-01; FCS 2-2004, f. & cert. ef. 8-5-04; FCS 2-2007(Temp), f. 6-29-07, cert. ef. 7-1-07 thru 12-27-07

## 441-730-0275

### Conditions Applicable to Short-Term Personal Loans that are Title Loans

(1) Short Term Personal Loan Licensees making Title Loans shall not compound interest.

(2) Short Term Personal Loan Licensees making Title Loans must calculate daily interest based upon a 365/366 day year pursuant to OAR 441-730-0160(2) and may not calculate daily interest based upon a 360-day year.

(3) Short Term Personal Loan Licensees making Title Loans must comply with the Equal Credit Opportunity Act (ECOA), 15 USC 1691, and shall provide the applicant with a written notice of the reason for declining a loan. The notice may be provided to the applicant at the time the loan is declined or the notice may be mailed to the applicant. The lender must retain a copy of the notice in the lender's files. Exceptions to providing notice contained within ECOA are available to the lender under this rule.

(4) The Annual Percentage Rate shall be posted prominently inside the Short Term Personal Loan licensee's office where customers can easily see it. (5) The Short Term Personal Loan licensee making Title Loans shall have the following information displayed prominently in bold print on the first page of the Title Loan agreement:

(a) The Annual Percentage Rate;

(b) The amount of the loan;

(c) The amount of interest/finance charge if paid when due;

(d) The total amount due on the due date; and

(e) The due date.

(f) Compliance with the disclosure requirements of Truth In Lending, 15 U.S.C. et seq. and Regulation Z 12 C.F.R. Part 226 will satisfy the requirements of this section.

(6) After any payment made, in full or in part, on any loan, the licensee shall:

(a) Give to the person making such a payment a signed, dated receipt showing the amount paid and the balance due on the loan.

(b) An electronic receipt, a canceled check, or other written instrument approved by the director may substitute for the receipt requirements of subsection (a).

(7) If a Short Term Loan licensee permits a borrower to renew or extend a Title Loan after the due date, the extension or renewal shall be effective on the due date of the loan and no late charge shall be permitted.

(8) The Short Term Personal Loan licensee may not use title loan contracts that provide for the continuation of interest or other charges after repossession.

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(9) Before repossessing a vehicle the Short Term Personal Loan licensee shall send written notice of default in a form approved by the Director, by first class mail to the borrower at the address shown on the loan agreement, or last known address 10 days prior to repossession.

- (a) The notice must be dated the day it is mailed;
- (b) A dated copy of the notice must be placed in the borrower file; and
- (c) Repossession may not occur until the 11th day from the date of the notice.

(10) The Short Term Personal Loan licensee must give written notice in a form approved by the Director, to the borrower delivered by first class mail to the address shown on the loan agreement, or the last known address, of intent to sell a repossessed vehicle.

- (a) The notice must be dated the day it is mailed;
- (b) A dated copy of the notice must be placed in the borrower file; and
- (c) The sale may not occur until at least the 16th day from the date of the notice.

(11) The Short Term Personal Loan licensee must obtain at least three bids on a vehicle prior to sale unless the sale is conducted at a public or dealer auction conducted by a licensed auctioneer. The bids must be in writing and contain the identity of the vehicle, the amount of the bid, and the name and address of the bidder.

(12) The Short Term Personal Loan licensee may not sell a vehicle to an affiliate, subsidiary or employee of the licensee.

(13) If a vehicle is sold, the Short Term Personal Loan licensee shall deliver to the borrower all proceeds, exceeding the debt and reasonable costs associated with the repossession and sale. Delivery must be made not later than three business days after the licensee receives the proceeds of the sale. If the vehicle was paid for by a check, the licensee may deliver the proceeds within three days after the check has cleared.

(14) If a Short Term Personal Loan licensee stores repossessed vehicles on property owned, leased, or otherwise controlled by the licensee, the licensee may not charge any storage charge regardless of how long the car is held prior to sale.

(15) A Short Term Personal Loan licensee may not assess the borrower any charge for repossession or sale except for the actual costs associated with the repossession or sale, but may recover:

(a) Reasonable pass-through costs paid to non-affiliated third parties excluding any storage charge resulting from repossession.

(b) Storage Charges unrelated to repossession such as impound charges by a local municipality.

(c) With approval by the Director, storage charges incurred resulting from remoteness from auction sales.

(16) A Short Term Personal Loan licensee may not repossess a vehicle if the title is held by more than one person, unless the licensee has all persons sign the loan documents.

(17) At the time the Truth In Lending disclosure, required pursuant to 15 U.S.C. et seq., and Regulation Z 12 C.F.R. Part 226, is provided to the borrower by the Short Term Personal Loan licensee, the Short Term Personal Loan licensee must provide:

(a) A statement that clearly describes under what circumstances a vehicle may be repossessed and sold;

(b) A statement that informs the borrower that if a car is sold, the borrower may not receive any proceeds from the sale because of the costs incurred; and

(c) The borrower may be liable to pay additional funds if the proceeds do not equal at least the amount of the debt plus the cost of repossession and sale.

(18) In compliance with ORS 725.605, prior to making a loan, a Short-Term Personal Loan licensee making a Title Loan must form a good faith belief that the applicant has the ability to repay the Title Loan under consideration.

(19) A Short-Term Personal Loan licensee making a Title Loan will be presumed to have complied with section 18 of this rule if the licensee:

(a) Requires the applicant to evidence a source of funds to repay the loan such as pay stubs, bank statements or similar record or evidence of employment or income.

(b) Establishes the amount of salary or earnings of the applicant and the date of the month on which compensation is received by the applicant or on which the applicant receives funds

(c) Solicits the applicant for information on the number, amounts and dates of maturity on outstanding loans on which the applicant is the payor or guarantor.

(d) Lends no more than 25% of the applicant's monthly net income to an applicant that earns \$60,000 a year or less. This limitation does not apply to applicants with an income in excess of \$60,000 a year. If a loan is based

upon anticipated receipt of funds from other sources, the licensee must so note in the file and may lend no more than 25% of the total anticipated funds received by the applicant during the loan period.

(20) If the licensee has established a preexisting business relationship with the borrower in which the licensee has entered into a loan or loans within the previous 12 months that have been satisfactorily repaid in full, the licensee may rely on that preexisting relationship to form the good faith belief required under section (18) of this rule.

Stat. Auth.: ORS 725.505 & 725.625

Stats. Implemented: ORS 725.505, 725.605 & 725.615

Hist.: FCS 13-2001, f. & cert. ef. 12-27-01; FCS 2-2004, f. & cert. ef. 8-5-04; FCS 2-2007(Temp), f. 6-29-07, cert. ef. 7-1-07 thru 12-27-07

## 441-730-0310

### Refund of Unearned Interest and Charges and Prohibition on Prepayment Penalty

(1) If a borrower pays off a Short-Term Personal Loan that is a Payday or Title Loan prior to the due date, the licensees must refund all unearned interest and charges and may not charge a Prepayment Penalty .

(2) For purposes of this rule, the Short-Term Personal Loan licensee who has made a Payday or Title loan shall calculate earned interest and charges by multiplying the loan amount by the interest rate and dividing by 365 to find daily interest then multiply that quotient by the number of days from the date the loan was made to the date of pay-off counting the day after the loan was made as the first day.

**Example:** A borrower borrows \$200 on the 5th day of the month at 36% interest and comes on the 25th of the month to pay off the loan. The interest is calculated as follows:  $\$200 \times 0.36 = \$72$  divided by 365 = \$.20 per day  $\times 20$  days = \$4.00 interest. If the borrower gave you a check on the 5th for the full 31 day term (\$226.12), \$4.00 interest and the origination fee of \$20 may be retained but the unearned interest of \$2.12 must be refunded. There is no minimum interest amount.

Stat. Auth.: ORS 725.505

Stats. Implemented: ORS 725.340 & 725.360

Hist.: FCS 2-2001, f. 1-22-01, cert. ef. 3-22-01; FCS 13-2001, f. & cert. ef. 12-27-01; FCS 2-2007(Temp), f. 6-29-07, cert. ef. 7-1-07 thru 12-27-07

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

**Rule Caption:** Promulgation of temporary disability standards to address the impairment of individual injured workers.

**Adm. Order No.:** WCD 5-2007(Temp)

**Filed with Sec. of State:** 6-27-2007

**Certified to be Effective:** 6-27-07 thru 12-23-07

**Notice Publication Date:**

**Rules Amended:** 436-035-0500

**Subject:** Promulgation of temporary disability standards to address the impairment of an individual injured worker in WCD files AAP-6549.

**Rules Coordinator:** Fred Bruyns—(503) 947-7717

## 436-035-0500

### Temporary Rules Promulgation for Individual Claims

(1) This rule applies to the rating of permanent disability under Chapter 656 in individual cases under ORS 656.726(4)(f) which requires the director to stay the reconsideration proceeding and adopt temporary rules in cases where the director finds that the worker's impairment is not addressed in the disability standards.

(2) Temporary rules promulgated under ORS 656.726(4)(f) will be incorporated by reference to the Workers' Compensation Division claim file number and will be applicable solely to the rating of that claim. The temporary rule will be effective upon filing with the Secretary of State and elapse 180 days thereafter under ORS 183.335(6)(a).

(3) Notice of adoption of temporary rules will be given by mailing a copy of the temporary rule to the affected parties and to others as provided in OAR 436-001-0000(3).

(4) AAP-6549 As a result of the accepted bilateral costochondritis the worker experiences a loss of function due to permanent damage to the chest with work restrictions which necessitate a reduction in the strength/lifting category of the job at the time of injury. The standards do not address this loss of function in the chest. The Director finds this loss of function similar to the loss experienced with permanent damage to the abdominal wall and resulting work restrictions which necessitate a reduction in the strength/lifting category of the job at the time of injury and assigns an impairment value of 5% of the chest. See OAR 436-035-0375. This value shall be combined with any other applicable impairment values.

# ADMINISTRATIVE RULES

Notwithstanding OAR 436-035-0003, this rule applies only to WCD file no. AAP-6549.

Stat. Auth.: ORS 656.726(4)  
Stats. Implemented: ORS 656.268(6), 656.726(4)(f)(D)  
Hist.: WCD 16-1992(Temp), Case #A58-7576 & Case #D60-5352, f. & ef. 12-31-92 - 6-29-93; WCD 2-1993(Temp), Case #A58-2159, B59-4533, E61-4228, & I59-2031, f. & ef. 4-28-93 - 10-25-93; WCD 4-1993, f. & cert. ef. 6-29-93; WCD 5-1993(Temp), Case #I64-3064, f. & cert. ef. 9-2-93 - 3-2-94; WCD 6-1993(Temp), Case #I64-3064, f. & cert. ef. 10-22-93 - 4-19-94; WCD 4-1994(Temp), f. & cert. ef. 5-26-94; WCD 6-1994(Temp), f. & cert. ef. 7-15-94; WCD 8-1994(Temp), f. & cert. ef. 8-31-94; WCD 11-1994(Temp), f. & cert. ef. 11-10-94; WCD 1-1995(Temp), f. & cert. ef. 1-26-95; WCD 2-1995(Temp), f. & cert. ef. 3-2-95; WCD 3-1995(Temp), f. & cert. ef. 4-13-95; WCD 4-1995(Temp), f. & cert. ef. 5-31-95; WCD 5-1995(Temp), f. & cert. ef. 7-11-95; WCD 14-1995(Temp), f. & cert. ef. 10-5-95; WCD 16-1995(Temp), f. & cert. ef. 11-2-95; WCD 19-1995(Temp), f. & cert. ef. 12-7-95; WCD 4-1996(Temp), f. & cert. ef. 2-1-96; WCD 11-1996(Temp), f. & cert. ef. 3-20-96; WCD 15-1996(Temp), f. & cert. ef. 7-3-96; WCD 18-1996, f. 8-6-96, cert. ef. 8-7-96; WCD 22-1996(Temp), f. & cert. ef. 10-31-96; WCD 1-1997, f. 1-9-97, cert. ef. 2-15-97; WCD 2-1997(Temp), f. & cert. ef. 1-15-97; WCD 3-1997(Temp), f. 3-12-97, cert. ef. 3-13-97; WCD 6-1997(Temp), f. & cert. ef. 5-14-97; WCD 12-1997(Temp), f. & cert. ef. 9-9-97; WCD 4-1998(Temp), f. & cert. ef. 3-31-98 thru 9-26-98; WCD 7-1998(Temp), f. 7-13-98, cert. ef. 7-15-98 thru 1-11-99; WCD 9-1998(Temp), f. & cert. ef. 10-15-98 thru 4-12-99; WCD 1-1999(Temp), f. 1-12-99, cert. ef. 1-15-99 thru 7-13-99; WCD 5-1999(Temp), f. & cert. ef. 4-15-99 thru 10-12-99; WCD 10-1999(Temp), f. & cert. ef. 7-15-99 thru 1-10-2000; WCD 12-1999(Temp), f. 10-14-99, cert. ef. 10-15-99 thru 4-12-00; WCD 1-2000(Temp), f. 1-12-00, cert. ef. 1-14-00 thru 7-12-00; WCD 5-2000(Temp), f. 4-13-00, cert. ef. 4-14-00 thru 10-10-00; WCD 7-2000(Temp), f. 7-14-00, cert. ef. 7-14-00 thru 1-9-01; WCD 8-2000(Temp), f. & cert. ef. 10-13-00 thru 4-10-01; WCD 1-2001(Temp), f. & cert. ef. 1-12-01 thru 7-10-01; WCD 3-2001(Temp), f. & cert. ef. 4-13-01 thru 10-9-01; WCD 6-2001(Temp), f. & cert. ef. 7-13-01 thru 1-8-02; WCD 9-2001(Temp), f. & cert. ef. 10-12-01 thru 4-9-02; WCD 1-2002(Temp), f. & cert. ef. 1-15-02 thru 7-13-02; WCD 5-2002(Temp), f. 4-12-02, cert. ef. 4-15-02 thru 10-11-02; WCD 8-2002(Temp), f. 7-12-02, cert. ef. 7-15-02 thru 1-10-03; WCD 11-2002(Temp), f. 10-11-02, cert. ef. 10-15-02 thru 4-12-03; WCD 1-2003(Temp), f. & cert. ef. 1-15-03 thru 7-13-03; WCD 2-2003, f. 1-15-03, cert. ef. 2-1-03; WCD 4-2003(Temp), f. 4-14-03, cert. ef. 4-15-03 thru 10-11-03; WCD 7-2003(Temp), f. & cert. ef. 7-15-03 thru 1-10-04; WCD 1-2004(Temp), f. & cert. ef. 1-21-04 thru 7-18-04; WCD 5-2004(Temp), f. & cert. ef. 4-19-04 thru 10-15-04; WCD 7-2004(Temp), f. & cert. ef. 7-15-04 thru 1-10-05; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 3-2005(Temp), f. & cert. ef. 5-13-05 thru 11-8-05; Administrative correction 11-18-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 6-2006(Temp), f. & cert. ef. 7-17-06 thru 1-12-07; Administrative correction 1-16-07; WCD 5-2007(Temp), f. & cert. ef. 6-27-07 thru 12-23-07

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**Department of Energy**  
**Chapter 330**

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

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

**Filed with Sec. of State:** 6-28-2007

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

**Notice Publication Date:** 6-1-07

**Rules Repealed:** 330-120-0005, 330-120-0010, 330-120-0015, 330-120-0020, 330-120-0025, 330-120-0030, 330-120-0035, 330-120-0040

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

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

**Rules Coordinator:** Kathy Stuttaford—(503) 378-4128

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**Department of Environmental Quality**  
**Chapter 340**

**Rule Caption:** Redesignation of the Salem-Keizer Carbon Monoxide Nonattainment Area.

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

**Filed with Sec. of State:** 6-28-2007

**Certified to be Effective:** 6-28-07

**Notice Publication Date:** 4-1-07

**Rules Amended:** 340-200-0040, 340-204-0030, 340-204-0040

**Subject:** This rulemaking redesignates the Salem-Keizer Carbon Monoxide area from nonattainment (not in compliance with National Ambient Air Quality Standards) to a state maintenance area (in compliance). This change follows twenty years in which the area has been within the federal limits for carbon monoxide (CO). This action includes adoption of the Salem-Keizer Limited Maintenance Plan which demonstrates how the area will stay within the CO lim-

its for the next ten years and ensures that the large emission reductions achieved by motor vehicles in the past will be maintained. The Environmental Quality Commission adopted this rulemaking as a revision of the Oregon State Implementation Plan (SIP). The Maintenance Plan and redesignation request will be submitted to the US Environmental Protection Agency (EPA) for approval as provided by the Federal Clean Air Act.

This rulemaking modifies new source review requirements for new and expanding major industry in the Salem-Keizer area. The current requirement to install "Lowest Achievable Emission Rate" emission controls to the potentially less stringent "Best Available Control Technology." New and expanding major industry will no longer be required to offset increased CO emissions with an equivalent amount of CO reductions in the area. In addition, the metropolitan planning organization for the Salem-Keizer area will be subject to streamlined requirements when adopting new regional transportation plans and metropolitan transportation improvement programs.

**Rules Coordinator:** Larry McAllister—(503) 229-6412

**340-200-0040**

**State of Oregon Clean Air Act Implementation Plan**

(1) This implementation plan, consisting of Volumes 2 and 3 of the State of Oregon Air Quality Control Program, contains control strategies, rules and standards prepared by the Department of Environmental Quality and is adopted as the state implementation plan (SIP) of the State of Oregon pursuant to the federal Clean Air Act, 42 U.S.C.A 7401 to 7671q.

(2) Except as provided in section (3), revisions to the SIP will be made pursuant to the Commission's rulemaking procedures in division 11 of this chapter and any other requirements contained in the SIP and will be submitted to the United States Environmental Protection Agency for approval. The State Implementation Plan was last modified by the Commission on June 21, 2007.

(3) Notwithstanding any other requirement contained in the SIP, the Department may:

(a) Submit to the Environmental Protection Agency any permit condition implementing a rule that is part of the federally-approved SIP as a source-specific SIP revision after the Department has complied with the public hearings provisions of 40 CFR 51.102 (July 1, 2002); and

(b) Approve the standards submitted by a regional authority if the regional authority adopts verbatim any standard that the Commission has adopted, and submit the standards to EPA for approval as a SIP revision.

**NOTE:** Revisions to the State of Oregon Clean Air Act Implementation Plan become federally enforceable upon approval by the United States Environmental Protection Agency. If any provision of the federally approved Implementation Plan conflicts with any provision adopted by the Commission, the Department shall enforce the more stringent provision.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.035

Hist.: DEQ 35, f. 2-3-72, ef. 2-15-72; DEQ 54, f. 6-21-73, ef. 7-1-73; DEQ 19-1979, f. & ef. 6-25-79; DEQ 21-1979, f. & ef. 7-2-79; DEQ 22-1980, f. & ef. 9-26-80; DEQ 11-1981, f. & ef. 3-26-81; DEQ 14-1982, f. & ef. 7-21-82; DEQ 21-1982, f. & ef. 10-27-82; DEQ 1-1983, f. & ef. 1-21-83; DEQ 6-1983, f. & ef. 4-18-83; DEQ 18-1984, f. & ef. 10-16-84; DEQ 25-1984, f. & ef. 11-27-84; DEQ 3-1985, f. & ef. 2-1-85; DEQ 12-1985, f. & ef. 9-30-85; DEQ 5-1986, f. & ef. 2-21-86; DEQ 10-1986, f. & ef. 5-9-86; DEQ 20-1986, f. & ef. 11-7-86; DEQ 21-1986, f. & ef. 11-7-86; DEQ 4-1987, f. & ef. 3-2-87; DEQ 3-2-87; DEQ 8-1987, f. & ef. 4-23-87; DEQ 21-1987, f. & ef. 12-16-87; DEQ 31-1988, f. 12-20-88, cert. ef. 12-23-88; DEQ 2-1991, f. & cert. ef. 2-14-91; DEQ 19-1991, f. & cert. ef. 11-13-91; DEQ 20-1991, f. & cert. ef. 11-13-91; DEQ 21-1991, f. & cert. ef. 11-13-91; DEQ 22-1991, f. & cert. ef. 11-13-91; DEQ 23-1991, f. & cert. ef. 11-13-91; DEQ 24-1991, f. & cert. ef. 11-13-91; DEQ 25-1991, f. & cert. ef. 11-13-91; DEQ 1-1992, f. & cert. ef. 2-4-92; DEQ 3-1992, f. & cert. ef. 2-4-92; DEQ 7-1992, f. & cert. ef. 3-30-92; DEQ 19-1992, f. & cert. ef. 8-11-92; DEQ 20-1992, f. & cert. ef. 8-11-92; DEQ 25-1992, f. 10-30-92, cert. ef. 11-1-92; DEQ 26-1992, f. & cert. ef. 11-2-92; DEQ 27-1992, f. & cert. ef. 11-12-92; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 8-1993, f. & cert. ef. 5-11-93; DEQ 12-1993, f. & cert. ef. 9-24-93; DEQ 15-1993, f. & cert. ef. 11-4-93; DEQ 16-1993, f. & cert. ef. 11-4-93; DEQ 17-1993, f. & cert. ef. 11-4-93; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 1-1994, f. & cert. ef. 1-3-94; DEQ 5-1994, f. & cert. ef. 3-21-94; DEQ 14-1994, f. & cert. ef. 5-31-94; DEQ 15-1994, f. 6-8-94, 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. 6-1-01; 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.

# ADMINISTRATIVE RULES

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; DEQ 4-2007, f. & cert. ef. 6-28-07

## 340-204-0030

### Designation of Nonattainment Areas

The following areas are designated as Nonattainment Areas. PM10 Nonattainment Areas:

(1) The Eugene Nonattainment Area for PM10 is the Eugene-Springfield UGB as defined in OAR 340-204-0010.

(2) 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 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 340-031-0520; DEQ 15-1999, f. & cert. ef. 10-22-99; DEQ 16-2000, f. & cert. ef. 10-25-00; 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; DEQ 4-2007, f. & cert. ef. 6-28-07

## 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;

(f) The Salem Carbon Monoxide Maintenance Area is the Salem-Keizer Area Transportation Study 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 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 340-031-0530; 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; DEQ 4-2007, f. & cert. ef. 6-28-07

**Rule Caption:** This proposal increases permit fees by 3% and provides criteria for termination of septic permits.

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

**Filed with Sec. of State:** 7-3-2007

**Certified to be Effective:** 7-3-07

**Notice Publication Date:** 2-1-07

**Rules Amended:** 340-045-0075, 340-071-0130

**Subject:** This proposal to revise the Oregon Administrative Rules has two parts. Part A increases water quality permit fees by 3% and affects all water quality permit holders except for suction dredgers covered by General Permit 700-PM and small onsite septic system permit holders. Part B provides criteria for small onsite septic system permit holders to terminate their permits and operate under permits issued at the county level.

**Rules Coordinator:** Larry McAllister—(503) 229-6412

## 340-045-0075

### Permit Fee Schedule

(1) The fee schedule for onsite sewage disposal system permits, including WPCF permits, is found in OAR chapter 340, division 071.

(2) The Department has established fees for various industrial, domestic and general permit categories. The industrial and domestic permit categories and fees are listed in Tables 70B and 70C. The general permit categories are defined in OAR 340-045-0033 and the fees are listed in Table 70G.

(3) The Department must consider the following criteria when classifying a facility for determining applicable fees. For industrial sources that discharge to surface waters, discharge flowrate refers to the system design capacity. For industrial sources that do not discharge to surface waters, discharge flow refers to the total annual flow divided by 365:

(a) Tier 1 industry. A facility is classified as a Tier 1 industry if the facility:

(A) Discharges at a flowrate that is greater than or equal to 1 mgd; or

(B) Discharges large biochemical oxygen demand loads; or

(C) Is a large metals facility; or

(D) Has significant toxic discharges; or

(E) Has a treatment system that will have a significant adverse impact on the receiving stream if not operated properly; or

(F) Needs special regulatory control, as determined by the Department.

(b) Tier 1 domestic facility. A facility is classified as a Tier 1 domestic facility if the facility:

(A) Has a dry weather design flow of 1 mgd or greater; or

(B) Serves an industry that can have a significant impact on the treatment system.

(c) Tier 2 industry or domestic facility: does not meet Tier 1 qualifying factors.

(4) New Permit Application Fee. Unless waived by this rule, the applicable new permit application fee listed in Table 70A, 70C or 70G (available on the Department's website or upon request) must be submitted with each application. The amount of the fee is based on the facility category and type of permit (e.g., individual vs. general).

(5) Permit Modification Fee. Permit modification fees are listed in Tables 70A and 70C (available on the Department's website or upon request). They vary with the type of permit, the type of modification and the timing of modification as follows:

(a) Modification at time of permit renewal:

(A) Major Modification — involves an increase in effluent limitations or any other change that involves significant analysis by the Department;

(B) Minor Modification — does not involve significant analysis by the Department.

(b) Modification prior to permit renewal:

(A) Major Modification — involves an increase in effluent limitations or any other change that involves significant analysis by the Department. A permittee requesting a significant modification to their permit may be required by the Department to enter into an agreement to pay for these services according to ORS 468.073. ORS 468.073 allows the Department "to expedite or enhance a regulatory process by contracting for services, hiring additional staff or covering costs of activities not otherwise provided during the ordinary course of Department business;"

(B) Minor Modification — does not involve significant analysis by the Department.



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(6) Annual fees. Applicable annual fees for General and Industrial permit holders may be found in Tables 70G and 70B (available on the Department's website or upon request). Annual fees for domestic sources may also be found in Table 70C (available on the Department's website or upon request), and consist of the following:

(a) Base annual fee. This is based on the type of treatment system and the dry weather design flow;

(b) Population-based fee. A permit holder with treatment systems other than Type F (septage alkaline stabilization facilities) must pay a population-based fee. The applicable fee may be found in Table 70D (available on the Department's website or upon request);

(c) Pretreatment fee. A source required by the Department to administer a pretreatment program pursuant to federal pretreatment program regulations (40CFR, Part 403; January 29, 1981 and amendments thereto) must pay an additional annual fee plus a fee for each significant industrial user specified in their annual report for the previous year. The applicable fee may be found in Table 70E (available on the Department's website or upon request).

(7) Technical Activities Fee. Technical activity fees are listed in Tables 70F and 70H (available on the Department's website or upon request). They are categorized as follows:

(a) All Permits. A permittee must pay a fee for NPDES and WPCF permit-related technical activities. A fee will be charged for initial submittal of engineering plans and specifications. Fees will not be charged for revisions and re-submittals of engineering plans and specifications or for facilities plans, design studies, reports, change orders, or inspections;

(b) General Permits. A permittee must pay the technical activity fee shown in Table 70H (available on the Department's website or upon request) when the following activities are required for application review:

(A) Disposal system plan review;

(B) Site inspection and evaluation.

(8) For permits administered by the Oregon Department of Agriculture, the following fees are applicable until superseded by a fee schedule established by the Oregon Department of Agriculture:

(a) WPCF and NPDES General Permits #800 for Confined Animal Feeding Operations Filing Fee — \$50;

(b) Individual Permits:

(A) Filing Fee — \$50;

(B) New Applications — \$6,280;

(C) Permit Renewals (including request for effluent limit modifications) — \$3,140;

(D) Permit Renewals (without request for effluent limit modifications) — \$1,416;

(E) Permit Modifications (involving increase in effluent limit modifications) — \$3,140;

(F) Permit Modifications (not involving an increase in effluent limitations) — \$500;

(G) Annual Compliance Determination Fee for dairies and other confined feeding operations — \$705;

(H) Annual Compliance Determination Fee for facilities not elsewhere classified with disposal of process wastewater — \$1,885;

(I) Annual Compliance Determination Fee for facilities not elsewhere classified that dispose of non-process wastewater (e.g., small cooling water discharges, boiler blowdown, filter backwash, log ponds) — \$1,180.

(c) Annual Compliance Determination Fee for facilities that dispose of wastewater only by evaporation from watertight ponds or basins — \$705.

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

Stat. Auth.: ORS 468.020, 468B.020 & 468B.035

Stats. Implemented: ORS 468.065, 468B.015, 468B.035 & 468B.050

Hist.: DEQ 113, f. & ef. 5-10-76; DEQ 129, f. & ef. 3-16-77; DEQ 31-1979, f. & ef. 10-1-79; DEQ 18-1981, f. & ef. 7-13-81; DEQ 12-1983, f. & ef. 6-2-83; DEQ 9-1987, f. & ef. 6-3-87; DEQ 18-1990, f. & cert. ef. 6-7-90; DEQ 10-1991, f. & cert. ef. 7-1-91; DEQ 9-1992, f. & cert. ef. 6-5-92; DEQ 10-1992, f. & cert. ef. 6-9-92; DEQ 30-1992, f. & cert. ef. 12-18-92; DEQ 20-1994, f. & cert. ef. 10-7-94; DEQ 4-1998, f. & cert. ef. 3-30-98; Administrative correction 10-22-98; DEQ 15-2000, f. & cert. ef. 10-11-00; DEQ 2-2002, f. & cert. ef. 2-12-02; DEQ 7-2004, f. & cert. ef. 8-3-04; DEQ 5-2005, f. & cert. ef. 7-1-05; DEQ 11-2006, f. & cert. ef. 8-15-06; DEQ 5-2007, f. & cert. ef. 7-3-07

## 340-071-0130

### General Standards, Prohibitions and Requirements

(1) Protection of public waters from public health hazards. An agent may not authorize installation or use of a system that is likely to pollute public waters or create a public health hazard. If, in the judgment of the agent, the minimum standards in this division will not adequately protect public waters or public health on a particular site, the agent must require a system to meet requirements that are protective. This may include but is not

limited to increasing setbacks, increasing drainfield sizing, or using an alternative system. The agent must provide the applicant with a written statement of the specific reasons why more stringent requirements are necessary.

(2) Approved treatment and dispersal required. All wastewater must be treated and dispersed in a manner approved in accordance with these rules.

(3) Prohibited discharges of wastewater. A person may not discharge untreated or partially treated wastewater or septic tank effluent directly or indirectly onto the ground surface or into public waters. Such discharge constitutes a public health hazard and is prohibited.

(4) Prohibited discharges to systems. A person may not discharge into any system cooling water, air conditioning water, water softener brine, groundwater, oil, hazardous materials, roof drainage, or other aqueous or nonaqueous substances that are detrimental to the performance of the system or to groundwater.

(5) Increased flows prohibited. Except where specifically allowed by this division, a person may not connect a dwelling or commercial facility to a system if the total projected sewage flow would be greater than that allowed under the original system construction-installation permit.

(6) System capacity. Each system must have adequate capacity to properly treat and disperse the maximum projected daily sewage flow. The projected quantity of sewage flow must be determined from **Table 2** or other information the agent determines to be valid.

(7) Material standards. All materials used in onsite systems must comply with standards in this division and OAR chapter 340, division 073.

(8) Encumbrances. Before a permit to install a new system may be issued, the site for the new system must be approved pursuant to OAR 340-071-0150 and be free of encumbrances (such as easements or deed restrictions) that could prevent the installation or operation of the system from conforming with the rules of this division.

(9) Plumbing fixtures connected. All plumbing fixtures in dwellings, commercial facilities, and other structures from which sewage is or may be discharged must be connected to and discharge into an approved area-wide sewerage system or an approved onsite system that is not failing.

(10) Future connection to sewerage system. Placement of plumbing in buildings to facilitate connection to a sewerage system is encouraged in areas where a district has been formed to provide sewerage facilities.

(11) Property lines crossed. All or part of an onsite system, including areas for future repair or replacement, may be located on one or more lots or parcels different from the lot or parcel on which the facility the system serves is located. The lots and parcels may be under the same or different ownership:

(a) For each lot or parcel different from and under different ownership than the lot or parcel served, the owner of the lot or parcel served must ensure that a utility easement and covenant against conflicting uses is executed and recorded in such owner's favor, on a form approved by the agent, in the county land title records. The easements and covenants must accommodate the parts of the system, including a 10-foot setback surrounding the areas for future repair or replacement, that lie beyond the property line of the facility served and must allow entry by the grantee, successor, or assigns to install, maintain, and repair the system;

(b) For each lot or parcel different from but under the same ownership as the lot or parcel served, the owner of the property must execute and record in the county land title records, on a form approved by the department, an easement and a covenant in favor of the State of Oregon:

(A) Allowing the state's officers, agents, employees, and representatives to enter and inspect, including by excavation, that portion of the system, including setbacks, on the servient lot or parcel;

(B) Agreeing not to put that portion of the servient lot or parcel to a conflicting use; and

(C) Agreeing, upon severance of the lots or parcels, to grant or reserve and record a utility easement and covenant against conflicting uses, in a form approved by the department, in favor of the owner of the lot or parcel served by the system in accordance with subsection (a) of this section.

(12) Initial and replacement absorption area. Except as provided in specific rules, the absorption area, including installed system and replacement area, must not be subject to activity that is likely, in the opinion of the agent, to adversely affect the soil or the functioning of the system. This may include but is not limited to vehicular traffic, covering the area with asphalt or concrete, filling, cutting, or other soil modification.

(13) Operation and maintenance. Owners of onsite systems must operate and maintain their systems in compliance with all permit conditions and applicable requirements in this division and must not create a public

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health hazard or pollute public waters. Operation and maintenance requirements for systems under WPCF permits are established by the WPCF permits required in this division.

(14) Construction. An agent may limit the time period during which a system can be constructed to ensure that soil conditions, weather, groundwater, or other conditions do not adversely affect the reliability of the system.

(15) Permit requirements:

(a) A person may not cause or allow construction, alteration, or repair of a system or any part thereof without a WPCF permit issued under OAR 340-071-0162 or a construction-installation, alteration, or repair permit under OAR 340-071-0160, 340-071-0210, and 340-071-0215 except for emergency repairs authorized under OAR 340-071-0215(1) and (2);

(b) The following systems must be constructed and operated under a renewable WPCF permit issued pursuant to OAR 340-071-0162:

(A) Any system or combination of systems located on the same property or serving the same facility and having a total sewage flow design capacity greater than 2,500 gpd. Flows from single family residences or equivalent flows on separate systems incidental to the purpose of the large system or combination of systems (e.g., caretaker residence for a mobile home park) need not be included;

(B) A system of any size, if the septic tank effluent produced is greater than residential strength wastewater as defined in OAR 340-071-0100;

(C) Except as provided for in section (16)(d) of this rule, other systems that are not described in this division and do not discharge to surface public waters or the ground surface.

(16) WPCF permits for existing facilities:

(a) The owner of an existing system required to have a WPCF permit under subsection (15)(b) of this rule is not required to obtain a WPCF permit until a system major repair or major alteration of a system, or facility expansion, is necessary;

(b) The permittee of an existing aerobic treatment unit, recirculating gravel filter, commercial sand filter, or alternative treatment technology system constructed or operating under a WPCF permit that is no longer required under section (15) of this rule may request the department to terminate the permit:

(A) The permittee must submit, on a form approved by the department:

(i) A copy of the service contract required in OAR 340-071-0290, 340-071-0302, or 340-071-0345; and

(ii) A written statement from a maintenance provider certifying that the system is not failing.

(B) The department will send a letter to the permittee to terminate a WPCF permit. The letter will be deemed a Certificate of Satisfactory Completion for the permitted system.

(c) The department may terminate WPCF permits for existing holding tanks for which permits are no longer required under section (15) of this rule. The department will send a letter to the permittee to terminate the permit. The letter will be deemed a Certificate of Satisfactory Completion for the permitted system;

(d) Permittees of other existing systems or combination of systems constructed or operating under a WPCF permit may request the department terminate the permit if all of the following conditions are met:

(A) The system or combination of systems located on the same property or serving the same facility must have a total sewage flow design capacity of 2,500 gpd or less; and

(B) The system or combination of systems must not produce septic tank effluent greater than residential strength wastewater as defined in OAR 340-071-100; and

(C) The system or combination of systems must have been operating under a WPCF permit prior to July 1, 2007; and

(D) The absorption facility is described in this division and does not discharge to surface public waters or the ground surface; and

(E) The system or combination of systems must have been in continuous operation and compliance with the waste disposal limitations specified in the WPCF permit for at least the three (3) years prior to the date of termination request; and

(F) The permittee submits a copy of a service contract that meets the requirements of OAR 340-071-0302(6); and

(G) The permittee submits a written statement from a maintenance provider certifying that the system is not failing;

(H) Owners of and maintenance providers for these systems must operate and maintain the system in accordance with the requirements described for recirculating gravel filter systems in OAR 340-071-0302(4),

(5), and (6). The department will send a letter to the permittee to terminate the WPCF permit. The letter will be deemed a Certificate of Satisfactory Completion for the permitted system. Conditions specified in the Certificate of Satisfactory Completion continue in force as long as the system is in use.

(17) Annual permit fees and reports:

(a) Commercial sand filter, recirculating gravel filter, alternative treatment technology systems and those systems described in section (16)(d) of this rule not under WPCF permits. Owners of commercial sand filter, recirculating gravel filter, and alternative treatment technology systems and those systems described in section (16)(d) of this rule not under WPCF permits must submit annual fees and reports as follows:

(A) Owners must pay the annual report evaluation fee in OAR 340-071-0140(3)(k)(B) by the date specified by the department for each year the system is in operation. A system is placed in operation when it first receives wastewater and remains in operation until the department receives notice the system has been decommissioned;

(B) Owners must submit written certification prepared by a maintenance provider on a department-approved form that:

(i) The system has been maintained in accordance with the requirements of the rules in this division during the reporting year and is operating in accordance with the agent-approved design specifications; or

(ii) The owner has applied for a repair permit under OAR 340-071-0215.

(C) Owners are not required to submit fees or reports under this subsection that a maintenance provider has submitted on behalf of the owner in accordance with OAR 340-071-0290(7)(b), 340-071-0302(6)(c)(E), or 340-071-0345(14)(c)(E).

(b) Owners of holding tanks not under WPCF permits. Owners of holding tanks not under WPCF permits must pay annual fees and reports as follows:

(A) Owners must pay the annual report evaluation fee in 340-071-0140(3)(k)(A) by the date specified by the department for each calendar year the tank is in operation;

(B) Owners must submit written certification on a department-approved form that the holding tank has been regularly inspected and pumped during the reporting year and that the year's service log for the holding tank is available for inspection by the agent.

(c) Fees for systems under WPCF permits. Permittees of onsite systems under WPCF permits must pay the annual compliance determination fee in OAR 340-071-0140(4)(e) by the date specified by the department for each year the system is in operation.

(18) Engineering plan review. Unless specifically exempted in this division, all plans and specifications for the construction, installation, or modification of onsite systems must be submitted to the agent for approval or denial. The design criteria and rules governing the plan review are as follows:

(a) The agent must review all plans and specifications for WPCF permits in accordance with OAR chapter 340, division 052;

(b) Plans and specifications for construction-installation permits for commercial sand filter, recirculating gravel filter, and advanced treatment technology systems with design capacities greater than 600 gpd must be signed by a person registered in accordance with ORS 672 or 700.

(19) Criteria and standards for design and construction. The criteria and standards for design and construction in this division and OAR chapter 340, division 073 apply to all onsite systems:

(a) For onsite systems subject to WPCF onsite permits, the department may allow variations of the criteria, standards, and technologies in this division and OAR chapter 340, division 073 based on adequate documentation of successful operation of the proposed technology or design. The system designer must demonstrate the performance of new processes, treatment systems, and technologies in accordance with OAR chapter 340, division 052;

(b) For systems not requiring WPCF permits, the department may authorize variances from the criteria, standards, and technologies in this division through the variance processes in OAR 340-071-0415 through 340-071-0445.

(20) Manufacturer's specifications. All materials and equipment, including but not limited to tanks, pipe, fittings, solvents, pumps, controls, and valves, must be installed, constructed, operated, and maintained in accordance with manufacturer's specifications.

(21) Sewer and water lines. Effluent sewer and water line piping constructed of materials that are approved for use within a building, as defined by the 2000 Edition of the Oregon State Plumbing Specialty Code, may be

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run in the same trench. Effluent sewer pipe of material not approved for use in a building must not be run or laid in the same trench as water pipe unless both of the following conditions are met:

(a) The bottom of the water pipe at all points is at least 12 inches above the top of the sewer pipe;

(b) The water pipe is placed on a solid shelf excavated at one side of the common trench with a minimum clear horizontal distance of at least 12 inches from the sewer pipe.

(22) Septage management. A person may not dispose of wastewater, septage, or sewage-contaminated materials in any location or manner not authorized by the department.

(23) Groundwater levels. All groundwater levels must be predicted using conditions associated with saturation. In areas where conditions associated with saturation do not occur or are inconclusive, such as in soil with rapid or very rapid permeability, predictions of the high level of the water table must be based on past recorded observations of an agent. If such observations have not been made or are inconclusive, the application must be denied until observations can be made. Groundwater level observations must be made during the period of the year in which high groundwater normally occurs in an area. A properly installed nest of piezometers or other methods acceptable to the department must be used for making water table observations.

(24) A person may not submit information required by statute, rule, permit, or order that is false, inaccurate, or incomplete.

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

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

Stat. Auth.: ORS 454.625 & 468.020

Stats. Implemented: ORS 454.615, 454.655, 454.695, 468B.050, 468B.055 & 468B.080

Hist.: DEQ 10-1981, f. & ef. 3-20-81; DEQ 5-1982, f. & ef. 3-9-82; DEQ 8-1983, f. & ef. 5-25-83; DEQ 9-1984, f. & ef. 5-29-84; DEQ 27-1994, f. & cert. ef. 11-15-94; DEQ 12-1997, f. & cert. ef. 6-19-97; DEQ 8-1998, f. & cert. ef. 6-5-98; DEQ 16-1999, f. & cert. ef. 12-29-99; DEQ 5-2000(Temp), f. 2-24-00, cert. ef. 3-1-00 thru 8-27-00; DEQ 14-2000, f. & cert. ef. 8-24-00; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05; DEQ 5-2007, f. & cert. ef. 7-3-07

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## Department of Fish and Wildlife Chapter 635

**Rule Caption:** Modifications to Southwest Zone sport Chinook salmon regulations for the Rogue River.

**Adm. Order No.:** DFW 47-2007(Temp)

**Filed with Sec. of State:** 6-18-2007

**Certified to be Effective:** 6-21-07 thru 10-31-07

**Notice Publication Date:**

**Rules Amended:** 635-016-0090

**Subject:** The Rogue River spring chinook run count at Gold Ray Dam is currently at below 40% of the recent 10-year average and is now projected to be similar in size to the 2006 run, the second lowest recorded since counts began in 1942. The total return of wild fish in 2007 is projected to fall below the three year moving average level of 5,000 identified as a conservation status trigger in the draft Rogue Spring Chinook Conservation Plan. Rising water temperatures in the lower river may causes losses to disease that will further reduce the number of adults surviving to spawn. This rule reduces angling impacts for wild spring chinook salmon while maximizing spawning escapement, allows for opportunities to harvest hatchery spring chinook, and will provide opportunities for harvest of the more abundant fall chinook.

**Rules Coordinator:** Casaria Tuttle—(503) 947-6033

### 635-016-0090

#### Inclusions and Modifications

(1) The **2007 Oregon Sport Fishing Regulations** provide requirements for the Southwest Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2007 Oregon Sport Fishing Regulations**.

(2) Rogue River, tidewater upstream to Hog Creek boat landing:

(a) Mouth upstream to Whiskey Creek:

(A) From 12:01 a.m. June 21 thru July 13, 2007 only adipose fin-clipped chinook salmon may be retained;

(B) From July 14 thru December 31, 2007 Oregon Sport Fishing Regulations for Southwest Zone apply.

(b) Whiskey Creek upstream to Hog Creek boat landing:

(A) From 12:01 a.m. June 21 thru July 31, 2007 only adipose fin-clipped chinook salmon may be retained;

(B) From August 1 thru December 31, 2007 Oregon Sport Fishing Regulations for Southwest Zone apply.

(3) Rogue River, Hog Creek boat landing to Gold Ray Dam:

(a) From 12:01 a.m. June 21 thru August 14, 2007 only adipose fin-clipped chinook salmon may be retained;

(b) From August 15 thru September 30, 2007 Oregon Sport Fishing Regulations for Southwest Zone apply.

(4) Rogue River, from Gold Ray Dam to Cole Rivers Hatchery Diversion Dam:

(a) Gold Ray Dam to the Rogue Elk boat ramp:

(A) From 12:01 a.m. June 21 thru June 30, 2007 only adipose fin-clipped chinook salmon may be retained;

(B) Closed to retention of chinook salmon from July 1 thru October 31, 2007.

(b) Rogue Elk boat ramp to Cole Rivers Hatchery diversion dam:

(A) From 12:01 a.m. June 21 thru July 31 only adipose fin-clipped chinook salmon may be retained;

(B) Closed to retention of chinook salmon August 1 thru October 31, 2007.

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

Stat. Auth.: ORS 496.138 & 496.146

Stats. Implemented: ORS 496.162

Hist.: FWC 80-1993(Temp), f. 12-21-93, cert. ef. 1-1-94; FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 31-1994, f. 5-26-94, cert. ef. 6-20-94; FWC 79-1994(Temp), f. 10-21-94, cert. ef. 7-22-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 57-1995(Temp), f. 7-3-95, cert. ef. 7-4-95; FWC 59-1995(Temp), f. 7-24-95, cert. ef. 8-1-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 82-1995(Temp), f. 9-29-95, cert. ef. 10-1-95; FWC 90-1995(Temp), f. 11-29-95, cert. ef. 1-1-96; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 52-1996, f. & cert. ef. 9-11-96; FWC 61-1996, f. & cert. ef. 10-9-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 73-1996(Temp), f. 12-31-96, cert. ef. 1-1-97; FWC 5-1997, f. & cert. ef. 2-4-97; FWC 17-1997(Temp), f. 3-19-97, cert. ef. 4-1-97; FWC 32-1997(Temp), f. & cert. ef. 5-23-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 24-1998(Temp), f. & cert. ef. 3-25-98 thru 9-15-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 52-1998(Temp), f. 7-10-98, cert. ef. 7-11-98 thru 7-24-98; DFW 55-1998(Temp), f. & cert. ef. 7-24-98 thru 12-31-98; DFW 70-1998, f. & cert. ef. 8-28-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 36-1999, f. & cert. ef. 5-20-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 48-2000(Temp), f. 8-14-00, cert. ef. 8-15-00 thru 12-31-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 8-2001, f. & cert. ef. 3-5-01; DFW 40-2001(Temp) f. & cert. ef. 5-24-01 thru 11-20-01; DFW 42-2001(Temp), f. 5-25-01, cert. ef. 5-29-01 thru 7-31-01; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 72-2001(Temp), f. 8-10-01, cert. ef. 8-16-01 thru 12-31-01; DFW 90-2001(Temp), f. 9-14-01, cert. ef. 9-15-01 thru 12-31-01; DFW 97-2001(Temp), f. 10-4-01, cert. ef. 11-1-01 thru 12-31-01; DFW 105-2001(Temp), f. 10-26-01, cert. ef. 11-1-01 thru 12-31-01; DFW 122-2001(Temp), f. & cert. ef. 12-31-01 thru 5-31-02; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 5-2002(Temp), f. 1-11-02, cert. ef. 1-12-02 thru 7-11-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 37-2002, f. & cert. ef. 4-23-02; DFW 55-2002(Temp), f. 5-28-02, cert. ef. 7-1-02 thru 11-31-02; DFW 91-2002(Temp) f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 124-2002(Temp), f. & cert. ef. 10-30-02 thru 12-31-02 (Suspended by DFW 125-2002(Temp), f. 11-8-02, cert. ef. 11-9-2002); DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 90-2003(Temp), f. 9-12-03 cert. ef. 9-13-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 127-2004, f. 12-22-04, cert. ef. 1-1-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 24-2006(Temp), f. 4-25-06, cert. ef. 5-13-06 thru 10-31-06; DFW 37-2006(Temp), f. 6-2-06, cert. ef. 6-5-06 thru 12-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 47-2007(Temp), f. 6-18-07, cert. ef. 6-21-07 thru 10-31-07

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**Rule Caption:** Inseason change to the Oregon ocean commercial troll salmon season North of Cape Falcon.

**Adm. Order No.:** DFW 48-2007(Temp)

**Filed with Sec. of State:** 6-22-2007

**Certified to be Effective:** 6-23-07 thru 9-16-07

**Notice Publication Date:**

**Rules Amended:** 635-003-0077

**Subject:** This rule implements inseason changes to the ongoing Oregon Ocean Commercial Troll Salmon season as adopted by NOAA Fisheries on June 21, 2007.

**Rules Coordinator:** Casaria Tuttle—(503) 947-6033

### 635-003-0077

#### US-Canada Border to Cape Falcon

(1) All vessels participating in the commercial ocean salmon fishery must land their fish within the area or in Garibaldi, Oregon, and within 24 hours of any closure of this fishery. Oregon licensed limited fish sellers and fishers intending to transport and deliver their catch outside the area must notify ODFW one hour prior to transport away from the port of landing by calling (541) 867-0300 extension 271. Notification shall include vessel name and number, number of salmon by species, location of delivery, and estimated time of delivery.

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(2) The commercial troll salmon fishery landing and possession limit is reduced from 60 to 50 Chinook per vessel for the four-day open period June 23 through 26, 2007 in the area North of Leadbetter Point, but remains 30 Chinook per vessel for the four-day open period between Leadbetter Point and Cape Falcon. The fishery is closed to all troll salmon fishing from 12:01 a.m. June 27 through 12:00 midnight June 30, 2007.

(3) The commercial troll salmon fishery is open effective 12:01 a.m. July 1, 2007 through earlier of September 16, 2007 or 5,400 preseason Chinook guideline or a 22,400 marked coho quota. Open Saturdays through Tuesdays, landing and possession limit for each four-day open period is 40 Chinook per vessel North of Leadbetter Point and 20 Chinook per vessel south of Leadbetter Point.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 506.129

Hist.: DFW 6-2005, f. & cert. ef. 2-14-05; DFW 36-2005(Temp), f. & cert. ef. 5-4-05 thru 10-27-05; DFW 48-2005(Temp), f. 5-23-05, cert. ef. 5-24-05 thru 10-27-05; DFW 49-2005(Temp), f. 6-1-05, cert. ef. 6-3-05 thru 10-27-05; DFW 59-2005(Temp), f. 6-21-05, cert. ef. 6-26-05 thru 10-27-05; DFW 97-2005(Temp), f. & cert. ef. 8-23-05 thru 12-31-05; Administrative correction 1-19-06; DFW 43-2006(Temp), f. & cert. ef. 6-16-06 thru 11-16-06; DFW 70-2006(Temp), f. 7-28-06, cert. ef. 7-29-06 thru 12-31-06; DFW 85-2006(Temp), f. 8-18-06, cert. ef. 8-19-06 thru 2-14-07; DFW 93-2006(Temp), f. 9-7-06, cert. ef. 9-8-06 thru 12-31-06; Administrative correction 1-16-07; DFW 48-2007(Temp), f. 6-22-07, cert. ef. 6-23-07 thru 9-16-07

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**Rule Caption:** Continued sales of fish caught during Tribal Treaty fisheries in the Columbia River and tributaries.

**Adm. Order No.:** DFW 49-2007(Temp)

**Filed with Sec. of State:** 6-22-2007

**Certified to be Effective:** 6-26-07 thru 9-13-07

**Notice Publication Date:**

**Rules Amended:** 635-041-0076

**Subject:** This rule allows commercial sales of fish caught in Tribal Treaty fisheries in the Columbia River and tributaries to continue in conjunction with the adoption of two additional fishing periods. Implementation is consistent with action taken June 22, 2007 by the Columbia River Compact.

**Rules Coordinator:** Casaria Tuttle—(503) 947-6033

## 635-041-0076

### Summer Salmon Season

(1) Commercial sale of platform and hook-and-line caught fish from Zone 6 of the mainstem Columbia River is allowed beginning 6:00 a.m. Saturday June 16, 2007 until further notice:

(a) Gear is restricted to: hoop nets, dip nets, and rod and reel with hook-and-line;

(b) Closed areas are as set forth in OAR 635-041-0020.

(2) Chinook salmon, coho salmon, steelhead, walleye, carp and shad, may be taken for commercial purposes and subsistence from the Columbia River Treaty Indian Fishery, from 6:00 a.m. Monday June 18 to 6:00 p.m. Wednesday June 20, 2007; 6:00 a.m. Tuesday June 26 to 6:00 p.m. Friday June 29, 2007; and 6:00 a.m. Tuesday July 3 to 6:00 p.m. Friday July 6, 2007 in all of Zone 6:

(a) During the summer salmon season it shall be unlawful to use gill nets with a mesh size of less than 7 inches;

(b) Sockeye salmon may not be sold but may be retained for subsistence. Sturgeon may not be sold. Sturgeon between 48–60 inches in The Dalles and John Day pools and between 45–60 inches in the Bonneville pool, may be retained for subsistence;

(c) Closed areas are as set forth in OAR 635-041-0045 with the exception of Spring Creek Hatchery.

(3) Sale of fish caught in the Big White Salmon River, Klickitat River, and Wind River is allowed beginning 6:00 a.m. Monday June 18, 2007, during those days and hours when the tributaries are open under lawfully enacted tribal fishing periods.

Stat. Auth.: ORS 496.118 & 506.119

Stats. Implemented: ORS 506.109, 506.129 & 507.030

Hist.: DFW 5-2006, f. & cert. ef. 2-15-06; DFW 39-2006(Temp), f. & cert. ef. 6-8-06 thru 7-31-06; DFW 46-2006(Temp), f. & cert. ef. 6-20-06 thru 7-31-06; DFW 49-2006(Temp), f. 6-26-06, cert. ef. 6-27-06 thru 7-31-06; DFW 56-2006(Temp), f. 6-30-06, cert. ef. 7-3-06 thru 7-31-06; DFW 58-2006(Temp), f. 7-6-06, cert. ef. 7-10-06 thru 7-31-06; Administrative correction 8-22-06; DFW 46-2007(Temp), f. 6-15-07, cert. ef. 6-16-07 thru 9-13-07; DFW 49-2007(Temp), f. 6-22-07, cert. ef. 6-26-07 thru 9-13-07

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**Rule Caption:** Modified commercial Select Area salmon seasons in Youngs Bay.

**Adm. Order No.:** DFW 50-2007(Temp)

**Filed with Sec. of State:** 6-29-2007

**Certified to be Effective:** 7-4-07 thru 7-31-07

**Notice Publication Date:**

**Rules Amended:** 635-042-0145

**Subject:** Amended rule modifies the Columbia River Select Area commercial fishing season in Youngs Bay by expanding 4 existing 30-hour fishing periods to 48-hours each. Modifications are consistent with action taken June 28, 2007 by the Columbia River Compact.

**Rules Coordinator:** Casaria Tuttle—(503) 947-6033

## 635-042-0145

### Youngs Bay Salmon Season

(1) Salmon, white sturgeon, and shad may be taken for commercial purposes in those waters of Youngs Bay:

(a) The open fishing periods are established in three segments categorized as the winter fishery, paragraph (A); the spring fishery, paragraph (B); and summer fishery, paragraph (C), as follows:

(A) Winter Season:

(i) Entire Youngs Bay: 6:00 p.m. Wednesday February 14, 2007 to 12:00 noon Thursday February 15, 2007; 6:00 p.m. Sunday February 18, 2007 to 12:00 noon Monday February 19, 2007; 6:00 p.m. Wednesday February 21, 2007 to 12:00 noon Thursday February 22, 2007; 6:00 p.m. Sunday February 25, 2007 to 12:00 noon Monday February 26, 2007; 6:00 p.m. Wednesday February 28, 2007 to 12:00 noon Thursday March 1, 2007; 6:00 p.m. Sunday March 4, 2007 to 12:00 noon Monday March 5, 2007; 6:00 p.m. Wednesday March 7, 2007 to noon Thursday March 8, 2007; 6:00 p.m. Sunday March 11, 2007 to 12:00 noon Monday March 12, 2007; and 3:00 p.m. to 7:00 p.m. Wednesday March 14, 2007;

(ii) Walluski Area: 12:00 noon Sunday March 18, 2007 to 6:00 a.m. Monday March 19, 2007; 6:00 a.m. to 6:00 p.m. Tuesday March 20, 2007; 6:00 a.m. to 6:00 p.m. Thursday March 22, 2007; 12:00 noon Sunday March 25, 2007 to 6:00 a.m. Monday March 26, 2007; 6:00 a.m. to 6:00 p.m. Tuesday March 27, 2007; 6:00 a.m. to 6:00 p.m. Thursday March 29, 2007; 12:00 noon Sunday April 1, 2007 to 6:00 a.m. Monday April 2, 2007; 6:00 a.m. to 6:00 p.m. Tuesday April 3, 2007; 6:00 a.m. to 6:00 p.m. Thursday April 5, 2007; 12:00 noon Sunday April 8, 2007 to 6:00 a.m. Monday April 9, 2007; 6:00 a.m. to 6:00 p.m. Tuesday April 10, 2007.

(B) Spring Season: Entire Youngs Bay: 6:00 p.m. Monday April 23, 2007 to 6:00 a.m. Tuesday April 24, 2007; 6:00 p.m. Thursday April 26, 2007 to 6:00 a.m. Friday April 27, 2007; 6:00 p.m. Monday April 30, 2007 to 12:00 noon Tuesday May 1, 2007; 6:00 p.m. Thursday May 3, 2007 to 12:00 noon Friday May 4, 2007; 12:00 noon Monday May 7, 2007 to 12:00 noon Friday May 11, 2007; 12:00 noon Monday May 14, 2007 to 12:00 noon Friday May 18, 2007; 12:00 noon Monday May 21, 2007 to 12:00 noon Friday May 25, 2007; 12:00 noon Monday May 28, 2007 to 12:00 noon Friday June 1, 2007; 12:00 noon Monday June 4, 2007 to 12:00 noon Friday June 8, 2007; 12:00 noon Tuesday June 12, 2007 to 12:00 noon Friday June 15, 2007;

(C) Summer Season: 6:00 a.m. Wednesday June 20, 2007 to 6:00 a.m. Friday June 22, 2007; 6:00 a.m. Wednesday June 27, 2007 to 6:00 a.m. Friday June 29, 2007; 6:00 a.m. Wednesday July 4, 2007 to 6:00 a.m. Friday July 6, 2007; 6:00 a.m. Wednesday July 11, 2007 to 6:00 a.m. Friday July 13, 2007; 6:00 a.m. Wednesday July 18, 2007 to 6:00 a.m. Friday July 20, 2007; 6:00 a.m. Wednesday July 25, 2007 to 6:00 a.m. Friday July 27, 2007.

(b) The fishing areas for the winter, spring and summer fisheries are:

(A) From February 14, 2007 through March 12, 2007 and from April 19, 2007 through July 26, 2007, the fishing area is identified as the waters of Youngs Bay from the Highway 101 Bridge upstream to the upper boundary markers at the confluence of the Klaskanine and Youngs rivers; except for those waters which are closed southerly of the alternate Highway 101 Bridge (Lewis and Clark River);

(B) On March 14, 2007, the fishing area extends from old Youngs Bay Bridge upstream to the confluence of the Youngs and Klaskanine rivers;

(C) From March 18, 2007 through April 10, 2007 the fishing area extends from the first overhead powerlines downstream of the Walluski River upstream to the confluence of the Youngs and Klaskanine rivers.

(2) Gill nets may not exceed 1,500 feet (250 fathoms) in length and weight may not exceed two pounds per any fathom. A red cork must be placed on the corkline every 25 fathoms as measured from the first mesh of the net. Red corks at 25-fathom intervals must be in color contrast to the corks used in the remainder of the net:

(a) It is *unlawful* to use a gill net having a mesh size that is less than 7-inches during the winter season from February 14, 2007 to April 10, 2007. From March 6 through 31, 2007 nets not specifically authorized for

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use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater. Nets authorized for this fishery, and nets with a mesh size of  $\leq 2$  inches or  $\geq 9$  inches are not required to be properly stored. Other permanent gear regulations remain in effect. It is *unlawful* to use a gill net having a mesh size that is more than 8-inches during the spring and summer seasons from April 19, 2007 to July 26, 2007;

(b) The use of additional weights or anchors attached directly to the headline is allowed upstream of markers at the mouth of the Walluski River during all Youngs Bay commercial fisheries.

(3) A maximum of three white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fisheries are open through June 24, 2007. Effective June 25, 2007 a maximum of five white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fisheries are open. During the fishing periods identified in (1)(a)(A), (1)(a)(B) and (1)(a)(C), the weekly aggregate sturgeon limit applies to possessions and sales in the Youngs Bay fishery and other open Select Area fisheries through June 24, 2007. From June 25 until further notice, the weekly aggregate sturgeon limit applies to possessions and sales in both Select Area fisheries and mainstem Columbia River fisheries.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162, 506.129 & 507.030

Hist.: FWC 32-1979, f. & cert. 8-22-79; FWC 28-1980, f. & cert. 6-23-80; FWC 42-1980(Temp), f. & cert. 8-22-80; FWC 30-1981, f. & cert. 8-14-81; FWC 42-1981(Temp), f. & cert. 11-5-81; FWC 54-1982, f. & cert. 8-17-82; FWC 37-1983, f. & cert. 8-18-83; FWC 61-1983(Temp), f. & cert. 10-19-83; FWC 42-1984, f. & cert. 8-20-84; FWC 39-1985, f. & cert. 8-15-85; FWC 37-1986, f. & cert. 8-11-86; FWC 72-1986(Temp), f. & cert. 10-31-86; FWC 64-1987, f. & cert. 8-7-87; FWC 73-1988, f. & cert. 8-19-88; FWC 55-1989(Temp), f. 8-7-89, cert. 8-20-89; FWC 82-1990(Temp), f. 8-14-90, cert. 8-19-90; FWC 86-1991, f. 8-7-91, cert. 8-18-91; FWC 123-1991(Temp), f. & cert. 10-21-91; FWC 30-1992(Temp), f. & cert. 4-27-92; FWC 35-1992(Temp), f. 5-22-92, cert. 5-25-92; FWC 74-1992 (Temp), f. 8-10-92, cert. 8-16-92; FWC 28-1993(Temp), f. & cert. 4-26-93; FWC 48-1993, f. 8-6-93, cert. 8-9-93; FWC 21-1994(Temp), f. 4-22-94, cert. 4-25-94; FWC 51-1994, f. 8-19-94, cert. 8-22-94; FWC 64-1994(Temp), f. 9-14-94, cert. 9-15-94; FWC 66-1994(Temp), f. & cert. 9-20-94; FWC 27-1995, f. 3-29-95, cert. 4-1-95; FWC 48-1995(Temp), f. & cert. 6-5-95; FWC 66-1995, f. 8-22-95, cert. 8-27-95; FWC 69-1995, f. 8-25-95, cert. 8-27-95; FWC 8-1995, f. 2-28-96, cert. 3-1-96; FWC 37-1996(Temp), f. 6-11-96, cert. 6-12-96; FWC 41-1996, f. & cert. 8-12-96; FWC 45-1996(Temp), f. 8-16-96, cert. 8-19-96; FWC 54-1996(Temp), f. & cert. 9-23-96; FWC 4-1997, f. & cert. 1-30-97; FWC 47-1997, f. & cert. 8-15-97; DFW 8-1998(Temp), f. & cert. 2-5-98 thru 2-28-98; DFW 14-1998, f. & cert. 3-3-98; DFW 18-1998(Temp), f. 3-9-98, cert. 3-11-98 thru 3-31-98; DFW 60-1998(Temp), f. & cert. 8-7-98 thru 8-21-98; DFW 67-1998, f. & cert. 8-24-98; DFW 10-1999, f. & cert. 2-26-99; DFW 52-1999(Temp), f. & cert. 8-2-99 thru 8-6-99; DFW 55-1999, f. & cert. 8-12-99; DFW 9-2000, f. & cert. 2-25-00; DFW 42-2000, f. & cert. 8-3-00; DFW 3-2001, f. & cert. 2-6-01; DFW 66-2001(Temp), f. 8-2-01, cert. 8-6-01 thru 8-14-01; DFW 76-2001(Temp), f. & cert. 8-20-01 thru 10-31-01; DFW 106-2001(Temp), f. & cert. 10-26-01 thru 12-31-01; DFW 15-2002(Temp), f. & cert. 2-20-02 thru 8-18-02; DFW 82-2002(Temp), f. 8-5-02, cert. 8-7-02 thru 9-1-02; DFW 96-2002(Temp), f. & cert. 8-26-02 thru 12-31-02; DFW 12-2003, f. & cert. 2-14-03; DFW 17-2003(Temp), f. 2-27-03, cert. 3-1-03 thru 8-1-03; DFW 32-2003(Temp), f. & cert. 4-23-03 thru 8-1-03; DFW 34-2003(Temp), f. & cert. 4-24-03 thru 10-1-03; DFW 36-2003(Temp), f. 4-30-03, cert. 5-1-03 thru 10-1-03; DFW 37-2003(Temp), f. & cert. 5-7-03 thru 10-1-03; DFW 75-2003(Temp), f. & cert. 8-1-03 thru 12-31-03; DFW 89-2003(Temp), f. 9-8-03, cert. 9-9-03 thru 12-31-03; DFW 11-2004, f. & cert. 2-13-04; DFW 19-2004(Temp), f. & cert. 3-12-04 thru 3-31-04; DFW 22-2004(Temp), f. & cert. 3-18-04 thru 3-31-04; DFW 28-2004(Temp), f. 4-8-04 cert. 4-12-04 thru 4-15-04; DFW 39-2004(Temp), f. 5-5-04, cert. 5-6-04 thru 7-31-04; DFW 44-2004(Temp), f. 5-17-04, cert. 5-20-04 thru 7-31-04; DFW 79-2004(Temp), f. 8-2-04, cert. 8-3-04 thru 12-31-04; DFW 109-2004(Temp), f. & cert. 10-19-04 thru 12-31-04; DFW 6-2005, f. & cert. 2-14-05; DFW 15-2005(Temp), f. & cert. 3-10-05 thru 7-31-05; DFW 18-2005(Temp), f. & cert. 3-15-05 thru 3-21-05; Administrative correction 4-20-05; DFW 27-2005(Temp), f. & cert. 4-20-05 thru 6-15-05; DFW 28-2005(Temp), f. & cert. 4-28-05 thru 6-16-05; DFW 37-2005(Temp), f. & cert. 5-5-05 thru 10-16-05; DFW 40-2005(Temp), f. & cert. 5-10-05 thru 10-16-05; DFW 46-2005(Temp), f. 5-17-05, cert. 5-18-05 thru 10-16-05; DFW 73-2005(Temp), f. 7-8-05, cert. 7-11-05 thru 7-31-05; DFW 77-2005(Temp), f. 7-14-05, cert. 7-18-05 thru 7-31-05; DFW 85-2005(Temp), f. 8-1-05, cert. 8-3-05 thru 12-31-05; DFW 109-2005(Temp), f. & cert. 9-19-05 thru 12-31-05; DFW 110-2005(Temp), f. & cert. 9-26-05 thru 12-31-05; DFW 116-2005(Temp), f. 10-4-05, cert. 10-5-05 thru 12-31-05; DFW 120-2005(Temp), f. & cert. 10-11-05 thru 12-31-05; DFW 124-2005(Temp), f. & cert. 10-18-05 thru 12-31-05; Administrative correction 1-20-06; DFW 5-2006, f. & cert. 2-15-06; DFW 14-2006(Temp), f. 3-15-06, cert. 3-16-06 thru 7-27-06; DFW 15-2006(Temp), f. & cert. 3-23-06 thru 7-27-06; DFW 17-2006(Temp), f. 3-29-06, cert. 3-30-06 thru 7-27-06; DFW 29-2006(Temp), f. & cert. 5-16-06 thru 7-31-06; DFW 32-2006(Temp), f. & cert. 5-23-06 thru 7-31-06; DFW 35-2006(Temp), f. & cert. 5-30-06 thru 7-31-06; DFW 52-2006(Temp), f. & cert. 6-28-06 thru 7-27-06; DFW 73-2006(Temp), f. 8-1-06, cert. 8-2-06 thru 12-31-06; DFW 103-2006(Temp), f. 9-15-06, cert. 9-18-06 thru 12-31-06; DFW 119-2006(Temp), f. & cert. 10-18-06 thru 12-31-06; Administrative correction 1-16-07; DFW 7-2007(Temp), f. 1-31-07, cert. 2-1-07 thru 7-30-07; DFW 9-2007, f. & cert. 2-14-07; DFW 13-2007(Temp), f. & cert. 3-6-07 thru 9-1-07; DFW 16-2007(Temp), f. & cert. 3-14-07 thru 9-9-07; DFW 25-2007(Temp), f. 4-17-07, cert. 4-18-07 thru 7-26-07; DFW 45-2007(Temp), f. 6-15-07, cert. 6-25-07 thru 7-31-07; DFW 50-2007(Temp), f. 6-29-07, cert. 7-4-07 thru 7-31-07

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**Rule Caption:** Modification to the summer recreational chinook salmon fisheries in the Columbia River.

**Adm. Order No.:** DFW 51-2007(Temp)

**Filed with Sec. of State:** 6-29-2007

**Certified to be Effective:** 7-2-07 thru 7-31-07

**Notice Publication Date:**

**Rules Amended:** 635-023-0128

**Subject:** Amend rule to close the recreational salmon fishery above Bonneville Dam to retention of summer Chinook salmon. Modifications are consistent with the action taken June 28, 2007 by the Columbia River Compact

**Rules Coordinator:** Casaria Tuttle—(503) 947-6033

**635-023-0128**

**Summer Sport Fishery**

(1) The **2007 Oregon Sport Fishing Regulations** provide requirements for the Columbia River Zone and the Snake River Zone. However, additional regulations may be adopted in this rule division from time to time, and, to the extent of any inconsistency, they supersede the **2007 Oregon Sport Fishing Regulations**.

(2) Notwithstanding all other specifications and restrictions in the **2007 Oregon Sport Fishing Regulations**:

(a) Effective June 16 through June 30, 2007, or until the harvest guideline is achieved, the mainstem Columbia River from a line projected from Rocky Point on the Washington bank through Red Buoy 44 to the navigation light at Tongue Point on the Oregon bank upstream to Bonneville Dam is open to the retention of adult and jack chinook salmon; and

(b) Effective 11:59 p.m. Monday July 2, 2007, the mainstem Columbia River from Bonneville Dam to the Oregon/Washington border is closed to the retention of adult chinook salmon.

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

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: DFW 117-2004, f. 12-13-04, cert. 1-1-05; DFW 52-2005(Temp), f. 6-3-05, cert. 6-16-05 thru 7-31-05; DFW 64-2005(Temp), f. 6-30-05, cert. 7-1-05 thru 7-31-05; Administrative correction 8-17-05; DFW 26-2006(Temp), f. 4-20-06, cert. 5-1-06 thru 10-27-06; DFW 79-2006, f. 8-11-06, cert. 1-1-07; DFW 24-2007, f. 4-16-07, cert. 5-1-07; DFW 51-2007(Temp), f. 6-29-07, cert. 7-2-07 thru 7-31-07

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**Rule Caption:** Summer salmon gill net seasons in mainstem Columbia River.

**Adm. Order No.:** DFW 52-2007(Temp)

**Filed with Sec. of State:** 7-6-2007

**Certified to be Effective:** 7-6-07 thru 7-31-07

**Notice Publication Date:**

**Rules Amended:** 635-042-0027

**Subject:** This rule will rescind the previously adopted commercial fishing period in the Columbia River mainstem consistent with provisions of the US v Oregon management agreement. This rule modification is consistent with action taken July 5, 2007 by the Columbia River Compact.

**Rules Coordinator:** Casaria Tuttle—(503) 947-6033

**635-042-0027**

**Summer Salmon Season**

(1) Chinook salmon, coho salmon, white sturgeon and shad may be taken by gill net for commercial purposes in all of Zones 1 thru 5, from the mouth of the Columbia River upstream to a line projected from a deadline marker on the Oregon bank (approximately four miles downstream from Bonneville Dam Powerhouse 1) in a straight line through the western tip of Pierce Island, to a deadline marker on the Washington bank at Beacon Rock (as identified in OAR 635-042-0001).

(2) It is *unlawful* to use a gill net having a mesh size less than 8 inches.

(3) The open fishing periods in the area described in section (1) above are:

(a) 7:00 p.m. Monday June 25, 2007 to 5:00 a.m. Tuesday June 26, 2007 (10 hours); and

(b) 7:00 p.m. Monday July 2, 2007 to 5:00 a.m. Tuesday July 3, 2007 (10 hours).

(4) A maximum of five white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) the fishery is open. The five sturgeon possession/sales limit includes both mainstem and Select Area fisheries.

(5) Closed waters, as described in OAR 635-042-0005 for Grays River, Elokomin-A, Cowlitz River, Kalama-A, Lewis-A, Washougal River and Sandy River sanctuaries are in effect during open fishing periods identified above.

Stat. Auth.: ORS 496.118, 506.109 & 506.129

# ADMINISTRATIVE RULES

Stats. Implemented: ORS 506.119 & 507.030  
Hist.: DFW 5-2006, f. & cert. ef. 2-15-06; DFW 47-2006(Temp), f. 6-20-06, cert. ef. 6-26-06 thru 7-31-06; DFW 51-2006(Temp), f. & cert. ef. 6-29-06 thru 7-31-06; DFW 57-2006(Temp), f. 7-5-06, cert. ef. 7-6-06 thru 7-31-06; DFW 63-2006(Temp), f. 7-14-2006, cert. ef. 7-16-06 thru 7-31-06; DFW 68-2006(Temp), f. 7-28-06, cert. ef. 7-30-06 thru 7-31-06; Administrative correction 8-22-06; DFW 45-2007(Temp), f. 6-15-07, cert. ef. 6-25-07 thru 7-31-07; DFW 52-2007(Temp), f. & cert. ef. 7-6-07 thru 7-31-07

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**Rule Caption:** Allowable sales of fish caught during Tribal Treaty fisheries in the Columbia River.

**Adm. Order No.:** DFW 53-2007(Temp)

**Filed with Sec. of State:** 7-6-2007

**Certified to be Effective:** 7-6-07 thru 7-31-07

**Notice Publication Date:**

**Rules Amended:** 635-041-0076

**Subject:** This amended rule establishes the last day commercial sales of fish caught in Tribal Treaty fisheries in the Columbia River and tributaries is allowed. Modification is consistent with action taken July 5, 2007 by the Columbia River Compact.

**Rules Coordinator:** Casaria Tuttle—(503) 947-6033

## 635-041-0076

### Summer Salmon Season

(1) Commercial sale of platform and hook-and-line caught fish from Zone 6 of the mainstem Columbia River is allowed beginning 6:00 a.m. Saturday June 16, 2007 until 6:00 p.m. Tuesday July 31, 2007.

(a) Gear is restricted to: hoop nets, dip nets, and rod and reel with hook-and-line.

(b) Closed areas are as set forth in OAR 635-041-0020.

(2) Chinook salmon, coho salmon, steelhead, walleye, carp and shad, may be taken for commercial purposes and subsistence from the Columbia River Treaty Indian Fishery, from 6:00 a.m. Monday June 18 to 6:00 p.m. Wednesday June 20, 2007 in all of Zone 6.

(a) During the summer salmon season it shall be *unlawful* to use gill nets with a mesh size of less than 7 inches.

(b) Sockeye salmon may not be sold but may be retained for subsistence. Sturgeon may not be sold. Sturgeon between 48–60 inches in The Dalles and John Day pools and between 45–60 inches in the Bonneville pool, may be retained for subsistence.

(c) Closed areas are as set forth in OAR 635-041-0045 with the exception of Spring Creek Hatchery.

(3) Sale of fish caught in the Big White Salmon River, Klickitat River, and Wind River is allowed beginning 6:00 a.m. Monday June 18, 2007, during those days and hours when the tributaries are open under lawfully enacted tribal fishing periods.

Stat. Auth.: ORS 496.118 & 506.119

Stats. Implemented: ORS 506.109, 506.129 & 507.030

Hist.: DFW 5-2006, f. & cert. ef. 2-15-06; DFW 39-2006(Temp), f. & cert. ef. 6-8-06 thru 7-31-06; DFW 46-2006(Temp), f. & cert. ef. 6-20-06 thru 7-31-06; DFW 49-2006(Temp), f. 6-26-06, cert. ef. 6-27-06 thru 7-31-06; DFW 56-2006(Temp), f. 6-30-06, cert. ef. 7-3-06 thru 7-31-06; DFW 58-2006(Temp), f. 7-6-06, cert. ef. 7-10-06 thru 7-31-06; Administrative correction 8-22-06; DFW 46-2007(Temp), f. 6-15-07, cert. ef. 6-16-07 thru 9-13-07; DFW 49-2007(Temp), f. 6-22-07, cert. ef. 6-26-07 thru 9-13-07; DFW 53-2007(Temp), f. & cert. ef. 7-6-07 thru 7-31-07

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**Rule Caption:** Powder River sport jack spring Chinook fishery.

**Adm. Order No.:** DFW 54-2007(Temp)

**Filed with Sec. of State:** 7-6-2007

**Certified to be Effective:** 7-14-07 thru 9-30-07

**Notice Publication Date:**

**Rules Amended:** 635-021-0090

**Subject:** This amended rule allows sport anglers the opportunity to harvest jack spring Chinook salmon, in excess of ODFW's natural production needs, which have been out-planted in the Powder River specifically for this purpose. The fishery is scheduled for the period Saturday, July 14 through September 30, 2007.

**Rules Coordinator:** Casaria Tuttle—(503) 947-6033

## 635-021-0090

### Inclusions and Modifications

(1) **2007 Oregon Sport Fishing Regulations** provide requirements for the Southeast Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2007 Oregon Sport Fishing Regulations**.

(2) Thief Valley Reservoir is open to angling for all game species from May 26 through September 30, 2007 with the following restrictions:

(a) The trout daily bag limit is 15 with no possession limit;

(b) The bass daily bag limit is 15 with no possession limit;

(c) There are no minimum length requirements.

(3) The Powder River upstream from Hughes Lane Bridge near Baker City to Mason Dam is open to angling for jack spring Chinook salmon from July 14 to September 30, 2007: the jack spring Chinook bag limit is five per day.

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

Stat. Auth.: ORS 183.325, 496.138 & 496.146

Stats. Implemented: ORS 496.162

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 76-1994(Temp), f. & cert. ef. 10-17-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; DFW 55-2001(Temp), f. & cert. ef. 6-29-01 thru 12-26-01; DFW 56-2001(Temp), f. & cert. ef. 6-29-01 thru 12-26-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 54-2002(Temp), f. 5-24-02, cert. ef. 6-15-02 thru 12-1-02; DFW 91-2002(Temp), f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 93-2002(Temp), f. 8-22-02, cert. ef. 8-24-02 thru 12-31-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 80-2003(Temp), f. & cert. ef. 8-22-03 thru 9-30-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 101-2005(Temp), f. 8-31-05, cert. ef. 9-2-05 thru 9-30-05; Administrative correction 10-19-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 36-2007(Temp), f. 5-25-07, cert. ef. 5-26-07 thru 9-30-07; DFW 54-2007(Temp), f. 7-6-07, cert. ef. 7-14-07 thru 9-30-07

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**Rule Caption:** Lower Deschutes River sport fall Chinook fishery.

**Adm. Order No.:** DFW 55-2007(Temp).

**Filed with Sec. of State:** 7-6-2007

**Certified to be Effective:** 8-1-07 thru 10-31-07

**Notice Publication Date:**

**Rules Amended:** 635-018-0090

**Subject:** Amend rule to allow the sport harvest of fall Chinook salmon in the Lower Deschutes River.

**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 chinook salmon from August 1, 2007 to October 31, 2007.

(3) The catch limit for Chinook salmon is two adults and five 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 Area 1 of the Deschutes River.

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

Stat. Auth.: ORS 496.138 & 496.146

Stats. Implemented: ORS 496.162

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 20-1994(Temp), f. & cert. ef. 4-11-94; FWC 24-1994(Temp), f. 4-29-94, cert. ef. 4-30-94; FWC 34-1994(Temp), f. 6-14-94, cert. ef. 6-16-94; FWC 54-1994, f. 8-25-94, cert. ef. 9-1-94; FWC 65-1994(Temp), f. 9-15-94, cert. ef. 9-17-94; FWC 67-1994(Temp), f. & cert. ef. 9-26-94; FWC 70-1994, f. 10-4-95, cert. ef. 11-1-94; FWC 18-1995, f. 3-2-95, cert. ef. 4-1-95; FWC 60-1995(Temp), f. 7-24-95, cert. ef. 8-1-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 11-1996(Temp), f. 3-8-96, cert. ef. 4-1-96; FWC 32-1996(Temp), f. 6-7-96, cert. ef. 6-16-96; FWC 38-1996(Temp), f. 6-14-96, cert. ef. 7-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 20-1997, f. & cert. ef. 3-24-97; FWC 21-1997, f. & cert. ef. 4-1-97; FWC 27-1997(Temp), f. 5-2-97, cert. ef. 5-9-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 25-1998(Temp), f. & cert. ef. 3-25-98 thru 8-31-98; DFW 56-1998(Temp), f. 7-24-98, cert. ef. 8-1-98 thru 10-31-98; DFW 70-1998, f. & cert. ef. 8-28-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 31-1999, f. & cert. ef. 5-3-99; DFW 78-1999, f. & cert. ef. 10-4-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 12-2000(Temp), f. 3-20-00, cert. ef. 4-15-00 thru 7-31-00; DFW 27-2000(Temp), f. 5-15-00, cert. ef. 8-1-00 thru 10-31-00; DFW 28-2000, f. 5-23-00, cert. ef. 5-24-00 thru 7-31-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 13-2001(Temp), f. 3-12-01, cert. ef. 4-7-01 thru 7-31-01; DFW 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; DFW 44-2001(Temp), f. 5-25-01, cert. ef. 6-1-01 thru 7-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 5-2002(Temp), f. 1-11-02, cert. ef. 1-12-02 thru 7-11-02; DFW 23-2002(Temp), f. 3-21-02, cert. ef. 4-6-02 thru 7-31-02; DFW 25-2002(Temp), f. 3-22-02, cert. ef. 4-6-02 thru 7-31-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 62-2002, f. 6-14-02, cert. ef. 7-11-02; DFW 74-2002(Temp), f. 7-18-02, cert. ef. 8-1-02 thru 10-31-02; DFW 91-2002(Temp), f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 97-2002(Temp), f. & cert. ef. 8-29-02 thru 10-31-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 26-2003(Temp), f. 3-28-03, cert. ef. 4-15-03 thru 7-31-03; DFW 66-2003(Temp), f. 7-17-03, cert. ef. 8-1-03 thru 10-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 23-2004(Temp), f. 3-22-04, cert. ef. 4-1-04 thru 7-31-04; DFW 77-2004(Temp), f. 7-28-04, cert. ef. 8-1-04 thru 10-31-04; Administrative correction 11-22-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 19-2005(Temp), f. 3-16-05, cert. ef. 4-15-05 thru 7-31-05; DFW 41-2005(Temp), f. 5-13-05, cert. ef. 5-15-05 thru 7-31-05; DFW 83-2005(Temp), f. 7-29-05, cert. ef. 8-1-05 thru 10-31-05; DFW 84-2005(Temp), f. & cert. ef.

# ADMINISTRATIVE RULES

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; DFW 55-2007(Temp), f. 7-6-07, cert. ef. 8-1-07 thru 10-31-07

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**Rule Caption:** Retention of radio-tagged fall chinook salmon allowed from Umpqua River Basin streams.

**Adm. Order No.:** DFW 56-2007(Temp)

**Filed with Sec. of State:** 7-6-2007

**Certified to be Effective:** 8-1-07 thru 12-31-07

**Notice Publication Date:**

**Rules Amended:** 635-016-0090

**Subject:** Amend rule to allow the retention of radio-tagged fall chinook salmon from Umpqua River Basin streams.

**Rules Coordinator:** Casaria Tuttle—(503) 947-6033

## 635-016-0090

### Inclusions and Modifications

(1) The **2007 Oregon Sport Fishing Regulations** provide requirements for the Southwest Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2007 Oregon Sport Fishing Regulations**.

(2) Rogue River, tidewater upstream to Hog Creek boat landing:

(a) Mouth upstream to Whiskey Creek:

(A) From 12:01 a.m. June 21 thru July 13, 2007 only adipose fin-clipped chinook salmon may be retained;

(B) From July 14 thru December 31, **2007 Oregon Sport Fishing Regulations** for Southwest Zone apply.

(b) Whiskey Creek upstream to Hog Creek boat landing:

(A) From 12:01 a.m. June 21 thru July 31, 2007 only adipose fin-clipped chinook salmon may be retained;

(B) From August 1 thru December 31, **2007 Oregon Sport Fishing Regulations** for Southwest Zone apply.

(3) Rogue River, Hog Creek boat landing to Gold Ray Dam:

(a) From 12:01 a.m. June 21 thru August 14, 2007 only adipose fin-clipped chinook salmon may be retained;

(b) From August 15 thru September 30, **2007 Oregon Sport Fishing Regulations** for Southwest Zone apply.

(4) Rogue River, from Gold Ray Dam to Cole Rivers Hatchery Diversion Dam:

(a) Gold Ray Dam to the Rogue Elk boat ramp:

(A) From 12:01 a.m. June 21 thru June 30, 2007 only adipose fin-clipped chinook salmon may be retained;

(B) Closed to retention of chinook salmon from July 1 thru October 31, 2007.

(b) Rogue Elk boat ramp to Cole Rivers Hatchery diversion dam:

(A) From 12:01 a.m. June 21 thru July 31 only adipose fin-clipped chinook salmon may be retained;

(B) Closed to retention of chinook salmon August 1 thru October 31, 2007.

(5) Notwithstanding General State Regulations, in those waters identified in the Southwest Zone under Special Regulations where the harvest of fall chinook salmon is allowed, retention of radio-tagged fall chinook salmon is permitted from August 1 thru December 31, 2007. Anglers are requested to return tags to the local ODFW office.

(6) All other specifications and restrictions as specified in the current

**2007 Oregon Sport Fishing Regulations** apply.

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

Stat. Auth.: ORS 496.138 & 496.146

Stats. Implemented: ORS 496.162

Hist.: FWC 80-1993(Temp), f. 12-21-93, cert. ef. 1-1-94; FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 31-1994, f. 5-26-94, cert. ef. 6-20-94; FWC 79-1994(Temp), f. 10-21-94, cert. ef. 7-22-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 57-1995(Temp), f. 7-3-95, cert. ef. 7-4-95; FWC 59-1995(Temp), f. 7-24-95, cert. ef. 8-1-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 82-1995(Temp), f. 9-29-95, cert. ef. 10-1-95; FWC 90-1995(Temp), f. 11-29-95, cert. ef. 1-1-96; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 52-1996, f. & cert. ef. 1-1-96; FWC 61-1996, f. & cert. ef. 10-9-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 73-1996(Temp), f. 12-31-96, cert. ef. 1-1-97; FWC 5-1997, f. & cert. ef. 2-4-97; FWC 17-1997(Temp), f. 3-19-97, cert. ef. 4-1-97; FWC 32-1997(Temp), f. & cert. ef. 5-23-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 24-1998(Temp), f. & cert. ef. 3-25-98 thru 9-15-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 52-1998(Temp), f. 7-10-98, cert. ef. 7-11-98 thru 7-24-98; DFW 55-1998(Temp), f. & cert. ef. 7-24-98 thru 12-31-98; DFW 70-1998, f. & cert. ef. 8-28-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 36-1999, f. & cert. ef. 5-20-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 48-2000(Temp), f. 8-14-00, cert. ef. 8-15-00 thru 12-31-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 8-2001, f. & cert. ef. 3-5-01; DFW 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; DFW 42-2001(Temp), f. 5-25-01, cert. ef. 5-29-01 thru 7-31-01; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 72-2001(Temp), f. 8-10-01, cert. ef. 8-16-01 thru 12-31-01; DFW 90-

2001(Temp), f. 9-14-01, cert. ef. 9-15-01 thru 12-31-01; DFW 97-2001(Temp), f. 10-4-01, cert. ef. 11-1-01 thru 12-31-01; DFW 105-2001(Temp), f. 10-26-01, cert. ef. 11-1-01 thru 12-31-01; DFW 122-2001(Temp), f. & cert. ef. 12-31-01 thru 5-31-02; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 5-2002(Temp), f. 1-11-02 cert. ef. 1-12-02 thru 7-11-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 37-2002, f. & cert. ef. 4-23-02; DFW 55-2002(Temp), f. 5-28-02, cert. ef. 7-1-02 thru 11-31-02; DFW 91-2002(Temp), f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 124-2002(Temp), f. & cert. ef. 10-30-02 thru 12-31-02 (Suspended by DFW 125-2002(Temp), f. 11-8-02, cert. ef. 11-9-2002); DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 90-2003(Temp), f. 9-12-03 cert. ef. 9-13-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 127-2004, f. 12-22-04, cert. ef. 1-1-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 24-2006(Temp), f. 4-25-06, cert. ef. 5-13-06 thru 10-31-06; DFW 37-2006(Temp), f. 6-2-06, cert. ef. 6-5-06 thru 12-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 47-2007(Temp), f. 6-18-07, cert. ef. 6-21-07; DFW 56-2007(Temp), 7-6-07, cert. ef. 8-1-07 thru 12-31-07

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

**Rule Caption:** Repeal of Obsolete Mental Health Rules in OAR Chapter 309.

**Adm. Order No.:** MHS 8-2007

**Filed with Sec. of State:** 6-27-2007

**Certified to be Effective:** 6-27-07

**Notice Publication Date:** 6-1-07

**Rules Repealed:** 309-031-0225, 309-031-0230, 309-031-0235, 309-031-0240, 309-031-0245, 309-034-0005

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

**Rules Coordinator:** Richard Luthe—(503) 947-1186

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

**Adm. Order No.:** MHS 9-2007

**Filed with Sec. of State:** 6-27-2007

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

**Notice Publication Date:** 6-1-07

**Rules Repealed:** 309-041-0015, 309-041-0016, 309-041-0017, 309-041-0018, 309-041-0019, 309-041-0020, 309-041-0021, 309-041-0022, 309-041-0023, 309-041-0024

**Subject:** The Department of Human Services, Seniors and People with Disabilities Division is repealing Oregon Administrative Rules (OAR) 309-041-0015 through OAR 309-041-0024, related to the Semi-Independent Living Program. Effective July 1, 2007, the Semi-Independent Living Program is eliminated.

**Rules Coordinator:** Christina Hartman—(503) 945-6398

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

**Rule Caption:** Renumbering of Abuse of Individuals Living in State Hospitals and Residential Training Centers.

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

**Filed with Sec. of State:** 6-29-2007

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

**Notice Publication Date:** 6-1-07

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

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

**Rules Coordinator:** Jennifer Bittel—(503) 947-5250

# ADMINISTRATIVE RULES

## 407-045-0400

### Purpose

Purpose. To establish a policy prohibiting abuse and to define procedures for reporting, investigating, and resolving alleged incidents of abuse of individuals in state hospitals and residential training centers.

Stat. Authority: ORS 179.040, 409.010, 409.050

Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.735-430.765

Hist.: MHD 23, f. 8-5-74, ef. 8-25-74; MHD 19-1982(Temp), f. & ef. 9-10-82; MHD 4-1983, f. & ef. 3-4-83, Renumbered from 309-021-0010(1) and (2); MHD 3-1991, f. 6-21-91, cert. ef. 8-15-91; MHD 7-1995, f. 12-27-95, cert. ef. 1-1-96; Renumbered from 309-116-0000, OMAP 60-2005, f. 11-22-05, cert. ef. 1-1-06; Renumbered from 410-011-0000, DHSD 4-2007, f. 6-29-07, cert. ef. 7-1-07

## 407-045-0410

### Definitions

(1) "Abuse" means any act or absence of action by a staff or visitor inconsistent with prescribed treatment and care, that violates the well-being or dignity of the individual.

(2) "Administrator" means the Assistant Department of Human Services Director for Seniors and People with Disabilities and the Office of Mental Health and Addiction Services or their designee.

(3) "Department" means Seniors & People with Disabilities or Office of Mental Health & Addiction Services, organizational units within the Department of Human Services.

(4) "Derogatory" means an expression of a low opinion or a disparaging remark.

(5) "Disrespectful" means lacking regard or concern; or to treat as unworthy or lacking value as a human being.

(6) "Employee" means an individual employed by the state and subject to rules for employee conduct.

(7) "Inconclusive" means the available evidence does not support a final decision that there was reasonable cause to believe that abuse occurred or did not occur.

(8) "Individual" means a person who is receiving services in a residential training center for people with developmental disabilities or at a state hospital for people with mental illness.

(9) "Not Substantiated" means the evidence does not support a conclusion that there is reasonable cause to believe that abuse occurred.

(10) "Office of Investigations and Training (OIT)" means the Department of Human Services office responsible for the investigation of allegations of abuse made at state hospitals and residential training centers.

(11) "Staff" means employees, contractors and their employees, and volunteers.

(12) "Substantiated" means the evidence supports a conclusion that there is reasonable cause to believe that abuse occurred.

(13) "Superintendent" refers to the chief executive officer of a state hospital or residential training center who serves as the designee of the Administrator to receive allegations of abuse concerning individuals and his or her designee.

(14) "Visitor" means all others persons not included as staff who visit the facility for business purposes or to visit individuals or staff.

Stat. Authority: ORS 179.040, 409.010, 409.050

Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.735-430.765

MHD 4-1983, f. & ef. 3-4-83, Renumbered from 309-021-0010(3); MHD 18-1985, f. & ef. 12-5-85; MHD 3-1987, f. & ef. 4-9-87; MHD 3-1991, f. 6-21-91, cert. ef. 8-15-91; MHD 7-1995, f. 12-27-95, cert. ef. 1-1-96; Renumbered from 309-116-0010, OMAP 60-2005, f. 11-22-05, cert. ef. 1-1-06; Renumbered from 410-011-0010, DHSD 4-2007, f. 6-29-07, cert. ef. 7-1-07

## 407-045-0420

### General Policy

(1) The Department believes every individual is deserving of safe, respectful and dignified treatment provided in a caring environment. To that end, all employees, volunteers, contractors and their employees, as well as visitors will conduct themselves in such a manner that individuals are free from abuse.

(2) In these rules, the term "abuse" is given a broad definition because of the unique vulnerability of individuals served by the Department. While some examples are listed later in these rules (including specific conduct listed in ORS 430.735(1)), it must be clearly understood that all possible situations cannot be anticipated and each case must be evaluated based on the particular facts available.

Stat. Authority: ORS 179.040, 409.010, 409.050

Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.735-430.765

Hist.: MHD 23, f. 8-5-74, ef. 8-25-74; MHD 19-1982(Temp), f. & ef. 9-10-82; MHD 4-1983, f. & ef. 3-4-83, Renumbered from 309-021-0010(4); MHD 3-1987, f. & ef. 4-9-87; MHD 3-1991, f. 6-21-91, cert. ef. 8-15-91; MHD 7-1995, f. 12-27-95, cert. ef. 1-1-96; Renumbered from 309-116-0020, OMAP 60-2005, f. 11-22-05, cert. ef. 1-1-06; Renumbered from 410-011-0020, DHSD 4-2007, f. 6-29-07, cert. ef. 7-1-07

## 407-045-0430

### Policy Regarding Abuse

(1) All forms of abuse are prohibited. Staff, visitors, volunteers, contractors and their employees must continually be aware of the potential for abuse in interactions with individuals.

(2) Listed below are examples of the type of conduct which constitutes abuse. This list of examples is by no means exhaustive and represents general categories of prohibited conduct. Conduct of a like or similar nature is also obviously prohibited. Examples include, but are not limited to:

(a) Physical Abuse: Examples include hitting, kicking, scratching, pinching, choking, spanking, pushing, slapping, twisting of head, arms, or legs, tripping, the use of physical force which is unnecessary or excessive or other physical contact with an individual inconsistent with prescribed treatment or care;

(b) Verbal Abuse: Verbal conduct may be abusive because of either the manner of communicating with or the content of the communication with individuals. Examples include yelling, ridicule, harassment, coercion, threats, intimidation, cursing, foul language or other forms of communication which are derogatory or disrespectful of the individual, or remarks intended to provoke a negative response by the individual;

(c) Abuse by Failure to Act: This includes neglecting the care of the individual resulting in death (including suicide), physical or psychological harm, or a significant risk of harm to the individual either by failing to provide authorized and prescribed treatment or by failing to intervene when an individual needs assistance such as denying food or drink or leaving the individual unattended when staff presence is mandated;

(d) Sexual Abuse: Examples include:

(A) Contact of a sexual nature between staff and individuals;

(B) Failure to discourage sexual advances toward staff by individuals;

and

(C) Permitting the sexual exploitation of individuals or use of individual sexual activity for staff entertainment or other improper purpose.

(e) Condoning Abuse: Permitting abusive conduct toward an individual by any other staff, individual, or person; and

(f) Statutory Terms of Abuse: As defined in ORS 430.735: any death caused by other than accidental or natural means; any physical injury caused by other than accidental means, or that appears to be at variance with the explanation given of the injury; willful infliction of physical pain or injury, sexual harassment or exploitation, including but not limited to any sexual contact between an employee of a facility or community program and an adult, and neglect that leads to physical harm or significant mental injury through withholding of services necessary to maintain health and well being.

(3) At times, persons may be required to utilize self-defense. This includes control procedures that are designed to minimize physical injury to the individual or other persons. Employees are expected to use the least restrictive procedures necessary under the circumstances for dealing with an individual's behaviors or defending against an individual's attack. Abuse does not include acts of self-defense or defense of an individual or other person in response to the use or imminent use of physical force provided that only the degree of force reasonably necessary for protection is used. When excessively severe methods of control are used or when any conduct designed as self-defense is carried beyond what is necessary under the circumstances to protect the individual or other persons from further violence or assault, that conduct then becomes abuse.

Stat. Authority: ORS 179.040, 409.010, 409.050

Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.735-430.765

MHD 4-1983, f. & ef. 3-4-83, Renumbered from 309-021-0010(5); MHD 3-1987, f. & ef. 4-9-87; MHD 12-1988(Temp), f. & cert. ef. 9-7-88; MHD 1-1989, f. & cert. ef. 2-23-89; MHD 3-1991, f. 6-21-91, cert. ef. 8-15-91; MHD 7-1995, f. 12-27-95, cert. ef. 1-1-96; MHD 2-1996, f. & cert. ef. 1-12-96; Renumbered from 309-116-0015, OMAP 60-2005, f. 11-22-05, cert. ef. 1-1-06; Renumbered from 410-011-0030, DHSD 4-2007, f. 6-29-07, cert. ef. 7-1-07

## 407-045-0440

### Reporting Requirements

(1) Oregon Statute requires mandatory reports and investigations of allegations of abuse of individuals with disabilities. Therefore, any person who has reasonable cause to believe that an incident of abuse has occurred to an individual residing at a state hospital or residential training center will immediately report the incident according to the procedures set forth in the applicable state hospital or residential training center policy on abuse reporting.

(2) Any person participating in good faith in reporting alleged abuse and who has reasonable grounds for reporting has immunity from any civil liability that otherwise might be imposed or incurred based on the reporting or the content of the report under ORS 430.753(1).



# ADMINISTRATIVE RULES

(3) The identity of the person reporting alleged abuse is confidential. The Department or OIT will reveal the names of abuse reporters to law enforcement agencies, public agencies who certify or license facilities or persons practicing therein, public agencies providing services to the individuals, private agencies providing protective services for the individual, and the protection and advocacy system for individuals designated by federal law. The identity of the person reporting alleged abuse may also be disclosed in certain legal proceedings including, but not limited to, Human Resources or other administrative proceedings and criminal prosecution.

Stat. Authority: ORS 179.040, 409.010, 409.050

Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.735-430.765

Hist.: MHD 23, f. 8-5-74, ef. 8-25-74; MHD 19-1982(Temp), f. & ef. 9-10-82; MHD 4-1983, f. & ef. 3-4-83, Renumbered from 309-021-0010(5); MHD 3-1991, f. 6-21-91, cert. ef. 8-15-91; MHD 7-1995, f. 12-27-95, cert. ef. 1-1-96; Renumbered from 309-116-0020, OMAP 60-2005, f. 11-22-05, cert. ef. 1-1-06; Renumbered from 410-011-0040, DHSD 4-2007, f. 6-29-07, cert. ef. 7-1-07

## 407-045-0450

### Preliminary Procedures

(1) Once a report of alleged abuse is made, the following steps will be taken to ensure both a proper investigation and appropriate action are taken to ensure that individuals are free from any threat of abuse:

(a) No later than two hours after receipt of the allegation except for circumstances with good cause the Superintendent will notify the Office of Investigations and Training (OIT) of the report of alleged abuse. OIT will determine whether the allegation, if true, would fit within the definition of abuse. This determination will be made in consultation with the Superintendent. The determination must be made within 24 hours of receipt of the report of abuse;

(b) If the allegation is determined to not fit the definition of abuse, the Superintendent may take other appropriate action, such as a referral to Human Resources for review as a performance issue, worksite training, or take other systemic measures to resolve problems identified;

(c) The Superintendent with OIT will further ensure that if the allegation meets the definition of child abuse under ORS 419B.005, or elder abuse under ORS 124.050 it has been reported to the appropriate agency.

(2) Immediately and no later than 24 hours after determining that the allegation comes within the definition of abuse under this policy or other applicable laws, the Superintendent will:

(a) Provide appropriate protective services to the individual that may include arranging for immediate protection of the individual and the provision of appropriate services including medical, legal or other services necessary to prevent further abuse;

(b) Determine with OIT if there is reason to believe that an investigation by an appropriate law enforcement agency is necessary, and if so, request that such agency determine whether there is reason to believe a crime has been committed;

(c) Make a report to any other appropriate agencies, e.g., State Office for Children, Adults and Families (CAF) (formerly State Office for Services to Children and Families) or Seniors and People with Disabilities (SPD) or Office of Mental Health and Addiction Services (OMHAS).

(d) Promptly notify the legal guardian (of an adjudicated incapacitated individual) of the alleged incident and give an explanation of the procedures that will be used to investigate and resolve the matter; as well as the facility's responsibility to provide appropriate protective services;

(e) Contact the Administrator of the Department if the individual has sustained serious injury.

Stat. Authority: ORS 179.040, 409.010, 409.050

Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.735-430.765

Hist.: MHD 7-1995, f. 12-27-95, cert. ef. 1-1-96; Renumbered from 309-116-0030, OMAP 60-2005, f. 11-22-05, cert. ef. 1-1-06; Renumbered from 410-011-0050, DHSD 4-2007, f. 6-29-07, cert. ef. 7-1-07

## 407-045-0460

### Investigation by the Office of Investigations and Training

(1) Investigation of allegations of abuse will be thorough and unbiased. An investigation of the allegation will be conducted by the Office of Investigations and Training (OIT).

(2) OIT will conduct interviews with any party alleging an incident of abuse, the individual allegedly abused, and the person accused. OIT will also include interviews with persons appearing to be involved in or having knowledge of the alleged abuse or surrounding circumstances.

(3) All records necessary for the investigation will be available to OIT for inspection and copying. OIT will collect information which has relevance to the alleged event. This may include, but is not limited to, individual or facility records, statements, diagrams, photographs and videos.

(4) If the facts in the case are disputed and a law enforcement agency does not produce an investigation report, OIT will determine the manner and methods of conducting the investigation.

(5) When a law enforcement agency is conducting a criminal investigation of the alleged abuse, OIT may also perform its own investigation unless OIT is advised by the law enforcement agency that a concurrent OIT investigation would interfere with the criminal investigation.

Stat. Authority: ORS 179.040, 409.010, 409.050

Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.735-430.765

Hist.: MHD 7-1995, f. 12-27-95, cert. ef. 1-1-96; MHD 5-1998, f. 6-26-98, cert. ef. 7-1-98; Renumbered from 309-116-0040, OMAP 60-2005, f. 11-22-05, cert. ef. 1-1-06; Renumbered from 410-011-0060, DHSD 4-2007, f. 6-29-07, cert. ef. 7-1-07

## 407-045-0470

### Abuse Investigation Report

(1) OIT will complete its investigation and submit a draft report to the Superintendent within 30 calendar days after initiating an investigation unless other laws or regulations require a shorter time frame. The investigation must be complete within 30 calendar days unless the Administrator grants an extension. The Administrator may grant an extension when a key party is unavailable, new evidence is discovered, the investigation is complex (e.g. large numbers of witnesses need to be interviewed, taking into account scheduling difficulties and limitations, consultation with experts, or a detailed review of records over an extended period of time is required) or for some other mitigating reason. The Administrator will specify the length of the extension.

(2) The Superintendent along with OIT is responsible for reviewing the OIT and/or law enforcement investigation report. The Superintendent and OIT will also review and discuss any other relevant reports or information.

(3) OIT will determine whether the evidence does or does not substantiate the allegation of abuse. In some instances, OIT may determine that the evidence is inconclusive. The determination must be made within 15 calendar days from completion of the draft investigation report, unless a key party is unavailable, additional evidence is discovered, or the Administrator grants an extension for some other mitigating reason. Any determination not made within the 15-day period must be made as soon as reasonably possible thereafter.

(4) Once this review is complete, a final report will be prepared by OIT, which includes:

(a) A statement of the alleged incident being investigated, including the dates(s), location(s) and time(s);

(b) An outline of steps taken in the investigation, a list of all witnesses interviewed and a summary of the information provided by each witness;

(c) A summary of findings and conclusion concerning the allegation of abuse;

(d) A specific finding of substantiated, inconclusive or not substantiated;

(e) A plan of action necessary to prevent further abuse of the individual;

(f) Any additional corrective action required by the hospital or residential training center and deadlines for the completion of these actions;

(g) A list of any notices made to licensing agencies;

(h) The name and title of the person completing the report; and

(i) The date it is written.

(5) If the allegation of abuse is substantiated, the Superintendent will direct that appropriate action be taken against the responsible person commensurate with the seriousness of the conduct and any aggravating or mitigating circumstances, including consideration of previous conduct of record. If Human Resources is involved, as necessary to comply with laws related to employee rights, additional investigation may be conducted.

(6) If the allegations are found to be inconclusive; the Superintendent may request a review by the Human Resources Department to determine the need for any training or disciplinary action, as warranted by the facts and any follow-up investigative work.

(7) The Superintendent will ensure that appropriate documentation exists as to the action taken as a result of an abuse investigation.

(8) The Superintendent will ensure that a copy of the law enforcement investigation report is forwarded to OIT.

Stat. Authority: ORS 179.040, 409.010, 409.050

Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.735-430.765

Hist.: MHD 7-1995, f. 12-27-95, cert. ef. 1-1-96; Renumbered from 309-116-0050, OMAP 60-2005, f. 11-22-05, cert. ef. 1-1-06; Renumbered from 410-011-0070, DHSD 4-2007, f. 6-29-07, cert. ef. 7-1-07

# ADMINISTRATIVE RULES

## 407-045-0480

### Disclosure of Investigation Report and Related Documents

(1) Investigation Reports prepared by OIT are subject to the following:

(a) Portions of the abuse investigation report and underlying investigatory documents are confidential and not available for public inspection. Pursuant to ORS 430.763, names of persons who make reports of abuse, witnesses, and the alleged abuse victim are confidential and shall not be available for public inspection. Investigatory documents, including portions of the abuse investigation report that contains "Individually identifiable health information", as that term is defined under ORS 192.519 and 45 CFR 160.103, are confidential under HIPAA privacy rules, 45 CFR Part 160 and 164, and ORS 192.520 and 179.505 to 509.

(b) Notwithstanding subsection (a) of this rule, the Department and OIT will make the confidential information, including any photographs, available, if appropriate, to any law enforcement agency, to any public agency that licenses or certifies facilities or licenses or certifies the persons practicing therein, and to any public agency providing protective services for the adult. The Department and OIT will also make the protective services report and underlying investigatory materials available to any private agency providing protective services for the adult and to the protection and advocacy system designated pursuant to ORS 192.517(1).

(c) Persons or entities receiving confidential information pursuant to this rule must maintain the confidentiality of the information and may not redisclose the confidential information to unauthorized persons or entities, as required by state or federal law.

(d) When the report is completed, a redacted version of the abuse investigation report not containing any confidential information, the disclosure of which would be prohibited by state or federal law, will be available for public inspection.

(2) The OIT report will be disclosed by OIT or the Superintendent to:

(a) The Administrator of the Department; and

(b) Any person designated by the Superintendent for purposes related to the proper administration of the institution or center such as assessing patterns of abuse or to respond to personnel actions and may be disclosed in the Superintendent's discretion;

(c) The individual involved;

(d) The guardian of an adjudicated incapacitated person; and

(e) The person or persons who allegedly abused the individual.

(3) Copies of all reports will be maintained by the Superintendent in a place separate from personnel files of employees. The chart of the individual allegedly abused must contain a reference to the report sufficient to enable authorized persons to retrieve and review the report.

Stat. Authority: ORS 179.040, 409.010, 409.050

Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.735-430.765

Hist.: MHD 7-1995, f. 12-27-95, cert. ef. 1-1-96; Renumbered from 309-116-0060, OMAP 60-2005, f. 11-22-05, cert. ef. 1-1-06; Renumbered from 410-011-0080, DHSD 4-2007, f. 6-29-07, cert. ef. 7-1-07

## 407-045-0490

### Consequences of Abuse

(1) All persons will be subject to appropriate action if found responsible for:

(a) Abusing an individual;

(b) Failing to report an alleged incident of abuse; or

(c) Refusing to give information or giving untruthful information during an investigation of alleged abuse.

(2) Any discipline of an employee as a result of the above-described conduct must be in conformance with any applicable standards contained in state law or in a Collective Bargaining Agreement.

(3) Any employee dismissed for violating the abuse policy will not be rehired in any capacity, nor will the person be permitted to visit or otherwise have contact with individuals in any manner.

(4) Any volunteer found violating the abuse policy may be denied visitation or any other contact with individuals.

(5) Any contractor found violating the abuse policy will be at risk of immediate termination of the contract. Any employee of the contractor found in violation of the abuse policy may be excluded from the grounds and may be subject to appropriate disciplinary action by his or her employer.

(6) Any visitor found in violation of the abuse policy may be excluded from the grounds and will be subject to other appropriate actions as determined by the Superintendent.

(7) Any employee, volunteer, contractor, contractor's employee, or visitor may be subject to criminal prosecution depending on the outcome of any allegation referred to law enforcement for investigation.

(8) Any staff found to have violated the abuse policy will be reported to any appropriate professional licensing or certification boards or associations; and is at risk of sanctions imposed by such a body.

Stat. Authority: ORS 179.040, 409.010, 409.050

Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.735-430.765

Hist.: MHD 7-1995, f. 12-27-95, cert. ef. 1-1-96; Renumbered from 309-116-0090, OMAP 60-2005, f. 11-22-05, cert. ef. 1-1-06; Renumbered from 410-011-0090, DHSD 4-2007, f. 6-29-07, cert. ef. 7-1-07

## 407-045-0500

### Notice of Abuse Policy

(1) Each individual must be informed upon admission and his or her guardian, if any, or his or her family will also be informed orally and in writing of the rights, policies, abuse definitions and procedures concerning prohibition of abuse of individuals.

(2) A clear and simple statement of the title and number of this policy and how to seek advice about its content will be prominently displayed in areas frequented by individuals at each state hospital and residential training center.

(3) All staff will be provided a copy of this rule, either at the commencement of their employment, and/or duties, or, for current staff, within 90 days of the effective date of this rule and once a year thereafter. All staff must sign a form acknowledging receipt of this information on the date of receipt.

(4) A summary of this policy will be posted in all state hospitals and residential training centers in areas regularly frequented by visitors and in a manner designed to notify visitors of the policy. Copies of the complete policy will be provided to visitors upon request.

Stat. Authority: ORS 179.040, 409.010, 409.050

Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.735-430.765

Hist.: MHD 7-1995, f. 12-27-95, cert. ef. 1-1-96; Renumbered from 309-116-0100, OMAP 60-2005, f. 11-22-05, cert. ef. 1-1-06; Renumbered from 410-011-0100, DHSD 4-2007, f. 6-29-07, cert. ef. 7-1-07

## 407-045-0510

### Retaliation

(1) No state hospital or residential training center staff or other person will retaliate against any person who reports in good faith suspected abuse or against the individual with respect to any report.

(2) Any state hospital or residential training center staff or other person who retaliates against any person because of a report of suspected abuse or neglect will be liable according to ORS 430.755, in a private action to that person for actual damages and, in addition, will be subject to a penalty of up to \$1,000, notwithstanding any other remedy provided by law.

Stat. Authority: ORS 179.040, 409.010, 409.050

Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.735-430.765

Hist.: MHD 7-1995, f. 12-27-95, cert. ef. 1-1-96; Renumbered from 309-116-0090, OMAP 60-2005, f. 11-22-05, cert. ef. 1-1-06; Renumbered from 410-011-0110, DHSD 4-2007, f. 6-29-07, cert. ef. 7-1-07

## 407-045-0520

### Quality Assurance Review

(1) Each of the State Hospitals and Residential Training Centers will report on critical indicators, identified by the Department; and on quality improvement activities undertaken to improve any identified issues.

(2) These reports must be provided to the Department monthly.

(3) Representatives from each State Hospital or Training Center and OIT will meet quarterly with the Administrators of the Department, or designee. They will regularly review quality indicators and any other Department generated information regarding the abuse and neglect system in State Hospitals and Training Centers.

(4) The Department must make such information part of any quality improvement activities of the Department.

Stat. Authority: ORS 179.040, 409.010, 409.050

Stats. Implemented: ORS 179.390, 426.385, 427.031, 430.210, 430.735-430.765

Hist.: MHD 7-1995, f. 12-27-95, cert. ef. 1-1-96; Renumbered from 309-116-0100, OMAP 60-2005, f. 11-22-05, cert. ef. 1-1-06; Renumbered from 410-011-0120, DHSD 4-2007, f. 6-29-07, cert. ef. 7-1-07

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

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

**Filed with Sec. of State:** 6-29-2007

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

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**Rules Renumbered:** 410-009-0050 to 407-045-0250, 410-009-0060 to 407-045-0260, 410-009-0070 to 407-045-0270, 410-009-0080 to

# ADMINISTRATIVE RULES

407-045-0280, 410-009-0090 to 407-045-0290, 410-009-0100 to 407-045-0300, 410-009-0110 to 407-045-0310, 410-009-0120 to 407-045-0320, 410-009-0130 to 407-045-0330, 410-009-0140 to 407-045-0340, 410-009-0150 to 407-045-0350, 410-009-0160 to 407-045-0360

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

**Rules Coordinator:** Jennifer Bittel—(503) 947-5250

## 407-045-0250

### Statement of Purpose

Purpose. These rules prescribe standards and procedures for the investigation, assessment for, and provision of protective services in community programs and community facilities, and the nature and content of the abuse investigation and protective services report.

Stat. Authority: ORS 179.040

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

Hist.: MHD 5-1994, f. 8-22-94 & cert. ef. 9-1-94; Renumbered from 309-040-0200, OMAP 87-2004, f. 11-10-04, cert. ef. 12-1-04; Renumbered from 410-009-0050, DHSD 5-2007, f. 6-29-07, cert. ef. 7-1-07

## 407-045-0260

### Definitions

As used in these rules the following definitions apply:

(1) "Abuse" means one or more of the following:

(a) Any death caused by other than accidental or natural means or occurring in unusual circumstances;

(b) Any physical injury by other than accidental means, or that appears to be at variance with the explanation given of the injury;

(c) Willful infliction of physical pain or injury;

(d) Sexual harassment or exploitation including, but not limited to, any sexual contact between an employee of a community facility or community program, or provider, or other caregiver and the adult. For situations other than those involving an employee, provider, or other caregiver and an adult, sexual harassment or exploitation means unwelcome verbal or physical sexual contact including requests for sexual favors and other verbal or physical conduct directed toward the adult;

(e) Neglect that leads to physical harm or significant mental injury through withholding of services necessary to maintain health and well-being;

(f) Abuse does not include spiritual treatments by a duly accredited practitioner of a recognized church or religious denomination when voluntarily consented to by the adult.

(2) "Abuse investigation and protective services report" means the completed report.

(3) "Adult" means a person who:

(a) Is mentally ill or developmentally disabled;

(b) Is 18 years of age or older;

(c) Receives services from a community program or facility or care provider which is licensed or certified by or contracts with the Department; and

(d) Is the alleged abuse victim.

(4) "Adult Protective Services" means the necessary actions taken to prevent abuse or exploitation of the adult, to prevent self-destructive acts and to safeguard an allegedly abused adult's person, property and funds.

(5) "Brokerage" or "Support Service Brokerage" means an entity, or distinct operating unit within an existing entity, that performs the functions listed in OAR 411-340-0120(1)(a) through (g) associated with planning and implementation of Support Services for adults with developmental disabilities.

(6) "Care Provider" means an individual or facility that has assumed responsibility for all or a portion of the care of an adult as a result of a contract or agreement.

(7) "Community facility" means a community residential treatment home or facility, community residential facility, adult foster home, community residential training home or facility, regional acute crisis facility or crisis respite facility.

(8) "Community program" means the community mental health and developmental disabilities program as established in ORS 430.610 through 430.700.

(9) "Designee" means the community program.

(10) "Department" means Seniors and People with Disabilities (SPD) and Health Services organizational units within the Department of Human Services.

(11) "Inconclusive" means that the available evidence does not support a final decision that there was reasonable cause to believe that abuse occurred or did not occur.

(12) "Law enforcement agency" means:

(a) Any city or municipal police department;

(b) Any county sheriff's office;

(c) The Oregon State Police; or

(d) Any district attorney.

(13) "Mandatory reporter" means any public or private official who, while acting in an official capacity, comes in contact with and has reasonable cause to believe that the adult has suffered abuse, or that any person with whom the official comes in contact while acting in an official capacity, has abused the adult. Pursuant to ORS 430.765(2) psychiatrists, psychologists, clergy and attorneys are not mandatory reporters with regard to information received through communications that are privileged under ORS 40.225 to 20.295

(14) "Not substantiated" means that the evidence does not support a conclusion that there is reasonable cause to believe that abuse occurred.

(15) "Public or private official" means:

(a) Physician, naturopathic physician, osteopathic physician, psychologist, chiropractor or podiatrist, including any intern or resident;

(b) Licensed practical nurse, registered nurse, nurse's aide, home health aide or employee of an in-home health services;

(c) Employee of the Department of Human Services, county health department, community mental health and developmental disabilities program or private agency contracting with a public body to provide any community mental health services;

(d) Peace officer;

(e) Member of the clergy;

(f) Licensed clinical social worker;

(g) Physical, speech or occupational therapist;

(h) Information and referral, outreach or crisis worker;

(i) Attorney; or

(j) Any public official who comes in contact with adults in the performance of the official's duties.

(16) "Substantiated" means that the evidence supports a conclusion that there is reasonable cause to believe that abuse occurred.

(17) "Unbiased investigation" means an investigation that is conducted by a community program that does not have an actual or potential conflict of interest with the outcome of the investigation.

Stat. Authority: ORS 179.040

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

Hist.: MHD 5-1994, f. 8-22-94 & cert. ef. 9-1-94; Renumbered from 309-040-0210, OMAP 87-2004, f. 11-10-04, cert. ef. 12-1-04; Renumbered from 410-009-0060, DHSD 5-2007, f. 6-29-07, cert. ef. 7-1-07

## 407-045-0270

### General Duties of the Community Program

(1) For the purpose of carrying out these rules, community programs are the designee of the Department.

(2) If the Department or community program has reasonable cause to believe abuse occurred, it must immediately notify the appropriate public licensing or certifying agency and provide a copy of the abuse investigation and protective services report when completed.

(3) If the Department or community program has reasonable cause to believe that a person licensed by any state agency to provide care has committed abuse, it must immediately notify the appropriate state agency provide that agency with a copy of the abuse investigation and protective services report when completed.

(4) Nothing in this rule prohibits sharing of information by the Department or community program prior to the completion of the abuse investigation and protective services report if this information is necessary for:

(a) The provision of protective services; or

(b) The function of licensing and certifying agencies or law enforcement agencies.

Stat. Authority: ORS 179.040

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

Hist.: MHD 5-1994, f. 8-22-94 & cert. ef. 9-1-94; Renumbered from 309-040-0220, OMAP 87-2004, f. 11-10-04, cert. ef. 12-1-04; Renumbered from 410-009-0070, DHSD 5-2007, f. 6-29-07, cert. ef. 7-1-07

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## 407-045-0280

### Training for Persons Investigating Reports of Alleged Abuse

(1) Sufficient training and consultation will be provided to community programs by the Department such that the community program is able to conduct a thorough and unbiased investigation and reach a conclusion about the abuse.

(2) The training will address the cultural and social diversity of the State.

Stat. Authority: ORS 179.040  
Stats. Implemented: ORS 430.735-430.765, 443.400-443.460, 443.705-443.825  
Hist.: OMAP 87-2004, f. 11-10-04, cert. ef. 12-1-04; Renumbered from 410-009-0080, DHSD 5-2007, f. 6-29-07, cert. ef. 7-1-07

## 407-045-0290

### Initial Action on Report of Alleged Abuse

(1) The community program receiving a report alleging abuse will document the information required by ORS 430.743(1) and any additional information reported. The community program will attempt to elicit the following information from the person making a report:

(a) The name, age and present location of the adult;

(b) The names and addresses of persons, programs or facilities responsible for the adult's care;

(c) The nature and extent of the alleged abuse, including any evidence of previous abuse of the adult or by the alleged perpetrator;

(d) Any information that led the person making the report to suspect abuse had occurred;

(e) Any information that the person believes might be helpful in establishing the cause of the abuse and the identity of the alleged perpetrator; and

(f) The date of the incident.

(2) If there is reason to believe a crime has been committed, the designee must notify the law enforcement agency with jurisdiction in the county where the report is made.

(3) If there is reasonable cause to believe that abuse has occurred, the community program must promptly determine if the adult is in danger or in need of immediate protective services and respond accordingly.

(4) The community program will immediately notify the Department upon receipt of a report of abuse in the format provided by the Department.

(5) Each community program must establish an after hours reporting system. Upon receipt of any report of alleged abuse, the community program must begin:

(a) Investigation into the nature and cause of the alleged abuse within one working day of receipt of the report;

(b) Assessment of the need for protective services; and

(c) Provision of protective services, if protective services are needed.

(6) The appropriate medical examiner shall be notified in cases in which the community program or law enforcement agency finds reasonable cause to believe that an adult has died as a result of abuse or where the death occurred under suspicious or unknown circumstances.

(7) Mandatory reporters must report instances, when the reporter has reasonable cause to believe abuse has occurred, to the community program or a local law enforcement agency.

Stat. Authority: ORS 179.040  
Stats. Implemented: ORS 430.735-430.765, 443.400-443.460, 443.705-443.825  
Hist.: MHD 5-1994, f. 8-22-94 & cert. ef. 9-1-94; Renumbered from 309-040-0230, OMAP 87-2004, f. 11-10-04, cert. ef. 12-1-04; Renumbered from 410-009-0090, DHSD 5-2007, f. 6-29-07, cert. ef. 7-1-07

## 407-045-0300

### Investigation of Alleged Abuse

(1) Investigation of abuse will be thorough and unbiased. Accordingly, community programs will not investigate allegations of abuse made against employees of the community program. Investigations of community program staff will be conducted by the Department or other community program not subject to the actual or potential conflict of interest.

(2) In conducting abuse investigation, the investigator:

(a) Must make in person contact with the adult;

(b) Must interview the adult, witnesses, the alleged perpetrator and other individuals who may have knowledge of the facts of the abuse allegation or related circumstances;

(c) Must review all evidence relevant and material to the complaint; and

(d) Should take a photograph of the adult, or arrange for the adult to be photographed, to preserve evidence of the alleged abuse and of the adult's physical condition at the time of investigation, unless the adult knowingly refuses.

(3) All records necessary for the investigation will be available to the community program for inspection and copying. A community facility will

provide community programs access to employees, the adult, and the premises for investigation purposes.

(4) When a law enforcement agency is conducting a criminal investigation of the alleged abuse, the community program will also perform its own investigation, as long as it does not interfere with the law enforcement agency investigation, when:

(a) There is potential for action by a licensing or certifying agency;

(b) Timely investigation by law enforcement is not probable; or

(c) The law enforcement agency does not complete a criminal investigation.

(5) When a law enforcement agency is conducting an investigation of the alleged abuse, the community program must communicate and cooperate with the law enforcement agency.

Stat. Authority: ORS 179.040  
Stats. Implemented: ORS 430.735-430.765, 443.400-443.460, 443.705-443.825  
Hist.: MHD 5-1994, f. 8-22-94 & cert. ef. 9-1-94; Renumbered from 309-040-0240, OMAP 87-2004, f. 11-10-04, cert. ef. 12-1-04; Renumbered from 410-009-0100, DHSD 5-2007, f. 6-29-07, cert. ef. 7-1-07

## 407-045-0310

### Assessment for and Provision of Protective Services to the Adult

Appropriate protective services will be provided to the adult as necessary to prevent further abuse and must be undertaken in a manner that is least intrusive to the adult and provide for the greatest degree of independence available within existing resources. Assessment for the provision of protective services may include:

(1) Arranging for the immediate protection of the adult;

(2) Contacting the adult to assess his or her ability to protect his or her own interest and give informed consent;

(3) Determining the ability of the adult to understand the nature of the protective service and his or her willingness to accept services;

(4) Coordinating evaluations to determine or verify the adult's physical and mental status, if necessary;

(5) Assisting in an arranging for appropriate services and alternative living arrangements;

(6) Assisting in or arranging the medical, legal, financial or other necessary services to prevent further abuse;

(7) Providing advocacy to assure the adult's rights and entitlements are protected; and

(8) Consulting with the community facility, program, brokerage or others as appropriate in developing recommendations or requirements to prevent further abuse.

Stat. Authority: ORS 179.040  
Stats. Implemented: ORS 430.735-430.765, 443.400-443.460, 443.705-443.825  
Hist.: MHD 5-1994, f. 8-22-94 & cert. ef. 9-1-94; Renumbered from 309-040-0250, OMAP 87-2004, f. 11-10-04, cert. ef. 12-1-04; Renumbered from 410-009-0110, DHSD 5-2007, f. 6-29-07, cert. ef. 7-1-07

## 407-045-0320

### Abuse Investigation and Protective Services Report

(1) Upon completion of the investigation, and within 45 calendar days of the date of a report alleging abuse, the community programs will prepare an abuse investigation and protective services report which includes:

(a) A statement of the alleged incident being investigated, including the date(s), location(s) and time(s);

(b) An outline of steps taken in the investigation, a list of all witnesses interviewed and a summary of the information provided by each witness;

(c) A summary of findings and conclusion concerning the allegation of abuse;

(d) A specific finding of substantiated, inconclusive or not substantiated;

(e) A list of protective services provided to the adult to the date of the abuse investigation and protective services report;

(f) A plan of action necessary to prevent further abuse of the adult;

(g) Any additional corrective action required by the community program and deadlines for the completion of these action;

(h) A list of any notices made to licensing or certifying agencies;

(i) The name and title of the person completing the report; and

(j) The date it is written.

(2) Abuse investigation and protective services report formats will be provided by the Department.

(3) A copy of the abuse investigation and protective services report will be provided to the Department within five working days of the report's completion.

(4) A centralized record of all abuse investigation and protective services reports will be maintained by the community programs for all abuse investigations conducted in their county, and by the Department for all abuse investigations in the state.

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Stat. Authority: ORS 179.040  
Stats. Implemented: ORS 430.735-430.765, 443.400-443.460, 443.705-443.825  
Hist.: MHD 5-1994, f. 8-22-94 & cert. ef. 9-1-94; Renumbered from 309-040-0260, OMAP 87-2004, f. 11-10-04, cert. ef. 12-1-04; Renumbered from 410-009-0120, DHSD 5-2007, f. 6-29-07, cert. ef. 7-1-07

## 407-045-0330

### Disclosure of the Abuse Investigation and Protective Services Report and Related Documents

(1) Portions of the abuse investigation and protective services report and underlying investigatory documents are confidential and not available for public inspection. Pursuant to ORS 430.763, names of persons who make reports of abuse, witnesses, and the alleged abuse victim are confidential and shall not be available for public inspection. Investigatory documents, including portions of the abuse investigation and protective services report that contains "Individually identifiable health information", as that term is defined under ORS 192.519 and 45 CFR160.103, are confidential under HIPAA privacy rules, 45 CFR Part 160 and 164, and ORS 192.520 and 179.505 to 509.

(2) Notwithstanding subsection (1) of this rule, the Department will make the confidential information, including any photographs, available, if appropriate, to any law enforcement agency, to any public agency that licenses or certifies facilities or licenses or certifies the persons practicing therein, and to any public agency providing protective services for the adult. The Department will also make the protective services report and underlying investigatory materials available to any private agency providing protective services for the adult and to the protection and advocacy system designated pursuant to ORS Section 192.517(1).

(3) Persons or entities receiving confidential information pursuant to this rule shall maintain the confidentiality of the information and may not disclose the confidential information to unauthorized persons or entities, as required by state or federal law.

(4) When the report is completed, a redacted version of the abuse investigation report not containing any confidential information, the disclosure of which would be prohibited by state or federal law, will be available for public inspection.

(5) When the abuse investigation and protective services report is conducted by a community program, as the Department's designee, the protective services investigation may be disclosed pursuant to this rule either by the community program or the Department.

Stat. Authority: ORS 179.040  
Stats. Implemented: ORS 430.735-430.765, 443.400-443.460, 443.705-443.825  
Hist.: MHD 5-1994, f. 8-22-94 & cert. ef. 9-1-94; Renumbered from 309-040-0270, OMAP 87-2004, f. 11-10-04, cert. ef. 12-1-04; Renumbered from 410-009-0130, DHSD 5-2007, f. 6-29-07, cert. ef. 7-1-07

## 407-045-0340

### Prohibition Against Retaliation

(1) A community facility, community program or person will not retaliate against any person who reports suspected abuse in good faith, including the adult.

(2) Any community facility, community program or person that retaliates against any person because of a report of suspected abuse or neglect will be liable according to ORS 430.755, in a private action to that person for actual damages and, in addition, a penalty up to \$1,000, notwithstanding any other remedy provided by law.

(3) Any adverse action creates a presumption of retaliation if taken within 90 days of a report of abuse. For purposes of this subsection, "adverse action" means any action taken by a community facility, community program or person involved in a report against the person making the report or against the adult because of the report and includes but is not limited to:

- (a) Discharge or transfer from the community facility, except for clinical reasons;
- (b) Discharge from or termination of employment;
- (c) Demotion or reduction in remuneration for services; or
- (d) Restriction or prohibition of access to the community facility or its residents.

(4) Adverse action may also be evidence of retaliation after 90 days even though the presumption no longer applies.

Stat. Authority: ORS 179.040  
Stats. Implemented: ORS 430.735-430.765, 443.400-443.460, 443.705-443.825  
Hist.: MHD 5-1994, f. 8-22-94 & cert. ef. 9-1-94; Renumbered from 309-040-0280, OMAP 87-2004, f. 11-10-04, cert. ef. 12-1-04; Renumbered from 410-009-0140, DHSD 5-2007, f. 6-29-07, cert. ef. 7-1-07

## 407-045-0350

### Immunity of Persons Making Reports in Good Faith

(1) Anyone who makes a good faith report and who had reasonable grounds for making the report, will have immunity from civil liability with respect to having made the report.

(2) The reporter will have the same immunity in any judicial proceeding resulting from the report.

Stat. Authority: ORS 179.040  
Stats. Implemented: ORS 430.735-430.765, 443.400-443.460, 443.705-443.825  
Hist.: OMAP 87-2004, f. 11-10-04, cert. ef. 12-1-04; Renumbered from 410-009-0150, DHSD 5-2007, f. 6-29-07, cert. ef. 7-1-07

## 407-045-0360

### Department Investigation of Alleged Abuse

(1) If determined necessary or appropriate, the Department may conduct an investigation itself rather than allow the community program to investigate the alleged abuse or in addition to the investigation by the community program. Under such circumstances, the community program must receive authorization from the Department before conducting any separate investigation.

(2) All records necessary for the investigation will be available to the Department for inspection and copying. The community facilities and community programs must provide the Department access to employees, the adult, and the premises for investigation purposes.

Stat. Authority: ORS 179.040  
Stats. Implemented: ORS 430.735-430.765, 443.400-443.460, 443.705-443.825  
Hist.: MHD 5-1994, f. 8-22-94 & cert. ef. 9-1-94; Renumbered from 309-040-0290, OMAP 87-2004, f. 11-10-04, cert. ef. 12-1-04; Renumbered from 410-009-0160, DHSD 5-2007, f. 6-29-07, cert. ef. 7-1-07

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

**Adm. Order No.:** DHSD 6-2007

**Filed with Sec. of State:** 6-29-2007

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**Rules Renumbered:** 410-006-0011 to 407-014-0200, 410-006-0021 to 407-014-0205

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

**Rules Coordinator:** Jennifer Bittel—(503) 947-5250

## 407-014-0200

### Confidentiality and Inadmissibility of Mediation Communications

(1) The words and phrases used in this rule have the same meaning as given to them in ORS 36.110 and 36.234.

(2) Nothing in this rule affects any confidentiality created by other law. Nothing in this rule relieves a public body from complying with the Public Meetings Law, ORS 192.610 to 192.690. Whether or not they are confidential under this or other rules of the agency, mediation communications are exempt from disclosure under the Public Records Law to the extent provided in ORS 192.410 to 192.505.

(3) This rule applies only to mediations in which the agency is a party or is mediating a dispute as to which the agency has regulatory authority. This rule does not apply when the agency is acting as the "mediator" in a matter in which the agency also is a party as defined in ORS 36.234.

(4) To the extent mediation communications would otherwise be compromise negotiations under ORS 40.190 (OEC Rule 408), those mediation communications are not admissible as provided in ORS 40.190 (OEC Rule 408), notwithstanding any provisions to the contrary in section (9) of this rule.

(5) Mediations Excluded. Sections (6)-(10) of this rule do not apply to:

(a) Mediation of workplace interpersonal disputes involving the interpersonal relationships between this agency's employees, officials or employees and officials, unless a formal grievance under a labor contract, a tort claim notice or a lawsuit has been filed; or

(b) Mediation in which the person acting as the mediator will also act as the hearings officer in a contested case involving some or all of the same matters;

(c) Mediation in which the only parties are public bodies;

(d) Mediation involving two or more public bodies and a private party if the laws, rule or policies governing mediation confidentiality for at least one of the public bodies provide that mediation communications in the mediation are not confidential;

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(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; or

(c) The mediation communication includes information related to the health or safety of any child, then the mediation communication may be disclosed and may be admitted into evidence in a subsequent proceeding to the extent the disclosure is necessary to prevent or mitigate a threat or danger to the health or safety of any child.

(d) The mediation communication includes information relating to suffering by or commission of abuse upon certain persons and that information would otherwise be required to be reported by a public or private official under the provisions of ORS 124.060 (person 65 years of age or older), ORS 430.765 (1) and (2) (person who is mentally ill or developmentally disabled who is 18 years of age or older and receives services from a community program or facility) or 441.640 (person who is a resident in a long-term care facility), in which case that portion of the mediation communication may be disclosed as required by statute.

(7) Confidentiality and Inadmissibility of Mediation Communications. Except as provided in sections (8)-(9) of this rule, mediation communications are confidential and may not be disclosed to any other person, are not admissible in any subsequent administrative, judicial or arbitration proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent proceeding, or introduced as evidence by the parties or the mediator in any subsequent proceeding.

(8) Written Agreement. Section (7) of this rule does not apply to a mediation unless the parties to the mediation agree in writing, as provided in this section, that the mediation communications in the mediation will be confidential and/or nondiscoverable and inadmissible. If the mediator is the employee of and acting on behalf of a state agency, the mediator or an authorized agency representative must also sign the agreement. The parties' agreement to participate in a confidential mediation must be in substantially the following form. This form may be used separately or incorporated into an "agreement to mediate." [Form not included. See ED. NOTE.]

(9) Exceptions to confidentiality and inadmissibility.

(a) Any statements, memoranda, work products, documents and other materials, otherwise subject to discovery that were not prepared specifically for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding.

(b) Any mediation communications that are public records, as defined in ORS 192.410(4), and were not specifically prepared for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential or privileged under state or federal law.

(c) A mediation communication is not confidential and may be disclosed by any person receiving the communication to the extent that person reasonably believes that disclosing the communication is necessary to prevent the commission of a crime that is likely to result in death or bodily injury to any person. A mediation communication is not confidential and may be disclosed in a subsequent proceeding to the extent its disclosure may further the investigation or prosecution of a felony crime involving physical violence to a person.

(d) Any mediation communication related to the conduct of a licensed professional that is made to or in the presence of a person who, as a condition of his or her professional license, is obligated to report such communication by law or court rule is not confidential and may be disclosed to the extent necessary to make such a report.

(e) The parties to the mediation may agree in writing that all or part of the mediation communications are not confidential or that all or part of the mediation communications may be disclosed and may be introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential, privileged or otherwise prohibited from disclosure under state or federal law.

(f) A party to the mediation may disclose confidential mediation communications to a person if the party's communication with that person is privileged under ORS chapter 40 or other provision of law. A party to the

mediation may disclose confidential mediation communications to a person for the purpose of obtaining advice concerning the subject matter of the mediation, if all the parties agree.

(g) An employee of the agency may disclose confidential mediation communications to another agency employee so long as the disclosure is necessary to conduct authorized activities of the agency. An employee receiving a confidential mediation communication under 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 Agency Director, Division Administrator or designee 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

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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).

(q) The mediation communication may be disclosed and may be admitted into evidence in a subsequent proceeding to the extent the disclosure is necessary to prevent or mitigate a threat or danger to the health or safety of any child or person 65 years of age or older, person who is mentally ill or developmentally disabled and receives services from a community program or facility as defined in ORS 430.735 or person who is a resident of a long-term care facility.

(10) When a mediation is subject to section (7) of this rule, the agency will provide to all parties to the mediation and the mediator a copy of this rule or a citation to the rule and an explanation of where a copy of the rule may be obtained. Violation of this provision does not waive confidentiality or inadmissibility.

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

Stat. Authority: ORS 409.050

Stats. Implemented: ORS 36.224, 36.228, 36.230, 36.232 & 36.234

Hist.: OMAP 8-1999, f. & cert. ef. 3-1-99; Renumbered from 410-006-0011, DHS D 6-2007, f. 6-29-07, cert. ef. 7-1-07

## 407-014-0205

### 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; or

(c) The mediation communication includes information related to the health or safety of any child, then the mediation communication may be disclosed and may be admitted into evidence in a subsequent proceeding to the extent the disclosure is necessary to prevent or mitigate a threat or danger to the health or safety of any child.

(d) The mediation communication includes information relating to suffering by or commission of abuse upon certain persons and that information would otherwise be required to be reported by a public or private official under the provisions of ORS 124.060 (person 65 years of age or older), 430.765 (1) and (2) (person who is mentally ill or developmentally disabled who is 18 years of age or older and receives services from a community program or facility) or 441.640 (person who is a resident in a long-term care facility), in which case that portion of the mediation communication may be disclosed as required by statute.

(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 specifically for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding.

(b) Any mediation communications that are public records, as defined in ORS 192.410(4), and were not specifically prepared for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential or privileged under state or federal law.

(c) A mediation communication is not confidential and may be disclosed by any person receiving the communication to the extent that person reasonably believes that disclosing the communication is necessary to prevent the commission of a crime that is likely to result in death or bodily injury to any person. A mediation communication is not confidential and may be disclosed in a subsequent proceeding to the extent its disclosure may further the investigation or prosecution of a felony crime involving physical violence to a person.

(d) The parties to the mediation may agree in writing that all or part of the mediation communications are not confidential or that all or part of the mediation communications may be disclosed and may be introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential, privileged or otherwise prohibited from disclosure under state or federal law.

(e) A party to the mediation may disclose confidential mediation communications to a person if the party's communication with that person is privileged under ORS chapter 40 or other provision 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).

(k) The mediation communication may be disclosed and may be admitted into evidence in a subsequent proceeding to the extent the disclosure is necessary to prevent or mitigate a threat or danger to the health or safety of any child or person 65 years of age or older, person who is mentally ill or developmentally disabled and receives services from a community program or facility as defined in ORS 430.735 or person who is a resident of a long-term care facility.

# ADMINISTRATIVE RULES

(7) 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.

(8) 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 may be obtained. Violation of this provision does not waive confidentiality or inadmissibility.

Stat. Authority: ORS 409.050

Stats. Implemented: ORS 36.224, 36.228, 36.230, 36.232 & 36.234

Hist.: OMAP 8-1999, f. & cert. ef. 3-1-99; Renumbered from 410-006-0021, DHS 6-2007, f. 6-29-07, cert. ef. 7-1-07

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

**Rule Caption:** Changing OARs affecting Child Welfare programs.

**Adm. Order No.:** CWP 12-2007(Temp)

**Filed with Sec. of State:** 7-13-2007

**Certified to be Effective:** 7-13-07 thru 11-27-07

**Notice Publication Date:**

**Rules Amended:** 413-200-0270, 413-200-0272, 413-200-0274, 413-200-0278, 413-200-0281, 413-200-0287, 413-200-0292, 413-200-0296, 413-200-0306, 413-200-0314, 413-200-0335, 413-200-0354, 413-200-0358, 413-200-0371, 413-200-0379, 413-200-0383, 413-200-0390

**Rules Suspended:** 413-200-0272(T), 413-200-0306(T), 413-200-0335(T)

**Subject:** OAR 413-200-0270 is being amended to clarify the purpose of OAR 413-200-0270 to 413-200-0296 as these rules pertain to an adoptive applicant.

OAR 413-200-0272 is being amended to remove the definition of "firearm" which is no longer needed with the amendments to OAR 413-200-0335. This same change was made by a temporary rule on June 1, 2007 which is being suspended with the adoption of this new set of temporary rules.

OAR 413-200-0274 about responsibilities for certification is being amended to clarify authority to approve certification after a child abuse or neglect disposition, parameters of requesting child abuse background history checks, parameters of issuing a two-year certificate of approval, and clarify parameters of verification of Foundations training.

OAR 413-200-0278 about responsibilities for issuing a certificate of approval is being amended to clarify timeframes for certification assessment activities and how the rules pertain to an adoptive applicant.

OAR 413-200-0281 is being amended to clarify parameters of child abuse and neglect and criminal history background checks for alternate caregivers.

OAR 413-200-0287 about responsibilities regarding a two-year renewal of the Certificate of Approval is being amended to change the title of the rule to clarify its purpose. This rule is also being amended to clarify when a child abuse history background check is required.

OAR 413-200-0292 about responsibilities regarding recertification of a previously certified home is being amended to change the title of the rule to clarify its purpose. This rule is also being amended to clarify requirements for criminal history background checks for new household members and the assessment process for family whose certificate of approval has expired. This rule is also being amended to add an approval for exemption from the requirement for Foundations training.

OAR 413-200-0296 about the denial or revocation of a certificate of approval is being amended to clarify the Department requirement for written notice of intent to revoke.

OAR 413-200-0306 is being amended to remove the definition of "firearm" which is no longer needed with the amendments to OAR

413-200-0335. This same change was made by a temporary rule on June 1, 2007 which is being suspended with the adoption of this new set of temporary rules.

OAR 413-200-0314 about the process to apply for a certificate of approval is being amended to clarify requirements about references and the applicant's requirement for Department access to every member of the household.

OAR 413-200-0335 is being amended so that the storage and transportation of firearms in the presence of foster children is no longer regulated in this rule (this same change was made by a temporary rule on June 1, 2007 which is being suspended with the adoption of this new set of temporary rules), although this rule is now being amended to state that the use of firearms by a child or young adult continues to require Department authorization.

OAR 413-200-0354 is being amended to clarify the certified family responsibilities regarding a child's education.

OAR 413-200-0358 about requirements regarding a child or young adult's discipline is being amended to add a definition of "physical restraint".

OAR 413-200-0371 is being amended to clarify the permitted use of relief or respite care providers.

OAR 413-200-0379 about education and training for applicants and certified families is being amended to clarify parameters of verification of Foundations training.

OAR 413-200-0383 is being amended to clarify parameters of required notification for certified families.

OAR 413-200-0390 is being amended to clarify how recertification requirements apply to an adoptive applicant.

**Rules Coordinator:** Annette Tesch—(503) 945-6067

## 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 or foster parent, and the assessment of a pre-adoptive applicant;

(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; CWP 12-2007(Temp), f. & cert. ef. 7-13-07 thru 11-27-07

## 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.



# ADMINISTRATIVE 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) "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.

(13) "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.

(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) "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.

(17) "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.

(18) "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.

(19) "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.

(20) "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.

(21) "Revocation" means an administrative act by the Department that rescinds an existing Certificate of Approval.

(22) "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; CWP 11-2007(Temp), f. & cert. ef. 6-1-07 thru 11-27-07; CWP 12-2007(Temp), f. & cert. ef. 7-13-07 thru 11-27-07

## 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 conduct-

ing 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, Assistant 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:

(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. Two of the four required references may be provided by the applicant's relatives.

# ADMINISTRATIVE RULES

(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 who has lived within the United States in the last five years and request a child abuse history background check from any other country in which a member of the household has resided in the last five years.

(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 for each certified adult in the 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 approve the certified family for the two-year certification period and issue a Child-Specific Certificate of Approval with an effective date on the day which the activities in section (3) of this rule were completed and an end date two years from the effective date on the initial Child-Specific Certificate of Approval.

(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, Assistant 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 and within the United States 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) If the applicant or an adult member of the household has lived outside of the United States in the previous five years, a child abuse history

background check must be requested from each country where the individual lived within the past five years;

(C) Assess any safety concerns regarding the applicant or member of the household; and

(D) If appropriate, obtain approval from the District Manager, Assistant 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, only two of which may be provided by the applicant's relatives.

(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 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) Verify that the applicant has completed Orientation and Foundations of Relative Care, Foster Care, and Pre-Adoptive Care (Foundations) before or within 12 months after the date on which the Certificate of Approval was issued, 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 each 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; CWP 12-2007(Temp), f. & cert. ef. 7-13-07 thru 11-27-07

## 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 an application to become a foster parent or relative caregiver, unless the application is withdrawn or the assessment period is extended by the District Manager, Assistant District Manager, or designee. Approval and notice of adoptive homes is described in Child Welfare Policy I-G.1.3, "Adoption Applications", OAR 413-120-0230 and 413-120-0240.

(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 to provide relative or foster care.

# ADMINISTRATIVE RULES

- (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; CWP 12-2007(Temp), f. & cert. ef. 7-13-07 thru 11-27-07

## 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 and in 413-200-0274(6)(j)(A)-(D) 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 as described in OAR 413-200-0274(6)(j)(A)-(D) 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; CWP 12-2007(Temp), f. & cert. ef. 7-13-07 thru 11-27-07

## 413-200-0287

### Responsibilities Regarding Two-Year Renewal of the Certificate of Approval

(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 or country 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; CWP 12-2007(Temp), f. & cert. ef. 7-13-07 thru 11-27-07

## 413-200-0292

### Responsibilities Regarding Recertification of a Previously 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) Complete criminal records and child abuse history background checks on any new adult member living the household as described in OAR 413-200-0272(2)(i)-(j).

(c) Conduct a home visit to identify and assess any changes in the environment or family;

(d) Observe and assess the safety of the physical environment and complete a safety assessment of the home; and

(e) 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:

(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 413-200-0274;

(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 unless the

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supervisor waives the training requirement based on the family's documented knowledge and skills in caring for a child or young adult placed in the home by the Department.

(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; CWP 12-2007(Temp), f. & cert. ef. 7-13-07 thru 11-27-07

## 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.

(2) 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.

(3) 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.

(4) 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.

(5) The certifier must provide the certified family a written notice of intent to revoke, which must state each reason for the revocation.

(6) 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.

(7) 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; CWP 12-2007(Temp), f. & cert. ef. 7-13-07 thru 11-27-07

## 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) "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.

(13) "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.

(14) "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.

(15) "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.

(16) "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.

(17) "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.

(18) "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.

(19) "Revocation" means an administrative act by the Department that rescinds an existing Certificate of Approval.

(20) "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; CWP 11-2007(Temp), f. & cert. ef. 6-1-07 thru 11-27-07; CWP 12-2007(Temp), f. & cert. ef. 7-13-07 thru 11-27-07

## 413-200-0314

### Process to Apply for a Certificate of Approval

(1) To become a certified family, the applicant must:

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(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, two of whom may be relatives of the applicant, 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) Allow Department staff to have face-to-face contact with all members of the applicant's household;

(g) Provide social and family history information to the Department; and

(h) 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; CWP 12-2007(Temp), f. & cert. ef. 7-13-07 thru 11-27-07

## 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.

(d) 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.

(3) 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.

(4) 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.

(5) 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.

(6) Transportation requirements.

(a) A certified family must have available, and be willing to use, a safe and reliable method of transportation.

(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.

(7) 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

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(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; CWP 11-2007(Temp), f. & cert. ef. 6-1-07 thru 11-27-07; CWP 12-2007(Temp), f. & cert. ef. 7-13-07 thru 11-27-07

## 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.

(g) Work with the Department to regularly share information regarding the child or young adult's educational progress.

(2) The certified family may authorize special educational testing of any child or young adult when a certified parent is considered the surrogate parent or has been appointed by a judge as the education decision maker for the child or young adult. "Education decision maker" means a specific person appointed by a judge, if more than one person qualifies as a parent under OAR 581-015-2000(21)(a). The person will be the parent for special education purposes.

(3) The certified family may provide consent for a child or young adult placed in the home to participate in 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; CWP 12-2007(Temp), f. & cert. ef. 7-13-07 thru 11-27-07

## 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.

(l) 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 devel-

op 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 has 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 when a child, young adult, or others are at imminent risk of danger. Physical restraint must be a safety measure of last resort. "Physical restraint" means the act of restricting a child or young adult's voluntary movement as an emergency measure in order to manage and protect the child or young adult or others from injury when no alternate actions are sufficient to manage the child or young adult's behavior. "Physical restraint" does not include temporarily holding a child or young adult to assist him or her or assure his or her safety, such as preventing a child from running onto a busy street.

(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; CWP 12-2007(Temp), f. & cert. ef. 7-13-07 thru 11-27-07

## 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 in the certified family's care; 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.

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(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; CWP 12-2007(Temp), f. & cert. ef. 7-13-07 thru 11-27-07

## 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 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.

(3) Foundations training is required if an applicant previously certified by the Department has not been certified within the last two years unless the supervisor waives the training requirement based on the family's documented knowledge and skills in caring for a child or young adult placed in the home by the Department.

(4) The certified family and the Department certifier must develop a training plan for each person certified in the family to complete at least 30 hours of training during each two-year certification period.

(5) 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.

(6) 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; CWP 12-2007(Temp), f. & cert. ef. 7-13-07 thru 11-27-07

## 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 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; CWP 12-2007(Temp), f. & cert. ef. 7-13-07 thru 11-27-07

## 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 or relative caregiver.

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; CWP 12-2007(Temp), f. & cert. ef. 7-13-07 thru 11-27-07

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## Department of Human Services, Children, Adults and Families Division: Self-Sufficiency Programs Chapter 461

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

**Adm. Order No.:** SSP 6-2007(Temp)

**Filed with Sec. of State:** 6-29-2007

**Certified to be Effective:** 7-1-07 thru 9-30-07

**Notice Publication Date:**

**Rules Amended:** 461-155-0030

**Subject:** OAR 461-155-0030 is being amended to raise the Adjusted Income/Payment Standard for the MAA (Medical Assistance Assumed), MAF (Medical Assistance to Families), REF (Refugee Assistance), SAC (Medical Coverage for Children in Substitute or Adoptive Care), and TANF (Temporary Assistance to Needy Families) programs. The payment standard for these programs is being increased by 3.1 percent effective July 1, 2007. This standard is used as the adjusted income limit and to calculate cash benefits for need groups with an adult. A need group consists of the individuals whose basic and special needs are used in determining eligibility and benefit level.

**Rules Coordinator:** Annette Tesch—(503) 945-6067

## 461-155-0030

### Income and Payment Standards; MAA, MAF, REF, SAC, TANF

In the MAA, MAF, REF, SAC, and TANF programs, the income standards are as follows:

(1) The Countable Income Limit Standard is the amount set as the maximum countable income limit.

(a) For each need group (see OAR 461-110-0630) in the REF and TANF programs containing an adult and for all need groups in the MAA, MAF, and SAC programs, the following table is used: [Table not included. See ED. NOTE.]

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(b) In the REF and TANF programs, when the need group contains no adults, the “no-adult countable income limit standard” is calculated as follows:

(A) Refer to the Countable Income Limit Standard for need groups with adults. Use the standard for the number of individuals in the household group (see OAR 461-110-0210).

(B) Divide the standard in paragraph (A) of this subsection by the number of individuals in the household group. Round this figure down to the next lower whole number if the figure is not a whole number.

(C) Multiply the figure from paragraph (B) of this subsection by the number of individuals in the need group. The result is the standard.

(2) The Adjusted Income/Payment Standard is used as the adjusted income limit and to calculate cash benefits for need groups with an adult.

(a) For need groups containing an adult in the REF and TANF programs and for all need groups in the MAA, MAF and SAC programs, the following table is used: [Table not included. See ED. NOTE.]

(b) For the REF and TANF programs, when the need group contains no adult, the No-Adult Adjusted Income/Payment Standard is calculated as follows:

(A) Refer to the Adjusted Income/Payment Standard for need groups with adults. Use the standard for the number of individuals in the household group.

(B) Divide the standard in paragraph (A) of this subsection by the number of individuals in the household group. Round this figure down to the next lower whole number if the figure is not a whole number.

(C) Multiply the figure from paragraph (B) of this subsection by the number of individuals in the need group.

(D) Add \$12 to the figure calculated in paragraph (C) of this subsection.

[ED. NOTE: Tables referenced are available from the agency.]  
Stat. Auth.: ORS 411.060, 418.100  
Stats. Implemented: ORS 411.070 & 418.100  
Hist.: AFS 80-1989, f. & cert. ef. 2-1-90; 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 13-1991, f. & cert. ef. 7-1-91; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 32-1996(Temp), f. & cert. ef. 9-23-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; 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 6-2007(Temp), f. 6-29-07, cert. ef. 7-1-07 thru 9-30-07

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

**Adm. Order No.:** SSP 7-2007

**Filed with Sec. of State:** 6-29-2007

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

**Notice Publication Date:** 5-1-07

**Rules Amended:** 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, 461-145-0040, 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

**Rules Repealed:** 461-105-0160

**Subject:** 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 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 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 Medical (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



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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 461-145-0040 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 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 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

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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-waivered 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.

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 relat-

ed 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—(503) 945-6067

### 461-001-0015

#### Definitions; FS

The following definitions apply to the rules of the Food Stamp program in Chapter 461:

(1) A *disabled* individual or an individual with a disability means an individual who meets any of the following requirements:

- (a) Receives SSI benefits under title XVI of the Social Security Act.
- (b) Receives blindness or disability benefits under titles I, II, X, XIV, or XVI of the Social Security Act.
- (c) Receives OSIP or other state or federal supplement under section 1616(a) of the Social Security Act based on disability or blindness criteria under title XVI of the Social Security Act.
- (d) Receives state general assistance benefits based upon disability or blindness criteria under title XVI of the Social Security Act.
- (e) Receives interim assistance pending receipt of SSI or receives disability-related medical assistance under title XIX of the Social Security Act.
- (f) Receives a state or federally administered supplemental benefit under section 212(a) of Public Law 93-66.
- (g) Receives an annuity payment under Section 2(a)(1)(iv) of the Railroad Retirement Act of 1974 and is determined to be eligible for Medicare by the Railroad Retirement Board.
- (h) Receives an annuity payment under Section 2(a)(1)(v) of the Railroad Retirement Act of 1974 and meets the disability criteria used under title XVI of the Social Security Act.
- (i) Receives VA benefits for non-service or service-connected disability rated or paid as total under title 38 of the United States Code.
- (j) Receives disability retirement benefits from a governmental agency because of a disability considered permanent under section 221(i) of the Social Security Act.
- (k) Has a disability considered permanent under 221(i) of the Social Security Act section and is the surviving spouse or surviving child of a veteran and considered by the VA to be entitled to compensation for a service-connected death or pension benefits for a non-service connected death under title 38 of the United States Code.
  - (1) Is a veteran or surviving spouse of a veteran considered by the VA to be in need of Aid and Attendance benefits or permanently housebound under title 38 of the United States Code.
  - (m) Is a surviving child of a veteran and considered permanently incapable of self-support under title 38 of the United States Code.
- (2) *Elderly* means an individual 60 years of age or older.
- (3) *Group living* means a public or private nonprofit residential setting that serves no more than 16 residents and is certified by State of Oregon under regulations issued under section 1616(e) of the Social Security Act (42 U.S.C. 1382e(e)). To be eligible for food stamps, a resident of such a group living arrangement must be blind or have a disability.
- (4) An individual is *homeless* if the individual does not have a fixed or regular nighttime residence or has a primary residence that is one of the following:
  - (a) A supervised shelter that provides temporary accommodations.
  - (b) A halfway house or residence for individuals who may become institutionalized.
  - (c) A temporary accommodation in another individual's or family's residence for 90 days or less.

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(d) A place not designed to be or ordinarily used as a place for individuals to sleep, such as a hallway, bus station, or similar place.

(5) A *migrant farmworker* is an individual who regularly travels away from their permanent residence overnight, usually with a group of laborers, to seek employment in an agriculturally related activity. If any member of an FS household fits the definition of migrant farmworker at any time during the redetermination period, the household is budgeted according to the policy on migrant farmworkers.

(6) A *primary person* means:

(a) An adult in the filing group (see OAR 461-110-0370) who is designated by the group to serve as the primary person. Where there is no adult, the group can designate another responsible person in the filing group.

(b) Once the primary person has been designated, the filing group cannot choose a different individual to be the primary person during the same certification period (see OAR 461-001-0000) or during an OFSET or job quit disqualification period, unless there is a change in the composition of the household group (see OAR 461-110-0210).

(7) *Seasonal farmworkers* are individuals employed in agricultural employment of a seasonal or temporary nature. If any member of an FS household fits the definition of seasonal farmworker at any time during the redetermination period, the household is budgeted according to policy on seasonal farmworkers. Seasonal farmworkers are not required to be absent overnight from their permanent residence when:

(a) Employed on a farm or ranch performing field work related to planting, cultivation, or harvesting operations; or

(b) Employed in a canning, packing, ginning, seed conditioning, or related research or processing operation, and transported to or from the place of employment by means of a day-haul operation.

Stat. Auth.: ORS 411.816

Stats. Implemented: ORS 411.816

Hist.: SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07

## 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.

(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) In the TA-DVS program, when OAR 461-135-1235 provides a right to a hearing.

(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). In the TA-DVS program, a dispute about the contents of a TA-DVS case plan (see OAR 461-135-1205) is resolved through conciliation if there is no right to a hearing under OAR 461-135-1235.

(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, 411.117, 411.816, 414.042, 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; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07

## 461-025-0315

### Expedited Hearings

(1) A claimant has the right to an expedited hearing in each of the following situations:

(a) The Department denies or fails to issue a timely decision on claimant's request for:

(A) Emergency assistance; or

(B) TA-DVS (see OAR 461-135-1235).

(b) The claimant contests the form or amount of a TA-DVS or an emergency assistance payment.

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(c) The claimant has the right to a hearing over a reduction, suspension, or closure and disagrees with the Department's decision to deny the continuation of one or more of the following pending a requested hearing:

- (A) Cash benefits.
- (B) Food stamp benefits.
- (C) Medical benefits.

(D) Nursing Home, Title XIX Home and Community Based Care waived, Spousal Pay, or Independent Choices Program services that have been reduced or closed as a result of a service re-assessment conducted in accordance with OAR division 411-015.

(d) The claimant's request for expedited food stamp service or DFSP is denied, or the claimant is aggrieved by an action of the Department that affects the expedited participation of the household in the Food Stamp program.

(e) In the JOBS program, the Department denies an application for a support service payment or a payment for a basic living expense authorized by OAR 461-190-0211, or the Department reduces or closes a support service payment authorized by OAR 461-190-0211, or the Department does not issue a JOBS support service payment within the time frames required under OAR 461-115-0190.

(2) Public Assistance programs: An expedited hearing is a telephone hearing held within five working days of the Department's receipt of the written hearing request, unless the claimant requests more time. The claimant is entitled to reasonable notice of the hearing either through personal service or by certified mail. In the TANF program, if the claimant requests a face-to-face hearing, the hearing may be postponed or continued as necessary to accommodate the claimant. However, the hearing must be held not later than 21 days following the receipt by the Department of the request for hearing if the claimant lives within 100 miles of Salem, Oregon, and not later than 35 days in all other cases. The final order must be issued within three working days from the date the hearing closes.

(3) Food Stamp program: An expedited hearing is a telephone hearing held within five working days of the receipt of a verbal or written hearing request, unless the claimant requests more time. The claimant is entitled to reasonable notice of the hearing either through personal service or by certified mail. Following the expedited hearing, a final order must be issued not later than the ninth working day after the hearing was requested.

Stat. Auth.: ORS 411.060, 411.095, 411.816, 418.100  
Stats. Implemented: ORS 411.060, 411.095, 411.099, 411.816, 418.100  
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 21-1990(Temp), f. 8-28-90, cert. ef. 9-1-90; AFS 2-1991, f. 1-15-91, cert. ef. 2-1-91; AFS 4-1995, f. & ef. 2-1-95; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; 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 7-2007, f. 6-29-07, cert. ef. 7-1-07

## 461-025-0350

### Withdrawals of Hearing Requests

(1) Submitting the withdrawal.

(a) In the DFSP program, the withdrawal of a hearing request must be in writing.

(b) In all programs other than the DFSP program, a claimant may withdraw a hearing request orally or in writing at any time.

(2) The withdrawal of a hearing request is effective on the date it is received by the Department or the Office of Administrative Hearings.

(3) The Department or the Office of Administrative Hearings will send a Final Order confirming the withdrawal of a hearing request to the claimant's last known address. The claimant may cancel the withdrawal up to the tenth work day following the date such an order is served.

Stat. Auth.: ORS 411.060 & 411.816  
Stats. Implemented: ORS 411.060 & 411.816  
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 4-1995, f. & ef. 2-1-95; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 9-2001, f. & cert. ef. 6-1-01; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07

## 461-101-0010

### Program Acronyms and Overview

(1) Acronyms are used when referring to each program (except Assessment and Repatriate). There is an acronym for each umbrella program (for instance, ERDC) and acronyms for each subprogram (for instance, ERDC-SBG).

(2) When no program acronym appears in a rule in chapter 461 of these rules, the rule with no program acronym applies to all programs listed in this rule. If a rule does not apply to all programs, the rule uses program acronyms to identify the programs to which the rule applies.

(3) Wherever an umbrella acronym appears, that means the rule covers all the subprograms under that code (for instance, OSIP means OSIP-AB, OSIP-AD, and OSIP-OAA).

(4) ADC; Aid to Dependent Children. Financial aid to low-income families when children are deprived of parental support because of continued absence, death, incapacity, or unemployment. When used alone, ADC refers to all ADC programs. Use of the acronym, ADC, which stands for Aid to Dependent Children, and use of the phrase, Aid to Dependent Children, refer to the state's Temporary Assistance for Needy Families Program, and its acronym, TANF. The following codes are used for ADC subprograms:

(a) ADC-BAS; Aid to Dependent Children — Basic (includes eligibility based on continued absence, death, incapacity, or unemployment). ADC with deprivation based on unemployment is also denoted by ADC-BAS/UN.

(b) EA; Aid to Dependent Children — Emergency Assistance. Emergency cash to families without the resources to meet emergent needs.

(5) ADCM; Aid to Dependent Children Medical. Medical aid to low-income families when children are deprived of parental support, as for ADC. Use of the acronym ADCM, which stands for Aid to Dependent Children Medical, and use of the phrase Aid to Dependent Children Medical refer to EXT, MAA, MAF, and SAC programs. When used alone, ADCM refers to all ADC-related medical programs. The following codes are used for ADCM subprograms:

(a) ADCM-BAS; Aid to Dependent Children Medical - Basic.

(b) ADCM-EXT; Aid to Dependent Children Medical - Extended. ADCM-EXT provides extended medical benefits to families after their ADC benefits end.

(c) ADCM-SAC; Aid to Dependent Children Medical - Substitute or Adoptive Care. ADCM-SAC gives medical coverage to children in substitute or adoptive care.

(6) The Assessment Program is an up-front assessment and resource-search program for TANF applicant families. The intent of the program is to convey the message that TANF is primarily a self-sufficiency development program and to help individuals find employment or other alternatives before they become dependent on public assistance.

(7) BCCM; Breast and Cervical Cancer Medical program.

(8) CAWEM; Citizen/Alien-Waived Emergent Medical. Medicaid coverage of emergent medical needs for clients who are not eligible for other medical programs solely because they do not meet citizenship and alien status requirements.

(9) DFSP; Disaster Food Stamp Program. Following a presidential declaration of a major disaster in Oregon, DFSP provides emergency food stamps to victims. OAR 461-135-0491 to 461-135-0497 cover DFSP eligibility and benefits.

(10) ERDC; Employment or Education-Related Day Care. Helps low-income families pay the cost of child care. When used alone, ERDC refers to all ERDC programs. The following codes are used for ERDC subprograms:

(a) ERDC-BAS; ERDC — Basic. Child care for working families.

(b) ERDC-SBG; ERDC — Student Block Grant. Child care for students.

(11) EXT; Extended Medical Assistance. The Extended Medical Assistance program provides medical assistance for a period of time after a family loses its eligibility for the Assessment Program, MAA, or MAF due to an increase in their child support or earned income.

(12) FS; Food Stamps. Helps low-income households maintain proper nutrition by giving them the means to purchase food.

(13) GA; General Assistance. Cash assistance to low-income individuals with disabilities who do not have dependent children.

(14) GAM; General Assistance Medical. Medical assistance to clients who are eligible for the GA program but have not been found eligible for OSIPM benefits.

(15) HSP; Housing Stabilization Program. A program that helps low-income families obtain stable housing. The program is operated through the Housing and Community Services Department through community-based, service-provider agencies. The Department's rules for the program (OAR 461-135-1305 to 461-135-1335) were repealed July 1, 2001.

(16) JOBS; Job Opportunity and Basic Skills. An employment program for REF, REFM, and TANF clients. JOBS helps these clients attain self-sufficiency through training and employment. The program is part of Welfare Reform.

(17) JOBS Plus. Provides subsidized jobs rather than FS or TANF benefits. For TANF clients, JOBS Plus is a component of the JOBS Program; for FS clients and noncustodial parents of children receiving TANF, it is a separate employment program. Eligibility for TANF clients, FS clients, and noncustodial parents of children receiving TANF is determined by the Department. Eligibility for UI recipients is determined by the

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Oregon State Employment Department. When used alone, JOBS Plus includes only clients whose JOBS Plus program participation is through the Department of Human Services. JOBS Plus administered through the Oregon State Employment Department is known in chapter 461 of the Oregon Administrative Rules as Oregon Employment Department UI JOBS Plus. The following acronyms are used for specific categories:

(a) ADC-PLS; Clients eligible for JOBS Plus based on TANF.

(b) FS-PLS; Clients eligible for JOBS Plus based on FS.

(c) NCP-PLS; Noncustodial parents of children receiving TANF.

(18) LIS; Low-Income Subsidy. The Low-Income Subsidy program is a federal assistance program for Medicare clients who are eligible for extra help meeting their Medicare Part D prescription drug costs.

(19) MAA; Medical Assistance Assumed. The Medical Assistance Assumed program provides medical assistance to people who are eligible for the Assessment Program or ongoing TANF benefits.

(20) MAF; Medical Assistance to Families. The Medical Assistance to Families program provides medical assistance to people who are ineligible for MAA but are eligible for Medicaid using ADC program standards and methodologies that were in effect as of July 16, 1996.

(21) OFSET. The Oregon Food Stamp Employment Transition Program, which helps FS recipients find employment. This program is mandatory for some FS recipients.

(22) OHP; Oregon Health Plan. The Oregon Health Plan Program provides medical assistance to many low-income individuals and families. The program includes five categories of people who may qualify for benefits. The acronyms for these categories are:

(a) OHP-OPU; Adults. OHP coverage for adults who qualify under the 100 percent income standard. A person eligible under OHP-OPU is referred to as a health plan new/noncategorical (HPN) client.

(b) OHP-OPC; Children. OHP coverage for children who qualify under the 100 percent income standard.

(c) OHP-OP6; Children Under 6. OHP coverage for children under age 6 who qualify under the 133 percent income standard.

(d) OHP-OPP; Pregnant Females and their newborn children. OHP coverage for pregnant females who qualify under the 185 percent income standard and their newborn children.

(e) OHP-CHP; Persons Under 19. OHP coverage for persons under age 19 who qualify under the 185 percent income standard for medical assistance authorized by the Children's Health Insurance Program (CHIP) provision of the 1997 Balanced Budget Act.

(23) OSIP; Oregon Supplemental Income Program. Cash supplements and special need payments to persons who are blind, disabled, or 65 years of age or older. When used alone, OSIP refers to all OSIP programs. The following acronyms are used for OSIP subprograms:

(a) OSIP-AB; Oregon Supplemental Income Program — Aid to the Blind.

(b) OSIP-AD; Oregon Supplemental Income Program — Aid to the Disabled.

(c) OSIP-EPD; Oregon Supplemental Income Program — Employed Persons with Disabilities program. This program provides Medicaid coverage for employed persons with disabilities with adjusted income less than 250 percent of the Federal Poverty Level.

(d) OSIP-OAA; Oregon Supplemental Income Program — Old Age Assistance.

(24) OSIPM; Oregon Supplemental Income Program Medical. Medical coverage for elderly and disabled individuals. When used alone, OSIPM refers to all OSIP-related medical programs. The following codes are used for OSIPM subprograms:

(a) OSIPM-AB; Oregon Supplemental Income Program Medical — Aid to the Blind.

(b) OSIPM-AD; Oregon Supplemental Income Program Medical — Aid to the Disabled.

(c) OSIPM-EPD; Oregon Supplemental Income Program Medical — Employed Persons with Disabilities program. This program provides Medicaid coverage for employed persons with disabilities with adjusted income less than 250 percent of the Federal Poverty Level.

(d) OSIPM-OAA; Oregon Supplemental Income Program Medical — Old Age Assistance.

(e) OSIPM-IC; Oregon Supplemental Income Program Medical — Independent Choices

(25) QMB; Qualified Medicare Beneficiaries. Additional medical coverage for Medicare recipients. When used alone, QMB refers to all QMB programs. The following codes are used for QMB subprograms:

(a) QMB-BAS; Qualified Medicare Beneficiaries — Basic. The basic QMB program.

(b) QMB-DW; Qualified Medicare Beneficiaries — Disabled Worker. Payment of the Medicare Part A premium for people under age 65 who have lost eligibility for Social Security disability benefits because they have become substantially gainfully employed.

(c) QMB-SMB; Qualified Medicare Beneficiaries — Special Medicare Beneficiary. Payment of all or a portion of the Medicare Part B premium only. There are no medical benefits available through QMB-SMB.

(26) REF; Refugee Assistance. Cash assistance to low-income refugee singles or married couples without children.

(27) REFM or REFM-BAS; Refugee Assistance Medical — Basic. Medical coverage for low-income refugees.

(28) The Repatriate Program helps Americans resettle in the United States if they have left a foreign land because of an emergency situation.

(29) SAC; Medical Coverage for Children in Substitute or Adoptive Care.

(30) Senior Prescription Drug Assistance Program; provides that people 65 years of age or older can purchase prescription drugs at the Medicaid price.

(31) SFDNP; Senior Farm Direct Nutrition Program. Food vouchers for low income seniors. Funded by a grant from the United States Department of Agriculture.

(32) TA-DVS; Temporary Assistance for Domestic Violence Survivors. Addresses the needs of clients threatened by domestic violence.

(33) TANF; Temporary Assistance for Needy Families. Cash assistance for families when children in those families are deprived of parental support because of continued absence, death, incapacity, or unemployment. Cash assistance used to be known as ADC.

Stat. Auth.: ORS 411.060, 411.816 & 414.342, 418.100

Stats. Implemented: ORS 411.060, 411.816 & 414.342, 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 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 35-1992, f. 12-31-92, cert. ef. 1-1-93; AFS 16-1993, f. & cert. ef. 9-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 17-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 4-1998, f. 2-25-98, cert. ef. 3-1-98; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 25-1998, f. 12-18-98, cert. ef. 1-1-99; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 11-2001, f. 6-29-01, cert. ef. 7-1-01; AFS 17-2001(Temp), f. 8-31-01, cert. ef. 9-1-01 thru 9-30-01; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 8-2006, f. & cert. ef. 6-1-06; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07

## 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 the client's 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.

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- (d) The Department has obliged itself not to disclose the information.
- (e) The Department is not using the withheld information in a contested case hearing in which the client is a party.
- (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 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 individual examining the case record a copy of any portion of the case record that the individual is 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; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07

## 461-105-0150

### Requests and Fees 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, 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 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; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07

## 461-105-0410

### Client Requirement to Cooperate in Quality Control Review; ERDC, FS, REF, REFM, and TANF

(1) In the ERDC, FS, REF, REFM, and TANF programs, clients are required to cooperate in the Department's quality control review process.

(2) In the ERDC, REF, REFM, and TANF programs, a client who refuses to cooperate is ineligible for the program in which the review takes place until the client cooperates.

(3) In the Food Stamp program, if a client refuses to cooperate, the client's *filing group* (see OAR 461-110-0370) is ineligible for the program. The client may choose to cooperate at any time. If the food stamp benefits have not already closed, the filing group does not need to reapply. The *filing group*, upon filing a new application, may again be found eligible only in accordance with federal Food Stamp regulations in 7 CFR 273.2(d)(2).

Stat. Auth.: ORS 411.060, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.816, 414.042, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 24-2001, f. & cert. ef. 11-1-01; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07

## 461-110-0210

### Household Group

(1) The household group consists of the individuals who live together with or without benefit of a dwelling. For homeless people, the household group consists of the individuals who consider themselves living together.

(2) A separate household group is established for all the individuals who live in a dwelling. A separate dwelling is not recognized for the purpose of determining the members of a household group unless the living space has — separate from other dwellings — an access to the outside that

does not pass through another dwelling, a sleeping area, a bathroom, and a kitchen facility.

(3) For all programs except the FS program, a separate household group is established for individuals who live in the same dwelling as another household group, if all the following are true:

(a) There is a landlord-tenant relationship between the two groups in which the tenant is billed by the landlord at *fair market value* (see OAR 461-001-0000) for housing.

(b) The tenant lives independently from the landlord.

(c) The tenant:

(A) Has and uses sleeping, bathroom, and kitchen facilities separate from the landlord; or

(B) Shares bathroom or kitchen facilities with the landlord, but the facilities are in a commercial establishment that provides room or board or both for compensation at fair market value.

(4) Individuals who live with more than one household group during a calendar month are members of the household group in which they spend more than half of their time, except as follows:

(a) In the ERDC program, if a *child* (see OAR 461-001-0000) lives with different caretakers during the month, the child is considered a member of both household groups.

(b) In the FS program:

(A) The individual is a member of the household group that provides the individual more than half of his or her 21 weekly meals. If the individual is a child, the child is a member of the household group credited with providing the child more than half of his or her 21 weekly meals. A household group is credited with providing breakfast and lunch for each day the child departs that group's home for school, even if the child eats no breakfast or lunch at that home.

(B) During the month in which a resident of a domestic violence shelter (see OAR 461-001-0000) enters the shelter, the resident may be included both in the household he or she left and in a household group in the shelter.

(c) In the TANF program:

(A) If a parent (see OAR 461-001-0000) sleeps at least 30 percent of the time during the calendar month in the home of the dependent child (see OAR 461-001-0000), the parent is in the same household group as the *dependent child*.

(B) A *dependent child* is included in the group with the caretaker relative (see OAR 461-001-0000), who usually has the major responsibility for care and control of the dependent child, if the dependent child lives with two household groups in the same calendar month for at least one of the following reasons:

(i) Education.

(ii) The *usual caretaker* relative is gone from the household for part of the month because of illness.

(iii) A family emergency.

(5) In the OSIPM program, individuals receiving waived care or nursing facility care are each an individual household group.

(6) In the QMB program, the household group consists of the client and the client's spouse (see OAR 461-001-0000), even if the spouse does not meet all nonfinancial eligibility requirements.

(7) The individuals in the household group who apply for benefits are called applicants. The household group and applicants form the basis for determining who is in the remaining eligibility groups.

(8) Individuals absent from the household for 30 days or more are no longer part of the household, except for the following:

(a) In all programs except the FS program, individuals in a general hospital for 30 days or more remain in the household group unless they go into long-term care. In the FS program, these individuals are no longer in the household group.

(b) In the ERDC, EXT, MAA, MAF, OHP, SAC and TANF programs:

(A) A *caretaker relative* who is absent for up to 90 days while in a residential alcohol or drug treatment facility is in the household group.

(B) A child who is absent for 30 days or more is in the household group if the child is:

(i) Absent for illness (unless the child is in a long-term care Title XIX facility), social service, or educational reasons;

(ii) In foster care, but expected to return to the household within the next 30 days; or

(iii) For OHP only, in a residential alcohol or drug treatment facility.

If the household of the child is ineligible because of income, the child is a separate household.

# ADMINISTRATIVE RULES

(c) In the ERDC and OHP programs, an individual who is absent because of education, training, or employment, including long-haul truck driving, fishing, and active duty in the U.S. armed forces.

(d) In the MAA, MAF, and TANF programs, a parent who is absent for 30 days or more is in the household group if:

(A) The *parent* is absent because of education, training or employment — including absence while working or looking for work outside the area of their residence, such as long-haul truck driving, fishing and active duty in the U.S. armed forces; and

(B) The other parent remains in the home.

(9) In the OSIP-EPD and OSIPM-EPD programs, the household group consists only of the individual applying for or receiving benefits.

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 2-1994, f. & cert. ef. 2-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 4-1998, f. 2-25-98, cert. ef. 3-1-98; 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 5-1999(Temp), f. & cert. ef. 4-1-99 thru 6-30-99; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 19-2001, f. 8-31-01, cert. ef. 9-1-01; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07

## 461-110-0370

### Filing Group; FS

In the Food Stamp program:

(1) Except as provided in this rule, the filing group is composed of members of a household group (see OAR 461-110-0210) who customarily purchase and prepare meals together.

(2) Except as provided in sections (3), (6), and (7) and subsection (5)(b) of this rule, the following individuals, if they are in the same *household group*, must be in the same filing group, even if they do not customarily purchase and prepare meals together:

(a) Each spouse (see OAR 461-001-0000).

(b) A *parent* (see OAR 461-001-0000) and his or her child under age 22 who is living with them.

(c) A *household group* member and child under age 18 who lives with and is under parental control of that household group member. For the purposes of this subsection, *parental control* means the adult is responsible for the care, control, and supervision of the child or the child is financially dependent on the adult.

(3) Notwithstanding sections (1) and (2) of this rule, an individual is excluded from the filing group if, during the month the group applied for food stamps, the individual received food-stamp benefits or SSI benefits through the state of California that included food-stamp benefits. This exclusion applies only in the initial month and, if necessary to meet notice requirements, in the month following the initial month. This exclusion does not apply to an individual who was the head of household in the prior household.

(4) The following individuals may form a separate filing group if they purchase and prepare food with other members of the household group, unless they are required by section (2) of this rule to be in the same filing group:

(a) A paid live-in attendant and the attendant's minor children may choose not to be in the filing group with the individuals for whom they are providing services.

(b) An elderly individual (see OAR 461-001-0015) may be considered a separate filing group from the others with whom the elderly individual purchases and prepares meals, if:

(A) The *elderly* individual is unable to purchase and prepare food because of a permanent and severe disabling condition; and

(B) The combined income of the other members of the household group does not exceed the following limit: [Table not included. See ED. NOTE.]

(5) The following individuals who are paying to have meals provided are not eligible to participate in the Food Stamp program independently of the care or service provider. However, they may be included in the care or service provider's filing group if the provider chooses to apply for benefits for them.

(a) An individual in foster care along with his or her spouse and each child under age 22 living with them.

(b) A member of the household group who pays the filing group a reasonable amount for room and board (lodger). A reasonable amount is:

(A) An amount that equals or exceeds the Thrifty Food Plan for the person and anyone in that person's filing group (see OAR 461-155-0190(2)), if more than two meals a day are provided; or

(B) An amount that equals or exceeds two-thirds of the Thrifty Food Plan for the person and anyone in that person's filing group, if two or fewer meals a day are provided.

(6) Notwithstanding section (2) of this rule, the following household group members may form a separate filing group from other members of the household group:

(a) A resident of an alcohol or drug treatment and rehabilitation program certified by the Department for which an employee of the facility is the authorized representative (see OAR 461-135-0550).

(b) A resident in *group living* (see OAR 461-001-0015).

(c) A resident of a homeless or domestic violence shelter (see OAR 461-135-0510).

(d) A member of the household group who is not paying the filing group a reasonable amount for room and board (lodger), as defined in subsection (5)(b) of this rule.

(7) The following household group members are excluded from the filing group:

(a) A resident of a commercial boarding house.

(b) An ineligible student, as defined in OAR 461-135-0570.

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

Stat. Auth.: ORS 411.816

Stats. Implemented: ORS 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 9-1991, f. 3-29-91, cert. ef. 4-1-91; AFS 20-1991, f. & cert. ef. 10-1-91; AFS 28-1991, 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 6-1994, f. & cert. ef. 4-1-94; AFS 19-1994, f. & cert. ef. 9-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 32-1996(Temp), f. & cert. ef. 9-23-96; AFS 34-1996, f. 9-26-96, cert. ef. 10-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 15-1998(Temp), f. 9-15-98, cert. ef. 10-1-98 thru 10-31-98; AFS 22-1998, f. 10-30-98, cert. ef. 11-1-98; AFS 11-1999, f. & cert. ef. 10-1-99; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 12-2001, f. 6-29-01, cert. ef. 7-1-01; AFS 22-2001, f. & cert. ef. 10-1-01; 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 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 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 7-2007, f. 6-29-07, cert. ef. 7-1-07

## 461-110-0530

### Financial Group

(1) Except as provided in section (4) of this rule, a financial group refers to the filing group members whose income and resources count in determining eligibility and benefits.

(2) In the EXT, MAA, MAF, REF, REFM, SAC, and TANF programs, the financial group consists of each individual in the filing group, except the following:

(a) A caretaker relative (see OAR 461-001-0000) other than a parent who chooses not to be included in the need group (see OAR 461-110-0630); and

(b) Individuals who receive SSI benefits.

(3) In the OHP program, the financial group consists of each individual in the filing group (including those receiving SSI benefits), except a caretaker relative (other than a parent) who chooses not to be included in the need group.

(4) In the OSIP and OSIPM programs:

(a) When individuals live in a standard living arrangement (see OAR 461-001-0000), all members of the filing group are in the financial group.

(b) When individuals live in a nonstandard living arrangement (see OAR 461-001-0000), the financial group consists only of the individual applying for benefits, except that the community spouse (see OAR 461-001-0030) is included in the financial group to determine initial eligibility. At initial eligibility, the resources of the community spouse are considered and the provisions of OAR 461-160-0580 apply. The income of the community spouse is not considered in determining initial eligibility.

(5) For all programs other than EXT, MAA, MAF, OHP, OSIP, OSIPM, REF, REFM, SAC, and TANF, the financial group consists of all the individuals in the filing group.

Stat. Auth.: ORS 411.060, 411.816, 414.042, 418.100

Stats. Implemented: ORS 411.060, 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; AFS 13-1991, f. & cert. ef. 7-1-91; 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 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 24-1997, f. 12-31-97, cert. ef. 1-1-98; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07

## 461-115-0050

### When an Application Must Be Filed

A client must file an application, or may amend an application already complete, as a prerequisite to receiving benefits as follows:

(1) A client may apply for the TA-DVS program as provided in OAR 461-135-1220.

(2) In all programs other than the TA-DVS program:

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(a) Except as provided in sections (3), (4), (5), and (6) of this rule, a client wishing to apply for program benefits must submit a complete application on a form approved by the Department.

(b) An application is complete if all of the following requirements are met:

(A) All information necessary to determine the individual's eligibility and benefit amount is provided on the application for all individuals in the filing group.

(B) The applicant, even if homeless, provides a mailing address.

(C) The application is signed. An individual required but unable to sign the application may sign with a mark, witnessed by another individual.

(D) The application is received by the Department.

(3) A new application is not required in the following situations:

(a) In the Food Stamp program, when a single application can be used both to determine a client is ineligible in the month of application and to determine the client is eligible the next month. This can be done when:

(A) Anticipated changes make the filing group eligible the second month; or

(B) The filing group provides verification between 30 and 60 days following the filing date (see OAR 461-115-0040), in accordance with OAR 461-180-0080.

(b) In all programs except the Food Stamp program, when a single application can be used both to determine a client is ineligible on the date of request (see OAR 461-115-0030) and to determine the client is eligible when anticipated changes make the filing group eligible within 45 days from the date of request.

(c) When the case is closed and reopened during the same calendar month.

(d) When benefits were suspended for one month because of the level of income, and the case is reopened the month following the month of suspension.

(e) When reinstating medical benefits for a pregnant woman covered by OAR 461-135-0950.

(4) A new application is required to add a newborn child to a benefit group (see OAR 461-110-0750) according to the following requirements:

(a) For the REF and TANF programs:

(A) A new application is not required if the child is listed on the application as "unborn" and there is sufficient information about the child to establish its eligibility.

(B) A new application is required if the child is not included on the application as "unborn."

(b) In the EXT, MAA, MAF, OHP, and REFM programs, no additional application is required to add the child to the benefit group of the child's mother. The child may be added to a benefit group other than the benefit group of the child's mother if eligibility can be determined without submission of a new application.

(c) In the ERDC and FS programs, an application is not required to add the child to the benefit group.

(d) In all programs other than ERDC, EXT, FS, MAA, MAF, OHP, REF, REFM, and TANF, an application is required.

(5) A new application is required to add an individual to a benefit group, other than a newborn child, according to the following requirements:

(a) In the ERDC and FS programs, a new application is not required.

(b) In the EXT, MAA, MAF, OHP, REFM, SAC, and TANF programs, an individual may be added by amending a current application if the information is sufficient to determine eligibility; otherwise a new application is required.

(c) In all programs other than ERDC, EXT, FS, MAA, MAF, OHP, REFM, SAC, and TANF, a new application is required.

(6) Clients whose TANF grant is closing may request ERDC orally or in writing.

(7) For all programs except the EXT, FS, MAA, MAF, and OHP programs, clients may change between programs administered by the Department using the current application if the following conditions are met:

(a) The client makes a verbal or written request for the change.

(b) The Department has sufficient evidence to determine eligibility and benefit level for the new program without a new application.

(c) The program change can be effected while the client is eligible for the first program.

(8) A new application is not required in the EXT, MAA, MAF, and OHP programs to redetermine eligibility for the same program or to change between these programs if the following conditions are met:

(a) The client is currently receiving benefits from one of these programs; and

(b) The Department has sufficient evidence to redetermine eligibility for the same program or determine eligibility for the new program without a new application or by amending the current application.

Stat. Auth.: ORS 409.050, 411.060 & 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.117, 411.816, 414.042, 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 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 3-1991(Temp), f. & cert. ef. 1-17-91; 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 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 27-1996, f. 6-27-1996, cert. ef. 7-1-96; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; AFS 4-1998, f. 2-25-98, cert. ef. 3-1-98; AFS 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 17-1998, f. & cert. ef. 10-1-98; AFS 2-1999, f. 3-26-99, cert. ef. 4-1-99; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 19-2001, f. 8-31-01, cert. ef. 9-1-01; AFS 21-2001(Temp), f. & cert. ef. 10-1-01 thru 12-31-01; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07

## 461-115-0090

### Authorized Representatives; General

(1) The head of household, spouse (see OAR 461-001-0000), or any other responsible member of the household may designate an authorized representative to act on behalf of the household in making application for the program, in reporting changes, in obtaining benefits, or in using benefits. A person must provide adequate documentary evidence to the Department in order to serve as an authorized representative of a client.

(2) In all programs except the Food Stamp program, if an authorized representative is needed but has not been designated by the client, the Department will appoint one.

(3) In the Food Stamp program, the selection of authorized representatives and their authority are limited by federal regulations in 7 CFR 273.2(n).

(4) A client who resides in a drug addiction or alcoholic treatment center identified in OAR 461-135-0550(2) may apply for food stamps only through an authorized representative. The authorized representative must be an employee of and designated by the center.

(5) A client with a disability (see OAR 461-001-0015) who participates in the Food Stamp program while residing in a group living facility (see OAR 461-001-0015) may participate through an authorized representative or on his or her own behalf, at the option of the group living facility (see OAR 461-135-0510(2)(e)).

(6) In the TANF program, a person not related to the dependent child may serve as authorized representative or alternate payee for not more than 60 days.

Stat. Auth.: ORS 411.060, 411.816 & 418.100

Stats. Implemented: ORS 411.060, 411.816, 414.042, 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 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; AFS 9-2001, f. & cert. ef. 6-1-01; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07

## 461-115-0140

### Authorized Representative or Alternate Payee; FS

(1) In the FS program, none of the following may serve as authorized representative or alternate payee:

(a) A person disqualified for fraud (unless he or she is the only adult member of the case).

(b) A landlord or a vendor of goods or items who deals directly with the client, including a retailer authorized to accept FS benefits.

(c) Unless authorized by the Department's Food Stamp Program Administrator or designee, an employee of the Department or an employee of a contractor involved in the certification and issuance processes for food stamp benefits.

(d) A provider of meals for the homeless.

(2) An authorized representative or alternate payee who knowingly misrepresents the circumstances of the filing group (see OAR 461-110-0370) or misuses FS benefits is subject to penalty as follows:

(a) In group living (see OAR 461-001-0015) situations or treatment programs for drug addiction or alcohol abuse, the facility may be prosecuted under applicable federal or state law.

(b) For other authorized representatives and alternate payees not covered by subsection (a) of this section, the Department may prohibit the person from serving as a representative or payee for one year.

(3) Except as provided by this rule or by OAR 461-115-0090, a client may select his or her authorized representative or alternate payee.

Stat. Auth.: ORS 411.816

Stats. Implemented: ORS 411.816

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 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; AFS 9-



# ADMINISTRATIVE RULES

2001, f. & cert. ef. 6-1-01; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07

## 461-115-0145

### Responsibilities of a Center or Facility Acting as Authorized Representative; FS

In the Food Stamp program:

(1) Each state-certified drug or alcohol treatment center acting as an authorized representative (see OAR 461-115-0090 and 461-135-0550) and each group living (see OAR 461-001-0015) facility must provide the branch office monthly with a list of residents receiving food stamp benefits. The list must include a statement of validity signed by an official of the facility.

(2) Each center and facility covered by section (1) of this rule is responsible for notifying the branch office of changes in the resident's assets or other circumstances in accordance with the reporting system assigned to the case (see OAR 461-170-0020).

(3) When a resident moves out of a center or facility covered by section (1) of this rule, the center or facility must immediately comply with all of the following requirements:

(a) Inform the branch office that the individual has moved out.

(b) Stop acting as the individual's authorized representative.

(c) Inform the individual of the individual's receipt of food stamp benefits and the individual's need to report the new situation within 10 days to the local Department office.

(d) Stop using any benefits in the EBT account and refer the client to the local office for a new EBT card.

(e) If the resident moves prior to the 16th day of the month, ensure that the correct amount, not less than one-half of that month's allotment, is in the resident's EBT account.

(f) If the resident leaves on or after the 16th day of the month, the individual is entitled to any benefits posted to the EBT account at the time the individual leaves the center or facility.

(4) The center or facility is liable for all overpayments that occurred while the individual was a resident and the center or facility was acting as authorized representative (see OAR 461-195-0541).

(5) A center or facility authorized by the Food and Nutrition Service as a retail food store may be penalized or disqualified if it is determined the facility misappropriated or used benefits for a purchase that does not contribute to a meal of a certified filing group (see OAR 461-110-0370).

Stat. Auth.: ORS 411.816

Stats. Implemented: ORS 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 9-2001, f. & cert. ef. 6-1-01; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07

## 461-115-0190

### Application Processing Time Frames; Not Assessment or FS

(1) In all programs except Assessment, EA, FS, and TA-DVS and medical assistance programs based on disability, the Department determines eligibility and sends a decision notice (see OAR 461-001-0000) not later than the 45th day after the date of request (see OAR 461-115-0030). The Department may extend the period for any of the following reasons:

(a) Information needed to determine eligibility is expected to be received after the 45-day deadline, and the client has no control over the information.

(b) Other circumstances beyond the control of the client prevent the Department from making the decision within the 45-day period.

(c) The Department must determine whether an individual who has applied for OSIPM is blind or has a disability. In this case, the Department determines eligibility and sends a decision notice not later than the 90th day after the date of request. The Department may extend this period for any of the following reasons:

(A) The Department cannot reach a decision because the client or an examining physician or psychologist has not taken an action necessary for the decision to be made.

(B) There is an administrative or other emergency beyond the Department's control that impairs its ability to make the decision.

(2) In the EA program, the Department determines eligibility within one working day of the date of application or as soon thereafter as verification of emergent need is completed. Verification of all other factors may be waived if it would delay the client's receipt of assistance.

(3) For support service payments in the JOBS program authorized by OAR 461-190-0211, the Department determines eligibility as follows:

(a) If the client is receiving a TANF grant — not later than the 30th day after the date of request.

(b) If the client is not receiving a TANF grant — in time to meet the need for which the request is made.

(4) In the TA-DVS program, OAR 461-135-1220 covers the following time requirements:

(a) Assessing the client's safety concerns and offering options to the client for addressing immediate safety needs.

(b) Determining eligibility after the application is complete, whether or not the client has signed the application.

Stat. Auth.: ORS 411.060, 418.100

Stats. Implemented: ORS 411.060, 411.117, 414.042, 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 3-1991(Temp), f. & cert. ef. 1-17-91; 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 2-1994, f. & cert. ef. 2-1-94; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; 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; AFS 22-2001, f. & cert. ef. 10-1-01; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07

## 461-115-0705

### Required Verification; BCCM, MAA, MAF, EXT, OHP, SAC

(1) This rule establishes verification requirements for the BCCM, EXT, MAA, MAF, OHP, and SAC programs in addition to the requirements of OAR 461-115-0610.

(2) Except as provided in section (3) of this rule, each client declaring U.S. citizenship must provide acceptable documentation of citizenship and identity. For purposes of this rule, acceptable documentation consists of any of the documents permitted under section 6036 of the federal Deficit Reduction Act of 2005 (Pub. L. 109-171).

(a) A new applicant must provide acceptable documentation as a condition of eligibility.

(b) A current recipient who has not already provided acceptable documentation must provide documentation at the next redetermination of eligibility.

(c) A client who has already provided acceptable documentation is not required to provide additional evidence during subsequent application for benefits or redeterminations of eligibility.

(3) All of the following clients are exempt from the requirements of section (2) of this rule:

(a) A client eligible for or receiving Medicare.

(b) A client who is assumed eligible under OAR 461-135-0010(5).

(c) A client who is presumptively eligible for the BCCM program.

(d) A client who is eligible for OHP-CHP.

(e) A client who is receiving Social Security Disability Income (SSDI).

(f) A client receiving Title IV-E benefits.

(4) In the OHP program:

(a) At initial application and at any other time it affects the client, the following must be verified:

(A) The requirement in OAR 461-120-0210 to have or apply for a social security number.

(B) Alien status for applicants who indicate they are not U.S. citizens.

(C) The premium exemption allowed because a client is —

(i) A member of a federally recognized Indian tribe, band, or group;

(ii) An Eskimo, Aleut, or other Alaska native enrolled by the Secretary of the Interior pursuant to the Alaska Native Claims Settlement Act; or

(iii) A person eligible for benefits through an Indian Health Program.

(D) Income from the past three months and income already received in the budget month. If income cannot be verified, the client's statement is accepted.

(b) At recertification, the following must be verified, except that if income cannot be verified, the client's statement is accepted:

(A) Unearned income if it has changed since the last certification.

(B) Earned income from the three months prior to the budget month.

(c) A client enrolled full time in higher education must provide verification, at application and recertification, that the client meets the requirements of OAR 461-135-1110.

(d) The following must be verified when it is first reported or changed:

(A) Pregnancy of the client, which must be verified by a medical practitioner, health department, clinic, or crisis pregnancy center or like facility.

(B) Amount of the premium for cost-effective employer-sponsored health insurance.

(e) A client must provide verification for any eligibility requirement questioned by the Department.

Stat. Auth.: ORS 409.050, 411.060 & 414.042

Stats. Implemented: ORS 411.060, 414.042 & 414.047

Hist.: AFS 2-1994, f. & cert. ef. 2-1-94; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 15-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 24-1997,

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f. 12-31-97, cert. ef. 1-1-98; AFS 2-1999, f. 3-26-99, cert. ef. 4-1-99; 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 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 12-2006(Temp), f. & cert. ef. 9-1-06 thru 12-31-06; SSP 13-2006(Temp), f. & cert. ef. 9-25-06 thru 12-31-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07

## 461-120-0030

### State of Residence for an Individual in a Medical Facility

Residency of an individual living in a state or private medical facility such as a hospital, mental hospital, nursing home, or convalescent center is determined as follows.

(1) An individual age 21 or older who is capable of indicating intent to reside is considered to be a resident of the state where the individual is living with the intention to remain permanently or for an indefinite period.

(2) An individual age 21 or older who became incapable of indicating intent to reside after age 21 is considered to be a resident of the state where the facility is located unless the individual was placed in the facility by a state agency of another state. When a state agency of another state places an individual, the individual is considered to be a resident of the state that makes the placement.

(3) For an individual under age 21 who is incapable of forming an intent to reside, or an individual of any age who became incapable of forming that intent before age 21, the state of residence is one of the following:

(a) The state of residence of the individual's parent or legal guardian at the time of application.

(b) The state of residence of the party who applies for benefits on the individual's behalf if there is no living parent or the location of the parent is unknown, and there is no legal guardian.

(c) Oregon, if the individual has been receiving medical assistance in Oregon continuously since November 1, 1981, or is from a state with which Oregon has an interstate agreement that waives the residency requirement.

Stat. Auth.: ORS 411.060, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.816, 414.042, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07

## 461-135-0010

### Assumed Eligibility for Medical Programs

(1) This rule sets out when a client is assumed eligible for certain medical programs because the client receives or is deemed to receive benefits of another program.

(2) Except for a client disqualified for failure to pursue cost-effective, employer-sponsored health insurance as required by OAR 461-120-0345, a client who does not meet the citizenship and alien status requirements set forth in OAR 461-120-0125, and a client who does not meet a citizenship verification requirement set forth in OAR 461-115-0705, the following individuals are assumed eligible for MAA:

(a) A client receiving or eligible to receive TANF cash benefits.

(b) A client whose TANF cash benefits are being paid as wages through the JOBS Plus program.

(c) A client who receives no TANF cash benefits because of failure by the client to comply with the requirements for a recipient of the JOBS program, or a requirement for evaluation or treatment of substance abuse or mental health (OAR 461-135-0085).

(d) A client in the Assessment Program (see OAR 461-135-0475).

(e) A child in a benefit group (see OAR 461-110-0750) whose grant is affected by a failure to comply with the requirements of OAR 461-120-0340 regarding paternity or child support.

(3) A pregnant woman who is eligible for and receiving benefits the day the pregnancy ends is assumed eligible for EXT, MAA, MAF, OHP (except OHP-CHP), OSIPM, or SAC until the last day of the calendar month in which the 60th day after the last day of the pregnancy falls.

(4) A pregnant woman who was eligible for and receiving benefits of the EXT, GAM, MAA, MAF, OHP-OPP, OSIPM, or SAC program but becomes ineligible during the pregnancy is assumed eligible for Medicaid.

(5) A child born to a mother eligible for and receiving EXT, MAA, MAF, OHP (except OHP-CHP), OSIPM, or SAC benefits is assumed eligible for medical benefits. A child who is continuously a member of the household group of his or her mother is eligible under this section until the end of the month the child turns one year of age.

(6) Except for a child who does not meet a citizenship verification requirement set forth in OAR 461-115-0705, the following children are assumed eligible for SAC:

(a) A child who is the subject of an adoption assistance agreement with another state.

(b) A child in a state-subsidized, adoptive placement, if an adoption assistance agreement is in effect between a public agency of the state of

Oregon and the adoptive parents that indicates the child is eligible for Medicaid.

(7) The following individuals are assumed eligible for OSIPM (except OSIP-EPD and OSIPM-EPD):

(a) A recipient of SSI benefits.

(b) An individual deemed eligible for SSI under Sections 1619(a) or (b) of the Social Security Act (42 U.S.C. 1382h(a) or (b)), which cover individuals with disabilities whose impairments have not changed but who have become gainfully employed and have continuing need for OSIPM.

(c) An individual described in subsection (a) or (b) of this section who is in a nonstandard living arrangement (see OAR 461-001-0000) is not eligible for long-term care (see OAR 461-001-0000) services if the individual would otherwise be ineligible for OSIPM due to a disqualifying transfer of assets (OAR 461-140-0210 to 461-140-0300 regulate the effect of a transfer of assets on a client).

(8) A client who receives both benefits under Part A of Medicare and SSI benefits is assumed eligible for the QMB-BAS program.

(9) A client is assumed eligible for REFM if:

(a) The client is receiving cash assistance through the REF program;

or

(b) The client is ineligible for cash assistance through the REF program only because of income or resources.

Stat. Auth.: ORS 411.060 & 418.100

Stats. Implemented: ORS 411.060, 418.100, 1999 OL ch. 859

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 28-1992, f. & cert. ef. 10-1-92; AFS 1-1993, f. & cert. ef. 2-1-93; 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 10-1995, f. 3-30-95, cert. ef. 4-1-95; 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 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 12-1999(Temp), f. & cert. ef. 10-1-99 thru 1-31-00; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 12-2006(Temp), f. & cert. ef. 9-1-06 thru 12-31-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07

## 461-135-0510

### Residents of Institutions; FS

(1) Individuals who live in an institution that provides them with at least 50 percent of their meals as a part of the normal services of the institution are not eligible for food stamps, except as identified in section (2) of this rule.

(2) Individuals residing in the following types of institutions may participate in the Food Stamp program:

(a) Domestic violence shelters.

(b) Public or private nonprofit shelters for homeless individuals.

(c) Federally-subsidized housing for the recipients of benefits under Title I, II, X, XIV, or XVI of the Social Security Act who are elderly, blind, or have disabilities.

(d) Residential private, nonprofit drug addiction or alcoholic treatment and rehabilitation programs or publicly operated community mental health centers operated under the criteria set forth in OAR 461-135-0550(2).

(e) A resident of a group living facility (see OAR 461-001-0015) may receive benefits only if:

(A) The resident applies through an authorized representative (see OAR 461-115-0090) who is an employee of the facility, unless the facility determines that the resident can apply on his or her own; and

(B) The individual meets all other FS eligibility requirements.

(3) Individuals covered by section (2) of this rule must be treated as separate filing groups from the others with whom they reside, unless required to be in the same filing group under OAR 461-110-0370(2).

Stat. Auth.: ORS 411.816

Stats. Implemented: ORS 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; 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 7-2007, f. 6-29-07, cert. ef. 7-1-07

## 461-135-0550

### Residents of Drug Addiction and Alcohol Treatment Facilities; FS

(1) Except as provided in section (2) of this rule, a resident of a drug addiction or alcoholic (DAA) treatment and rehabilitation program (resident) is certified for food stamps in the same manner as other households.

(2) A resident who regularly participates in a tax-exempt publicly operated or private non-profit program must apply for food stamps through an authorized representative who is an employee of the program if:

# ADMINISTRATIVE RULES

(a) The program is certified by the Addictions and Mental Health Division of the Department to receive funding under part B of title XIX of the Public Health Service Act;

(b) The program is certified by the Addictions and Mental Health Division of the Department as operating to further the purposes of part B of title XIX of the Public Service Act and the facility is tax-exempt; or

(c) The program is authorized as a retailer by the Food and Nutrition Service.

(3) A program meeting the criteria in section (2) of this rule must comply with all of the following requirements:

(a) File an application in the manner required by OAR 461-115-0020 for each resident for which the facility wants to receive food stamps.

(b) Assign an authorized representative who will sign the application, participate in the interview, and provide all requested verification on the behalf of each resident.

(c) Comply with the responsibilities set forth in OAR 461-115-0145.

Stat. Auth.: ORS 411.816

Stats. Implemented: ORS 411.816

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 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 9-2001, f. & cert. ef. 6-1-01; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07

## 461-135-0950

### Eligibility for Inmates

(1) This rule sets out additional restrictions on the eligibility of inmates for programs covered by chapter 461 of the Oregon Administrative Rules.

(2) Definition of an inmate.

(a) An inmate is an individual living in a public institution who is:

(A) Confined involuntarily in a local, state or federal prison, jail, detention facility, or other penal facility, including an individual being held involuntarily in a detention center awaiting trial or an individual serving a sentence for a criminal offense;

(B) Residing involuntarily in a facility under a contract between the facility and a public institution where, under the terms of the contract, the facility is a public institution;

(C) Residing involuntarily in a facility that is under governmental control; or

(D) Receiving care as an outpatient while residing involuntarily in a public institution.

(b) An individual is no longer an inmate when:

(A) The individual is released on parole, probation, or post-prison supervision;

(B) The individual is on home- or work-release, unless the individual is required to report to a public institution for an overnight stay; or

(C) The individual is staying voluntarily in a detention center, jail, or county penal facility after his or her case has been adjudicated and while other living arrangements are being made for the individual.

(3) Definition of a public institution.

(a) A public institution is any of the following:

(A) A state hospital (see ORS 162.135) such as the Oregon State Hospital, Eastern Oregon Psychiatric Center, Eastern Oregon Training Center, and any other hospital established by law for similar purposes, including the "SAIP" means Secure Adolescent Inpatient Program (SAIP), and the Secure Children's Inpatient Program (SCIP).

(B) A local correctional facility (see ORS 169.005): a jail or prison for the reception and confinement of prisoners that is provided, maintained and operated by a county or city and holds individuals for more than 36 hours.

(C) A Department of Corrections institution (see ORS 421.005): a facility used for the incarceration of individuals sentenced to the custody of the Department of Corrections, including a satellite, camp, or branch of a facility.

(D) A youth correction facility (see ORS 162.135):

(i) A facility used for the confinement of youth offenders and other individuals placed in the legal or physical custody of the youth authority, including a secure regional youth facility, a regional accountability camp, a residential academy and satellite, and camps and branches of those facilities; or

(ii) A facility established under ORS 419A.010 to 419A.020 and 419A.050 to 419A.063 for the detention of children, wards, youth, or youth offenders pursuant to a judicial commitment or order.

(b) As used in this rule, the term public institution does not include:

(A) A medical institution as defined in 42 C.F.R. 435.1009;

(B) An intermediate care facility as defined in 42 C.F.R. 440.140 and 440.150;

(C) A publicly operated community residence that serves no more than 16 residents, as defined in 42 C.F.R. 435.1009; or

(D) A child-care institution as defined in 42 C.F.R. 435.1009 with respect to:

(i) Children for whom foster care maintenance payments are made under title IV-E of the Social Security Act; and

(ii) Children receiving TANF-related foster care under title IV-A of the Social Security Act.

(4) Definition of serious mental illness. A client has a serious mental illness if the client has been diagnosed, prior to becoming an inmate of a public institution, by a psychiatrist, a licensed clinical psychologist or a certified non-medical examiner as suffering from dementia, schizophrenia, bipolar disorder, major depression or other affective disorder or psychotic mental disorder other than a substance abuse disorder and other than a disorder that is both--

(a) Caused primarily by substance abuse; and

(b) Likely to no longer meet the applicable diagnosis if the substance abuse discontinues or declines.

(5) If this rule indicates that the medical benefits of a client are suspended, a client meeting the eligibility requirements of a program covered under chapter 461 of the Oregon Administrative Rules is not required to submit a new application for the benefits to be reinstated.

(6) For all programs covered under chapter 461 of the Oregon Administrative Rules:

(a) Except as provided in OAR 461-135-0750, an inmate of a public institution is not eligible for benefits.

(b) If a pregnant woman receiving medical assistance through the EXT, GAM, MAA, MAF, OHP, OSIPM, or SAC program is an inmate of a public institution, her medical benefits are suspended. When the Department is informed the woman is no longer an inmate, her medical benefits are reinstated—effective on the first day she is no longer an inmate — if she is still in her protected period of eligibility under OAR 461-135-0010.

(c) In the OSIP and OSIPM programs, if a client who is receiving Presumptive Medicaid because of a serious mental illness or SSI becomes an inmate of a public institution, the medical benefits are suspended. Benefits may be suspended for up to twelve full calendar months. When the Department is informed the client is no longer an inmate, the medical benefits are reinstated—effective on the first day the client is no longer an inmate — if the client meets the eligibility requirements for the program, including being in suspense status with SSA and the client intends to remain in Oregon. The client has 30 days from the date of release to provide verification that SSI has been reinstated, or the case will be closed if permitted under OAR 461-180-0085.

(d) In the SAC program, medical benefits are suspended if a client who receives medical assistance because of a serious mental illness becomes an inmate of a public institution. When the Department is informed the client is no longer an inmate, the medical benefits will be reinstated, effective on the first day the client is no longer an inmate, and eligibility will be determined for all medical assistance programs.

(7) In the Food Stamp and GA programs, in addition to the other provisions of this rule, an inmate released from a public institution on home arrest, and required to wear an electronic device to monitor his or her activity, is ineligible for benefits if the correctional agency provides room and board to the individual.

Stat. Auth.: ORS 411.060, 411.070, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.070, 411.816, 414.042, 414.420, 414.422, 414.424, 414.426, 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 4-1998, f. 2-25-98, cert. ef. 3-1-98; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 5-2000, f. 2-29-00, cert. ef. 3-1-00; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 21-2001(Temp), f. & cert. ef. 10-1-01 thru 12-31-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; SSP 17-2005(Temp), f. 12-30-05, cert. ef. 1-1-06 thru 6-30-06; 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 7-2007, f. 6-29-07, cert. ef. 7-1-07

## 461-135-1110

### Eligible and Ineligible Students; OHP-OPU

(1) In the OHP-OPU program, a person who is enrolled full time in higher education is ineligible to receive benefits, unless the requirements of one of the following subsections are met:

(a) The student:

(A) Meets the income requirements for a Pell grant;

(B) Is not currently covered by private major medical health insurance or an HMO; and

(C) Has not been covered by private major medical health insurance or by an HMO for the six months immediately preceding the date of application.

(b) The student is in a program serving displaced workers under Section 236 of the Trade Act of 1974 (19 U.S.C. § 2296).

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(2) For the purposes of this rule:

(a) Higher education includes the following:

(A) Any public or private university, college or community college.

(B) Any post-secondary vocational or technical school that is eligible to accept Pell grants.

(b) Full time is defined by the school.

(c) Meets the income requirements for a Pell grant means—

(A) The student's Student Aid Report shows an "expected family contribution" less than \$3,851 for the 2006-2007 school year or less than \$4,111 for the 2007-2008 school year; or

(B) The student is eligible for a Pell grant and provides documentation of eligibility from the school's financial aid office.

(3) A student's enrollment status continues during school vacation and breaks. A student's higher education status ends when the student graduates, drops out (as verified by their disenrolling), reduces the student's credit or attendance hours below full-time status, is suspended or expelled, or does not intend to register for the next school term (excluding summer term).

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060, 414.042

Hist.: AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 13-2000, f. & cert. ef. 5-1-00; AFS 12-2001, f. 6-29-01, cert. ef. 7-1-01; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 14-2002(Temp), f. & cert. ef. 10-30-02 thru 4-28-03; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07

## 461-135-1225

### TA-DVS; Eligibility and Verification Requirements

In the TA-DVS program:

(1) Eligibility requirements are the same as for the TANF program, except as provided otherwise in OAR 461-135-1200 to 461-135-1235.

(2) The financial eligibility requirements are the same as for the TANF program except that:

(a) A TANF grant does not count as income.

(b) Income received during the budget month is not counted if the client does not have reasonable access to the money or cannot access the money independently of the abuser.

(c) Income received during the budget month is not counted if the client needs the money for expenses made necessary by a flight from abuse, for instance an expense for temporary lodging.

(d) There is no resource limit.

(e) The income limit is the applicable TANF Countable Income Limit Standard amount in OAR 461-155-0030, but uses net income instead of countable (see OAR 461-001-0000) income. For purposes of this subsection, net income means the income countable for TA-DVS minus income and FICA (Federal Insurance Contributions Act) taxes, and other mandatory payroll deductions.

(f) Other financial requirements may be waived in accordance with OAR 461-135-1200.

(g) SSI income is countable (see OAR 461-001-0000), if available in time to meet the emergent need (the immediate safety need) of the client.

(3) The non-financial requirements are the same as for the TANF program except that:

(a) Citizenship and alien status requirements (OAR 461-120-0110) are waived.

(b) The requirements to assign support and obtain assets (see OAR 461-120-0310 to 0350) are waived, but the Department will assist the client obtain support at the client's request.

(c) The requirement of regular school attendance (OAR 461-120-0530) is waived.

(d) The client is not required to participate in an employment program (see divisions 130 and 190 of this chapter of rules).

(e) Other non-financial requirements may be waived in accordance with OAR 461-135-1200.

(4) Verification is required as in the TANF program except that no verification is required that the client is a victim of domestic violence (see OAR 461-001-0000) or needs to flee from abuse. Verification of other eligibility factors is postponed if the delay in finding the client eligible would prevent the client from meeting an emergent need.

Stat. Auth.: ORS 411.060 & 418.100

Stats. Implemented: ORS 411.060, 411.117 & 418.100

Hist.: AFS 9-1999, f. & cert. ef. 7-1-1999; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07

## 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 (see OAR 461-001-0000); or

(c) Son or daughter who meets the requirements of each of the following paragraphs:

(A) The son or daughter resided with the client in the client's home continuously for at least two years immediately prior to the client's admission to long-term care other than an absence from the home that is not intended to, and does not, exceed 30 days.

(B) The son or daughter provides convincing evidence that he or she provided services that permitted the client to reside at home for at least two years rather than in an institution or long-term care facility.

(C) Without receiving payment from the Department, the son or daughter must have directly provided the services required by paragraph (B) of this subsection as described in both of the following subparagraphs for a total of at least 20 hours per week.

(i) On a daily basis, one or a combination of any of the following activities of daily living, as each sub-subparagraph is further defined at OAR 411-015-0006:

(I) Eating.

(II) Dressing/Grooming.

(III) Bathing/Personal Hygiene.

(IV) Mobility.

(V) Elimination.

(VI) Cognition/Behavior.

(ii) One or a combination of any of the following instrumental activities of daily living, as each sub-subparagraph is further defined at OAR 411-015-0007:

(I) Housekeeping.

(II) Laundry.

(III) Meal Preparation.

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- (IV) Medication Management.
- (V) Shopping.
- (VI) Transportation.

(3) Except for a transfer permitted under section (2) of this rule, each of the following subsections applies in determining whether an asset is considered transferred for fair market value:

(a) The compensation received for the asset must be in a tangible form with intrinsic value.

(b) 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.

(c) Compensation for services is valued at the average market rate at the time the services were provided, unless the express agreement provides a lower rate.

(4) If a transfer is made for less than fair market value and is not exempt from disqualification under this rule, there is a rebuttable presumption that the asset was transferred for the purpose of establishing or maintaining eligibility and is not exempt under subsection (1)(a) of this rule.

(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

Stats. Implemented: ORS 411.060, 411.710, 414.042

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; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07

## 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 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.

(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:

(A) For a client who is already receiving Department-paid long-term care (see OAR 461-001-0000) or waived services (see OAR 461-001-0030) in a nonstandard living arrangement, 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) For a new applicant who submits an application and for a client who is already receiving benefits in a standard living arrangement (see OAR 461-001-0000), the date of request (see OAR 461-115-0030) for long-term care or waived services as long as the applicant or client would otherwise be eligible but for this disqualification period. If the applicant or client is not otherwise eligible on the date of request, the disqualification begins the first date following the date of request that the applicant or client would be otherwise eligible but for the 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

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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; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07

## 461-145-0040

### Burial Arrangements and Burial Fund

(1) The following definitions apply to this rule:

(a) A burial arrangement is an agreement with an entity — such as a funeral agreement (which means an arrangement made with a licensed funeral provider), burial insurance, or a burial trust designating a funeral director as the beneficiary — that makes allowance for burial costs. A burial arrangement does not include a burial space, which is covered in OAR 461-145-0050, or a burial fund.

(b) A burial fund is an identifiable fund set aside for a client's burial costs. A burial fund does not include a burial space, which is covered in OAR 461-145-0050, or a burial arrangement.

(2) Except as provided in subsection (d) of this section, a burial arrangement is treated as follows:

(a) In the ERDC, FS, MAA, MAF, OHP, REF, REFM, SAC and TANF programs, the equity value (defined in OAR 461-001-0000) of one prepaid burial arrangement for each member of the filing group is excluded.

(b) For grandfathered OSIP and OSIPM clients (see OAR 461-125-0330(2), 461-125-0370(1)(b), and 461-135-0771), up to \$1,000 in combined equity value of each burial arrangement with a licensed funeral director (plus accrued interest) and life insurance policies are excluded. The amount of combined cash and equity value of all life insurance and burial arrangements that is over \$1,000 is counted as a resource.

(c) In all programs not listed in subsection (a) of this section and for OSIP and OSIPM clients not covered by subsection (b) of this section, a burial arrangement is treated in the manner as the program treats a burial fund under section (3) of this rule.

(d) Burial insurance that has cash surrender value is considered life insurance and is treated in accordance with OAR 461-145-0320 and, as applicable, subsection (b) of this section.

(3) A burial fund is treated as follows:

(a) In the GA, GAM, OSIP, OSIPM, and QMB programs:

(A) A burial fund may be established only from financial means such as cash, burial contracts, bank accounts, stocks, bonds or life insurance policies.

(B) A burial fund is counted as a resource if it is commingled with assets unrelated to a burial. The amount set aside for burial must be in a separate account to be excluded from resource consideration.

(C) A burial fund may be established if the countable resources of a client exceed allowable limits. A burial fund is excluded from the resource calculation to the extent allowed in paragraph (D) of this subsection.

(D) The following calculation determines the exclusion for a burial fund:

(i) Up to \$1,500 of a burial fund may be excluded from resources for each of the following:

(I) The client.

(II) The client's spouse.

(ii) The amount in subparagraph (i) of this paragraph is reduced by the total of the following amounts:

(I) The face value of life insurance policies owned by the client that have already been excluded from resources.

(II) The amount in an irrevocable burial trust or any other irrevocable arrangement to cover burial costs.

(E) All interest earned on an excluded burial fund or increases in the value of an excluded burial arrangement if left in the fund is excluded from income.

(b) In all programs not listed in subsection (a) of this section, a burial fund is counted as a resource.

(4) There is no overpayment for the time period during which the burial arrangement or burial fund existed if a client:

(a) Cancels an excluded burial arrangement; or

(b) Uses an excluded burial fund for any purpose other than burial costs.

(5) If an asset originally used as a burial arrangement or burial fund is converted to other uses, the asset is treated under the other applicable rules.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.070, 411.816, 414.042, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1991(Temp), f. & cert. ef. 7-1-91; AFS 16-1991, f. 8-27-91, cert. ef. 9-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 21-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; 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 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07

## 461-145-0105

### Disqualifying Income; FS

(1) "TANF disqualifying income" is the portion of a TANF grant lost because of a reason listed in section (2) of this rule. It is determined by finding the difference between the TANF cash payment prior to imposition of the reduction and the payment due after the reduction described in section (2) is imposed. The incentive payment authorized by OAR 461-135-0210 is not included in the calculation.

(2) A reduction to a TANF cash payment for any of the following reasons results in TANF disqualifying income:

(a) A failure to pursue assets as required by OAR 461-120-0330;

(b) A failure to help the Department obtain child support from a non-custodial parent as required by OAR 461-120-0340;

(c) A failure to obtain medical coverage as required by OAR 461-120-0345;

(d) A failure to comply with requirements of the employment programs (see OAR 461-130-0330);

(e) A failure to seek treatment for substance abuse or mental health evaluation and treatment under OAR 461-135-0085;

(f) An IPV penalty imposed under OAR 461-195-0621;

(g) Repayment of a client error (see OAR 461-195-0501) overpayment in the TANF program other than the repayment of an overpayment resulting from continuing benefits because of a hearing request;

(h) Repayment of an overpayment in the TANF program that results from an intentional program violation (see OAR 461-195-0601).

(3) Eligibility for and the level of food stamp benefits are determined as if the client is receiving the TANF disqualifying income until:

(a) The TANF penalty is removed;

(b) The household becomes ineligible for TANF for a reason not included in section (2) of this rule;

(c) The overpayment is repaid; or

(d) The TANF cash or MAA case has been closed for at least 12 months.

Stat. Auth.: ORS 411.816

Stats. Implemented: ORS 411.816

Hist.: SSP 17-2004, f. & cert. ef. 7-1-04; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07

## 461-145-0280

### In-Kind Income

(1) This rule does not apply to shelter-in-kind income (see OAR 461-145-0470).

(2) In all programs except EXT, MAA, MAF, OHP, REFM, SAC, and TANF, in-kind income (see OAR 461-001-0000) that is earned is treated according to the administrative rules on earned income (such as OAR 461-145-0130).

(3) In all programs except EXT, MAA, MAF, OHP, REFM, SAC, and TANF, in-kind income that is unearned (except third-party payments) is treated as follows:

(a) Income from court-ordered community service work or bartering is excluded. Bartering is the exchange of goods of equal value.

(b) Items such as cars and furniture are treated according to the administrative rule for the specific type of asset.

(4) In the EXT, MAA, MAF, REFM, SAC, and TANF programs, in-kind income (except unearned third-party payments) is excluded.

(5) In the FS and OHP programs, except for child support (see OAR 461-145-0080) and an expenditure by a business entity that benefits a principal (see OAR 461-145-0088), in-kind income is excluded.

(6) Unearned third-party payments are treated as follows:

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(a) Payments made to a third party that should legally be paid directly to a member of the financial group (see OAR 461-110-0530) are counted as unearned income.

(b) Payments made to a third party that the payee is not legally obligated to pay directly to a member of the financial group and that the financial group does not have the option of taking as cash, and payments made by the noncustodial parent to a third party that are court-ordered are treated as follows:

(A) In the FS program, these third-party payments are excluded unless they are transitional housing payments for the homeless.

(B) In the MAA, MAF, REFM, SAC, and TANF programs, except for payments designated as child support (see OAR 461-145-0080), these third-party payments are excluded.

(C) In the OHP program, these third-party payments are counted.

(D) In all programs except the FS, MAA, MAF, OHP, REFM, SAC, and TANF programs, these third-party payments are excluded.

Stat. Auth.: ORS 409.050, 411.060, 411.816 & 418.100

Stats. Implemented: ORS 411.060, 411.816, 414.042, 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 19-1993, f. & cert. ef. 10-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 32-1996(Temp), f. & cert. ef. 9-23-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07

## 461-145-0320

### Life Insurance

(1) Benefits paid on a life insurance policy are counted as unearned income. A deduction is allowed, not to exceed \$1,500, for the cost of the deceased person's last illness and burial if these costs were not otherwise insured.

(2) Burial insurance that has cash surrender value is treated in the same manner that this rule treats life insurance.

(3) The value of a life insurance policy is treated as follows:

(a) All term insurance that has no cash surrender value is excluded.

(b) In all programs except GA, GAM, OSIP, OSIPM, and QMB, the cash surrender value of the life insurance policy is excluded.

(c) For grandfathered OSIP and OSIPM clients (see OAR 461-125-0330(2), 461-125-0370(1)(b), and 461-135-0771), the total exclusion available for life insurance and burial arrangements is limited as provided in OAR 461-145-0040(2)(b).

(d) In the GA, GAM, OSIP, OSIPM, and QMB programs:

(A) Except as provided in subsection (c) of this section, the total cash surrender value of life insurance policies owned by the client or the client's spouse is excluded if the total face value of all policies for the insured individual is less than or equal to \$1,500. If the total face value of all policies for the insured individual is more than \$1,500, the entire cash surrender value is counted as a resource to the owner of the policy. The total face value does not include dividend additions that increase the death benefit and cash surrender value.

(B) The cash surrender value of a policy acquired through a viatical settlement is excluded. A viatical settlement allows a third party to acquire the life insurance policy from a terminally ill person at an agreed upon percentage of the life insurance policy face value.

Stat. Auth.: ORS 411.060, 411.816 & 418.100

Stats. Implemented: ORS 411.060, 411.816, 414.042, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1991(Temp), f. & cert. ef. 7-1-91; AFS 16-1991, f. 8-27-91, cert. ef. 9-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 21-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 5-2002, f. & cert. ef. 4-1-02; 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 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07

## 461-145-0330

### Loans and Interest on Loans

(1) This rule covers proceeds of loans, loan repayments, and interest earned by a lender. If the proceeds of a loan are used to purchase an asset, the asset is evaluated under the other rules in this division of rules.

(2) For purposes of this rule:

(a) In the GA, GAM, OSIP, OSIPM, and QMB programs:

(A) "Bona fide loan agreement" means an agreement that:

(i) Is enforceable under state law;

(ii) Is in effect at the time the cash proceeds are provided to the borrower; and

(iii) Includes an obligation to repay and a feasible repayment plan.

(B) "Negotiable loan agreement" means a loan agreement in which the instrument ownership and the whole amount of money expressed on its

face can be transferred from one person to another (i.e., sold) at prevailing market rates.

(b) In all programs:

(A) "Reverse-annuity mortgage" means a contract with a financial institution (see OAR 461-001-0000) under which the financial institution provides payments against the equity in the home that must be repaid when the homeowner dies, sells the home, or moves.

(B) The proceeds of a home equity loan or reverse-annuity mortgage are considered loans.

(3) For payments that a member of the financial group (see OAR 461-110-0530) receives as a borrower to be treated as a loan:

(a) In the FS, GA, GAM, OHP, OSIP, OSIPM, and QMB programs, there must be an oral or written loan agreement, and this agreement must state when repayment of the loan is due to the lender.

(b) In programs other than the FS, GA, GAM, OHP, OSIP, OSIPM, and QMB programs, there must be a written loan agreement, and this agreement must be signed by the borrower and lender, dated before the borrower receives the proceeds of the loan, and state when repayment of the loan is due to the lender.

(4) Payments for a purported loan that do not meet the requirements of section (3) of this rule are counted as unearned income.

(5) When a member of a financial group receives cash proceeds as a borrower from a loan that meets the requirements of section (3) of this rule:

(a) In all programs, educational loans are treated according to OAR 461-145-0150.

(b) In the ERDC, EXT, FS, MAA, MAF, OHP, REF, REFM, SAC, and TANF programs, the loan is excluded. If retained after the month of receipt, the loan proceeds are treated in accordance with OAR 461-140-0070.

(c) In the GA, GAM, OSIP, OSIPM, and QMB programs:

(A) If the loan is a bona fide loan agreement, the money provided by the lender is not income but is counted as the borrower's resource if retained in the month following the month of receipt (notwithstanding OAR 461-140-0070).

(B) If the loan is not a bona fide loan agreement, the money provided by the lender is counted as income in the month received and is counted as a resource if retained in the month following the month it was received.

(6) Unless the loan is considered a transfer of assets for less than fair market value (see section (7) of this rule), when a member of a financial group is the lender, the loan is treated as follows:

(a) In the GA, GAM, OSIP, OSIPM, and QMB programs:

(A) If the loan is both a negotiable loan agreement and a bona fide loan agreement, the loan is counted as a resource of the lender valued at the outstanding principal balance.

(B) If the loan does not qualify under paragraph (A) of this subsection, the transfer of assets to the borrower may be considered a transfer for less than fair market value (see OAR 461-001-0000). If the transfer is not disqualifying, payments against the principal are counted as income to the lender.

(C) Interest income received by the lender is counted as unearned income whether the loan is a bona fide loan agreement or not.

(b) In all programs other than the GA, GAM, OSIP, OSIPM, and QMB programs:

(A) The interest payment is counted as unearned income.

(B) The payment of principal is excluded.

(7) In the GA, GAM, OSIP, OSIPM, and QMB programs, in a transaction occurring on or after July 1, 2006, if a client or a spouse of a client uses funds to purchase a mortgage or to purchase or lend money for a promissory note or loan, the balance of the payments owing to the client or spouse of the client is a transfer of assets for less than fair market value, unless all of the following requirements are met:

(a) The total value of the transaction is being repaid to the client or spouse of the client within that person's actuarial life expectancy as established by the Period Life Table of the Office of the Chief Actuary of the Social Security Administration.

(b) Payments are made in equal amounts over the term of the transaction without any deferrals or balloon payments.

(c) The contract is not cancelled upon the death of the client or the spouse of the client (who made the transaction).

Stat. Auth.: ORS 411.060, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.816, 414.042, 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 28-1992, f. & cert. ef. 10-1-92; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 14-2006, f. 9-29-06,

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cert. ef. 10-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07

## 461-145-0470

### Shelter-in-Kind Income

(1) Except as provided in section (2) of this rule:

(a) In the ERDC, GA, and GAM programs, shelter-in-kind (see OAR 461-001-0000) payments are excluded, except earned shelter-in-kind is not excluded in the ERDC program.

(b) In the EXT, MAA, MAF, REF, REFM, SAC, and TANF programs, except for child support (see OAR 461-145-0080 and 461-145-0280), shelter-in-kind payments are excluded.

(c) In the FS program, shelter-in-kind housing and utility payments are excluded (see OAR 461-145-0130 about exclusion of earned in-kind income), except an expenditure by a business entity for shelter costs of a principal (see OAR 461-145-0088) is counted as income.

(d) In the OHP program, shelter-in-kind payments are excluded except an expenditure by a business entity for shelter costs (see OAR 461-001-0000) of a principal (see OAR 461-145-0088) is counted as income.

(e) In the OSIP, OSIPM, and QMB programs:

(A) Unearned shelter-in-kind income is treated as follows:

(i) Shelter-in-kind payments from HUD are excluded.

(ii) If all shelter costs (see OAR 461-001-0000) are covered by a payment, the Shelter-in-Kind Standard for total shelter (see OAR 461-155-0300) is counted as unearned income.

(iii) If only rent or mortgage costs are covered by a payment, the Shelter-in-Kind Standard for housing costs (see OAR 461-155-0300) is counted as unearned income.

(iv) If the client has no shelter costs, the Shelter-in-Kind Standard for total shelter (see OAR 461-155-0300) is counted as unearned income.

(B) Earned shelter-in-kind income is treated as follows:

(i) 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 in accordance with paragraph (A) of this subsection.

(ii) Except as provided in subparagraph (i) of this paragraph, the fair market value (see OAR 461-001-0000) of the shelter is counted as earned income.

(2) A payment for which there is a legal obligation to pay to a member of the financial group (see OAR 461-110-0530) that is made to a third party for shelter expenses of a member of the financial group is counted as unearned income.

Stat. Auth.: ORS 409.050, 411.060, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.700, 411.816, 414.042, 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 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 13-1991, f. & cert. ef. 7-1-91; 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 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07

## 461-145-0490

### Social Security Benefits

Except for SSI (see OAR 461-145-0510) and death benefits remaining after burial costs (see OAR 461-145-0500), Social Security benefits (SSB) are treated as follows:

(1) Monthly payments are counted as unearned income.

(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:

(a) 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.

(b) Retroactive payments are counted as unearned income in the month of receipt except as provided in subsection (c) of this section.

(c) When retroactive payments are made through the representative payee of an individual who is required to have a representative payee because of drug addiction or alcoholism, the retroactive payments may be required to be made in installments. If the payments are 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 is made.

(d) Any remaining amount from a retroactive payment after the month of receipt is counted 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.

(4) The representative payee fee paid by a client who is required by the Social Security Administration to receive payments through a representative payee is excluded. The amount of the exclusion is limited to the amount authorized by the Social Security Administration.

Stat. Auth.: ORS 411.060, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.700, 411.816, 414.042, 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; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07

## 461-145-0582

### Victims' Assistance

(1) Payments to victims of Nazi persecution covered by Public Law 103-286 and payments to victims of crime under 42 U.S.C. 10602 (The Crime Act of 1984) are treated as follows:

(a) In the GA and GAM programs, these payments are counted as unearned income.

(b) In all programs except the GA and GAM programs, these payments are excluded as income, and amounts retained are excluded as a resource as long as the amounts are not commingled with other funds.

(2) For other types of victims' assistance (not covered by section (1) of this rule):

(a) Payments that are considered a reimbursement for a lost item are treated as provided in OAR 461-145-0440.

(b) Payments for pain and suffering are treated in the same manner as personal injury settlements under OAR 461-145-0400.

Stat. Auth.: ORS 411.060, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.700, 411.816, 414.042, 418.100

Hist.: AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 16-1996, f. 4-29-96, cert. ef. 5-1-96; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07

## 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.



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(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; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07

## 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, if they receive the services described in section (5) of this rule, are exempt from payments required by this rule:

- (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 identified in section (4) of this rule is exempt from payments required by this rule if the client receives:

(a) Waivered services (see OAR 461-001-0030); or

(b) Mental health services and lives in a mental health residential treatment facility. For purposes of this rule, only the following types of treatment centers qualify as a mental health residential treatment facility:

- (A) A mental health adult foster home.
- (B) A mental health residential treatment home.
- (C) A mental health residential treatment facility.
- (D) A mental health secure residential treatment facility.

(6) 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; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07

## 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 to the extent that the income is made available to or for the benefit of the community spouse, using the following calculation.

(A) Step 1 — Determine the maintenance needs allowance. \$1,712 is added to the amount over \$514 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).

(B) 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.

(C) 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 \$1,712. To determine the income allowance of each eligible dependent:

(i) The monthly income of the eligible dependent is deducted from \$1,712.

(ii) One-third of the amount remaining after the subtraction in paragraph (A) of this subsection is the income allowance of the eligible dependent.

(B) For a case with no community spouse:

(i) The allowance is the TANF adjusted income standard for the client and eligible dependents.

(ii) The TANF standard is not reduced by the income of the dependent.

(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:

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(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; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07

## 461-165-0060

### Benefits in Amounts Less Than \$10; FS, REF, TANF

(1) In the FS program:

(a) A benefit group (see OAR 461-110-0750) is not eligible for benefits in the initial month (see OAR 461-001-0000) if the allotment is less than \$10.

(b) In an ongoing month (see OAR 461-001-0000), benefits are issued as follows:

(A) An eligible one- or two-person benefit group receives a minimum monthly allotment of \$10.

(B) An eligible benefit group of three or more persons receives the calculated benefit except that a group whose calculated benefit is \$1, \$3, or \$5 receives instead an allotment of \$2, \$4, or \$6 respectively. A group that is categorically eligible (see OAR 461-135-0505) may be eligible for zero benefits (\$0) for the certification period (see OAR 461-001-0000).

(2) Except as provided in section (3) of this rule, in the REF and TANF programs, benefits are not issued if the monthly benefit is less than \$10. Individuals who do not receive a cash payment because the monthly benefit is less than \$10 may be eligible for medical benefits.

(3) The \$10 requirement in section (2) of this rule does not apply to:

(a) Special payments, such as one-time special needs, emergency assistance, supplements, or a benefit reduced from \$10 or more to under \$10 due to the recovery of an overpayment.

(b) Dual payee payments made in money management cases if the monthly benefit amount is \$10 or more.

(c) Wage supplements issued to JOBS Plus participants.

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 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 19-2004(Temp), f. 7-30-04, cert. ef. 8-1-04 thru 9-30-04; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07

## 461-175-0010

### What a Decision Notice Must Include

(1) A decision notice (see OAR 461-001-0000):

(a) Specifies the date the notice is mailed.

(b) Except as provided in section (2) of this rule, specifies the action the Department intends to take and the effective date of the action.

(c) Specifies the reasons for the action.

(d) In the Food Stamp program only, except as provided in paragraph (2)(c)(B) of this rule, provides the name and phone number of the Department staff person or identifies the office to contact for additional information.

(e) Informs the client of the extent to which the client has a right to a hearing before an impartial person.

(f) Specifies the method and deadline for requesting a hearing.

(g) Informs the client of the right to representation, including legal counsel, and the right to have witnesses testify on his or her behalf.

(h) Provides information about the availability of free legal help.

(i) Cites the rules that support the action.

(2) If benefits are reduced or closed to reflect cost-of-living adjustments in benefits or other mass change under a program operated by a federal agency or to reflect a mass change to payments in another program operated by the Department:

(a) The requirements in subsection (1)(b) of this rule are optional. Instead of specifying the action the Department intends to take and the effective date of the action, the decision notice may state all of the following:

(A) The general nature of the change.

(B) Examples of how the change affects a client's benefits.

(C) The month in which the change will take place.

(b) The decision notice must also state the client's right to continue receiving benefits.

(c) In the Food Stamp program:

(A) The decision notice must also state under what circumstances benefits will be continued pending a hearing.

(B) The requirements in subsection (1)(d) of this rule are optional. A decision notice may indicate instead that clients may contact their local offices or workers for additional information.

(3) In the Food Stamp program, a continuing benefit decision notice (see OAR 461-001-0000) and a decision notice under section (2) of this rule must also state that the client's household will incur a liability for any overissued benefits if:

(a) Benefits are continued pending the hearing; and

(b) The hearing decision is adverse to the client.

Stat. Auth.: ORS 411.060, 411.816 & 418.100

Stats. Implemented: ORS 411.060, 411.816, 414.042, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 40-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; 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 22-2004, f. & cert. ef. 10-1-04; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07

## 461-175-0200

### Notice Situations; General Information

(1) For all programs except the Assessment program, unless stated differently in a specific rule, the Department mails or otherwise provides the client with (sends) a decision notice (see OAR 461-001-0000) as follows:

(a) A basic decision notice (see OAR 461-001-0000) is sent whenever an application for assistance, including retroactive medical assistance, is approved or denied or a request for a support service payment in the JOBS program is denied.

(b) A timely continuing benefit decision notice (see OAR 461-001-0000) is sent whenever benefits or support service payments authorized by OAR 461-190-0211 are reduced or closed, or the method of payment changes to protective, vendor, or two-party.

(2) A notice to reduce or close benefits becomes void if the reduction or closure is not initiated on the date stated on the notice, unless the delay resulted from the client's request for a hearing. If the notice is void, a new notice is sent to inform the financial group (see OAR 461-110-0530) of a new date on which their benefits will be reduced or closed.

(3) A notice approving MAA, MAF, REF, REFM, or TANF benefits informs the client, within one month following eligibility determination, of the opportunity to volunteer for JOBS participation and of the procedure for JOBS program entry.

(4) For EA, a basic decision notice is sent for all situations.

(5) For the Assessment program, a basic decision notice is sent when payment for basic living expenses is denied. No other notices are required for this program.

(6) No decision notice is required if:

(a) Benefits are ended because there is no living person in the benefit group (see OAR 461-110-0750).

(b) A hearing order upholds a Department decision, and notice was sent before the client requested the hearing.

(c) A request for a support service in the JOBS program is approved.

Stat. Auth.: ORS 411.060, 411.816 & 418.100

Stats. Implemented: ORS 411.060, 411.117, 411.816, 414.042, 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 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; 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 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; 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; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; 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 21-2004, f. & cert. ef. 10-1-04; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07

## 461-175-0230

### Notice Situation; Nonstandard Living Situations

(1) In the Food Stamp program:

# ADMINISTRATIVE RULES

(a) A timely continuing benefit decision notice (see OAR 461-001-0000) is sent to terminate, suspend, or reduce benefits if the notice occurs as a result of any of the following situations:

(A) A client has been admitted or committed to an institution.

(B) A client has been placed in foster care, skilled nursing care, intermediate care, or long term hospitalization.

(C) A client is placed in official custody or a correctional facility.

(D) A client enters a drug or alcohol residential treatment facility.

(E) A client leaves a drug or alcohol residential treatment facility without reapplying for FS benefits.

(b) No decision notice (see OAR 461-001-0000) is required if the Department determines that a resident of a group living (see OAR 461-001-0015) facility or a drug or alcohol treatment center is ineligible as a result of one of the following actions taken against the center or facility:

(A) Disqualification by Food and Nutrition Services (FNS) as an authorized representative.

(B) Loss of certification with the Department.

(c) A resident of a facility that is disqualified or loses its certification as described in subsection (b) of this section may still qualify for Food Stamps through a separate application.

(2) Except as provided in section (3) of this rule, for all programs except the FS program, a basic decision notice (see OAR 461-001-0000) is sent to terminate, suspend, or reduce benefits in each of the following situations:

(a) The client has been admitted or committed to an institution.

(b) The client has been placed in skilled nursing care, intermediate care, or long-term hospitalization.

(c) The client is placed in official custody or a correctional facility.

(3) In the OSIPM program, a client receiving waived or long term care services is sent:

(a) A timely continuing benefit decision notice in each of the following situations:

(A) A reduction or closure of services occurs as the result of a process of reevaluating both the functional impairment levels of a client and the requirements of a client for assistance in performing activities of daily living.

(B) Services are closing because the client has not paid the client liability.

(C) The client receives benefits in the OSIP-IC or OSIPM-IC program, and benefits will end under OAR 411-036-0050.

(D) There is a change in special needs as described in OAR 461-180-0040.

(b) A continuing benefit decision notice (see OAR 461-001-0000) when there is an increase in the client liability.

Stat. Auth.: ORS 411.060, 411.101, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.095, 411.099, 411.101, 411.111, 411.816, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 11-2001, f. 6-29-01, cert. ef. 7-1-01; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07

## 461-175-0250

### Notice Situation; Mass Changes

(1) If benefits are reduced or closed to reflect cost-of-living adjustments in benefits or other mass change under a program operated by a federal agency or to reflect a mass change to payments in another program operated by the Department:

(a) Except as provided in subsection (b) of this section, the type of decision notice (see OAR 461-001-0000) used is the same as otherwise applies to the reduction or closure of benefits under the rules of this division.

(b) In the Food Stamp program, a continuing benefits decision notice (see OAR 461-001-0000) may be used if the rules in this division of rules would otherwise require a timely continuing benefits decision notice (see OAR 461-001-0000).

(c) OAR 461-175-0010(2) and (3) modify the content requirements for the decision notice that apply to other decision notices under OAR 461-175-0010(1).

(2) In the Food Stamp program, no decision notice is required when the Department makes the following mass changes:

(a) An annual adjustment to income limits, the shelter deduction, or the standard deduction.

(b) An annual adjustment to a standard utility allowance.

Stat. Auth.: ORS 411.060, 411.816, 414.042, 418.100

Stats. Implemented: ORS 411.060, 411.816, 414.042, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 4-1998, f. 2-25-98, cert. ef. 3-1-98; AFS 5-1998(Temp), f. & cert. ef. 3-11-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 15-2006,

f. 12-29-06, cert. ef. 1-1-07; SSP 20-2003, f. & cert. ef. 8-15-03; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07

## 461-195-0521

### Special Rules for Calculation of Overpayments

This rule contains special rules for calculating an overpayment.

(1) If a client directly receives support that should be, but is not, used to reimburse the Department for assistance or to reduce benefits, there is an overpayment for the amount of support the client received directly that should have been used to reimburse the Department or reduce benefits.

(2) If a client failed to comply with the requirements of OAR 461-120-0345 relating to medical insurance, an overpayment is calculated according to this section. The client is not included in the need group (see OAR 461-110-0630) during any period in which the client failed to meet a requirement of the OAR 461-120-0345 by withholding information or giving false information. Therefore, there is an overpayment equal to the difference between the benefits the group received and the reduced amount it would have received had the client been removed from the need group.

(3) If the benefit group was categorically eligible for food stamps, there is no Food Stamp overpayment based on resources, Social Security number, or residency. A Food Stamp overpayment may exist based on incorrect income.

(a) For a group found eligible for food stamps under OAR 461-135-0505(1)(a), (b) or (c), and the actual income made the group ineligible for the related program, the group remains categorically eligible for food stamps. Benefit groups of one or two persons would be entitled to at least \$10 in food stamp benefits.

(b) For a group found eligible for food stamps only under OAR 461-135-0505(1)(d), and the actual income equals or exceeds 185% Federal Poverty Level, the group is no longer categorically eligible and the overpayment is the food stamp benefit amount.

(4) When a client receives benefits in the OSIPM program and does not pay their share of the cost of service (client liability), the overpayment consists of all payments made by the Department on behalf of the client, including but not limited to capitation payments, Medicare Part D payments, all medical expenses for that period, waived service payments (including home-delivered meals and non-medical transportation), Medicare Buy-In (if not concurrently eligible for a Medicare Savings Program such as QMB), and mileage reimbursement.

(5) Credit against an overpayment is allowed as follows:

(a) In the GA, REF, and TANF programs, a credit is allowed for a client's payment for medical services made during the period covered by the overpayment, in an amount not to exceed the Department fee schedule for the service, but credit is not allowed for an elective procedure unless it would have been authorized if requested.

(b) Credit is allowed for an underpayment of benefits.

(c) In the FS program, if the overpayment was caused by unreported earned income, verified child care costs are allowed as a credit to the extent the costs would have been deductible under OAR 461-160-0040 and 461-160-0430.

(6) Benefits paid during the notice period (see OAR 461-175-0050) are included in the calculation of the overpayment if:

(a) The client failed to report changes within the reporting time frame; and

(b) Benefits could have been adjusted in time to prevent the overpayment if the client had reported changes at any time within the reporting time frame.

(7) An overpayment is determined and calculated by assigning unreported income to the applicable budget month without averaging the unreported income. There is a rebuttable presumption that a client's earnings reported in a quarterly earnings report from the Employment Department were received by the client in equal amounts during the months identified in the report.

(8) Earned income deductions are applied in calculating an overpayment except as follows:

(a) In the MAA, MAF, REF, and TANF programs, no earned income deduction (see OAR 461-160-0160 and 461-160-0190) is allowed for a client who, without good cause (see section (9) of this rule), did either of the following:

(A) Failed to report all earned income within the reporting time frame.

(B) Under reported earned income.

(b) In the FS program, no deduction is applied to earned income not timely reported.

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(9) For the purposes of section (8) of this rule, good cause means circumstances beyond the client's reasonable control that caused the client to be unable to report income timely and accurately.

(10) In the TANF program, the amount of support retained by the Department as current reimbursement each month is added to other income to determine ineligibility. In the case of a client not eligible for TANF, the overpayment is offset by support retained by the Department as current reimbursement.

(11) When a client has incurred an overpayment due to both an administrative error (see OAR 461-195-0501) and a client error (see OAR 461-195-0501) in the same month, the client error overpayment is calculated by determining the total overpayment for the month and subtracting from it the portion due to administrative error.

(12) In the medical programs:

(a) There is no overpayment if the client was ineligible for financial assistance but, during the period in question, would have been eligible for EXT or any other medical program.

(b) When an overpayment is caused by administrative error (see OAR 461-195-0501), there is no corresponding overpayment if the client had been eligible to receive medical benefits under EXT, GAM, MAA, MAF, OSIPM, or SAC. In such cases, the overpaid cash benefits are not counted as income in calculating eligibility for EXT, GAM, MAA, MAF, OSIPM, or SAC and are not used in determining the client's spend down (see OAR 461-160-0080).

Stat. Auth.: ORS 411.060, 411.660, 411.816 & 418.100

Stats. Implemented: ORS 411.060, 411.630, 411.635, 411.660, 411.816, 418.100

Hist.: AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; 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 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 20-2003, f. & cert. ef. 8-15-03; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07

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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.

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

**Filed with Sec. of State:** 6-29-2007

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

**Notice Publication Date:** 5-1-07

**Rules Amended:** 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

**Rules Repealed:** 410-122-0470

**Rules Ren. & Amend:** 410-122-0255 to 410-122-0655

**Subject:** DMAP amended as follows:

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—(503) 945-6927

### 410-122-0055

#### OHP Standard Benefit Package Limitations

(1) The Division of Medical Assistance Programs (DMAP) limits coverage of durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) for the Oregon Health Plan (OHP) Standard benefit package to the codes referenced in **Table 122-0055**. Coverage requirements and limitations, as specified in chapter 410, division 122, apply. For more information about the OHP Standard benefit package, see DMAP General Rules (Chapter 410, Division 120).

#### (2) Table 122-0055

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: OMAP 49-2004, f. 7-28-04 cert. ef. 8-1-04; OMAP 11-2005, f. 3-9-05, cert. ef. 4-1-05; OMAP 35-2006, f. 9-15-06, cert. ef. 10-1-06; OMAP 47-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 12-2007, f. 6-29-07, cert. ef. 7-1-07

### 410-122-0080

#### Conditions of Coverage, Limitations, Restrictions and Exclusions

(1) The Division of Medical Assistance Programs (DMAP) may pay for durable medical equipment, prosthetics, orthotics and medical supplies (DMEPOS) when the item meets all the criteria in this rule, including all of the following conditions. The item:

(a) Has been approved for marketing by the Food and Drug Administration (FDA) and is otherwise generally considered to be safe and effective for the purpose intended;

(b) Is reasonable and medically appropriate for the individual client;

(c) Is primarily and customarily used to serve a medical purpose;

(d) Is generally not useful to a person in the absence of illness or injury;

(e) Is appropriate for use in a client's home;

(f) Specifically, for durable medical equipment, can withstand repeated use; i.e., could normally be rented, and used by successive clients;

(g) Meets the coverage criteria as specified in this division and subject to service limitations of DMAP rules;

(h) Is requested in relation to a diagnosis and treatment pair that is above the funding line on the Prioritized List of Health Services, OAR 410-141-0520, consistent with treatment guidelines for the Prioritized List of Health Services, and not otherwise excluded under OAR 410-141-0500; and

(i) Is included in the OHP Client's benefit package of covered services.

#### (2) Conditions for Medicare-Medicaid Services:

(a) When Medicare is the primary payer for a covered service and when DMAP DMEPOS coverage criteria differs from Medicare coverage criteria, DMAP DMEPOS coverage criteria are waived, except as provided in subsection (b) of this section, and only if the item is requested in relation to a diagnosis and treatment pair that is above the funding line on the Prioritized List of Health Services, OAR 410-141-0520, consistent with treatment guidelines for the Prioritized List of Health Services, and not otherwise excluded under OAR 410-141-0500; and included in the OHP Client's benefit package of covered services;

(b) If Medicare is the primary payer and Medicare denies payment, an appeal to Medicare must be filed timely prior to submitting the claim to DMAP for payment. If Medicare denies payment based on failure to submit a timely appeal, DMAP may reduce any amount DMAP determines could have been paid by Medicare;

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(c) If Medicare denies payment on appeal, DMAP will apply DMEPOS coverage criteria in this rule to determine whether the item or service is covered under the Oregon Health Plan.

(3) DMAP will not cover DMEPOS items when the item or the use of the item is:

- (a) Not primarily medical in nature;
- (b) For personal comfort or convenience of client or caregiver;
- (c) A self-help device;
- (d) Not therapeutic or diagnostic in nature;
- (e) Used for precautionary reasons (e.g., pressure-reducing support surface for prevention of decubitus ulcers);
- (f) Inappropriate for client use in the home (e.g., institutional equipment like an oscillating bed);
- (g) For a purpose where the medical effectiveness is not supported by evidence-based clinical practice guidelines; or
- (h) Reimbursed as part of the all-inclusive rate in a nursing facility, or as part of a home and community based care waiver service, or by any other public, community or third party resource.

(4) In addition to the particular requirements in this rule, particular coverage criteria, limitations and restrictions for durable medical equipment, prosthetics, orthotics and supplies are specified in the appropriate rule. To the extent that codes are identified in these rules or in fee schedules, the codes are provided as a mechanism to facilitate payment for covered items and supplies consistent with OAR 410-122-0186, but codes do not determine coverage. If prior authorization is required, the request must document that prior authorization was obtained in compliance with the rules in this division.

(5) DMEPOS providers must have documentation on file that supports coverage criteria are met.

(6) Billing records must demonstrate that the provider has not exceeded any limitations and restrictions in rule. DMAP may require additional claim information from the provider consistent with program integrity review processes.

(7) Documentation described in (4), (5) and (6) above must be made available to DMAP on request.

(8) To identify non-covered items at a code level, providers can refer to the DMAP fee schedule, subject to the limitation that fee schedules and codes do not determine coverage, and are solely provided as a mechanism to facilitate payment for covered services and supplies consistent with OAR 410-122-0186. If an item or supply is not covered for an OHP Client in accordance with these rules, there is no basis for payment regardless of whether there is a code for the item or supply on the fee schedule.

(9) Some benefit packages do not cover equipment and supplies (see OAR 410-120-1210 Medical Assistance Benefit Packages and Delivery System).

(10) Buy-ups are prohibited. Advanced Beneficiary Notices (ABN) constitute a buy-up and are prohibited. Refer to the DMAP General Rules (chapter 410 division 120) for specific language on buy-ups.

(11) Equipment purchased by DMAP for a client is the property of the client.

(12) Rental charges, starting with the initial date of service, regardless of payer, apply to the purchase price.

(13) A provider who supplies rented equipment is to continue furnishing the same item throughout the entire rental period, except under documented reasonable circumstances.

(14) Before renting, providers should consider purchase for long-term requirements.

(15) DMAP will not pay DMEPOS providers for medical supplies separately while a client with Medicare Part A coverage is under a home health plan of care and covered home health care services.

(16) DMAP will not pay DMEPOS providers for medical supplies separately while a client is under a hospice plan of care where the supplies are included as part of the written plan of care and for which payment may otherwise be made by Medicare, DMAP or other carrier.

(17) The items listed in **Table 122-0080** generally do not meet the requirements under DMEPOS rules for purchase, rent or repair of equipment or items. A request for equipment or an item on this list will not be granted until all criteria in this rule are met.

(18) See General Rules, OAR 410-120-1200 Excluded Services and Limitations for more information on general scope of coverage and limitations.

## (19) **Table 122-0080**

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: AFS 3-1982, f. 1-20-82, f. 2-1-82; AFS 6-1989(Temp), f. 2-9-89, cert. ef. 3-1-89; AFS 48-1989, f. & cert. ef. 8-24-89; HR 24-1990(Temp), f. & cert. ef. 7-27-90; HR 6-1991, f. &

cert. ef. 1-18-91, Renumbered from 461-024-0020; HR 10-1992, f. & cert. ef. 4-1-92; HR 9-1993 f. & cert. ef. 4-1-93; HR 26-1994, f. & cert. ef. 7-1-94; HR 17-1996, f. & cert. ef. 8-1-96; HR 7-1997, f. 2-28-97, cert. ef. 3-1-97; OMAP 11-1998, f. & cert. ef. 4-1-98; OMAP 13-1999, f. & cert. ef. 4-1-99; OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 25-2004, f. & cert. ef. 4-1-04; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 46-2004, f. 7-22-04 cert. ef. 8-1-04; OMAP 44-2005, f. 9-9-05, cert. ef. 10-1-05; OMAP 25-2006, f. 6-14-06, cert. ef. 7-1-06; OMAP 47-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 12-2007, f. 6-29-07, cert. ef. 7-1-07

## **410-122-0186**

### **Payment Methodology**

(1) The Division of Medical Assistance Programs (DMAP) utilizes a payment methodology for covered durable medical equipment, prosthetics, orthotics and supplies (DMEPOS) which is generally based on Medicare's fee schedule.

(2) Payment is calculated using the DMAP fee schedule amount, the manufacturer's suggested retail price (MSRP) or the actual charge submitted, whichever is lowest.

(3) DMAP reimburses for the lowest level of service, which meets medical appropriateness. See OAR 410-120-1280 Billing and 410-120-1340 Payment.

(4) Reimbursement for durable medical equipment, miscellaneous (E1399) and other wheelchair accessories (K0108) is capped as follows:

(a) E1399 — \$6,000.00;

(b) K0108 — \$12,000.00.

(5) Reimbursement for codes E1399 and K0108 is determined as either:

(a) 80% of the Manufacturer's Suggested Retail Price (MSRP); or,

(b) If the MSRP is not available, the lowest amount of the following, plus 20 percent:

(A) Manufacturer's invoice; or

(B) Manufacturer's wholesale price; or

(C) Acquisition cost; or

(D) Manufacturer's bill to provider;

(c) If (5)(a) or (b) are not available, reimbursement will be the "estimated price" plus 20 percent. An "estimated price" is the price the provider expects the manufacturer to charge.

(6) When requesting prior authorization (PA) for items billed at or above \$100, the DMEPOS provider:

(a) Must submit a copy of:

(A) The items from (5)(a-c) that will be used to bill; and,

(B) Name of the manufacturer, description of the item, including product name/model name and number and technical specifications;

(b) May be required to submit a picture of the item.

(7) The DMEPOS provider must submit verification for items billed under code E1399 and K0108 when no specific Healthcare Common Procedure Coding System (HCPCS) code is available and an item category is not specified in chapter 410, division 122 rules. Verification can come from an organization such as the Statistical Analysis Durable Medical Equipment Regional Carrier (SADMERC).

(8) DMAP may review items that exceed the maximum allowable/cap on a case-by-case basis. For these situations, the provider must submit the following documentation:

(a) Documentation that supports the client meets all of the coverage criteria for the less costly alternative; and,

(b) A comprehensive evaluation by a licensed clinician (who is not an employee of or otherwise paid by a provider) which clearly explains why the less costly alternative is not sufficient to meet the client's medical needs; and;

(c) The expected hours of usage per day; and;

(d) The expected outcome or change in client's condition.

(9) For codes A4649 (surgical supplies; miscellaneous) and E1399 when \$50.00 or less per each unit:

(a) The DMEPOS provider must have documentation on file which supports the correct Healthcare Common Procedure Coding System (HCPCS) code was used for billing according to the Statistical Analysis Durable Medical Equipment Regional Carrier (SADMERC);

(b) Subject to service limitations of DMAP rules;

(c) PA is not required.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 44-2005, f. 9-9-05, cert. ef. 10-1-05; OMAP 47-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 12-2007, f. 6-29-07, cert. ef. 7-1-07

## **410-122-0204**

### **Nebulizer**

(1) Indications and Limitations of Coverage and Medical Appropriateness:

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(a) Equipment:

(A) Small Volume Nebulizer:

(i) A small volume nebulizer and related compressor may be covered to administer inhalation drugs based on evidence-based clinical practice guidelines;

(ii) The physician must have considered use of a metered dose inhaler (MDI) with and without a reservoir or spacer device and decided that, for medical reasons, the MDI was not sufficient for the administration of needed inhalation drugs.

(B) Large Volume Nebulizer:

(i) A large volume nebulizer (A7017), related compressor (E0565 or E0572), and water or saline (A4217 or A7018) may be covered when it is medically appropriate to deliver humidity to a client with thick, tenacious secretions, who has cystic fibrosis, bronchiectasis, a tracheostomy, or a tracheobronchial stent;

(ii) Combination code E0585 will be covered for the same indications as in (1)(a)(B)(i);

(C) The Division of Medical Assistance Programs (DMAP) will consider other uses of compressors/generators individually on a case by case basis, to determine their medical appropriateness, such as a battery powered compressor (E0571);

(b) Accessories:

(A) A large volume pneumatic nebulizer (E0580) and water or saline (A4217 or A7018) are not separately payable and should not be separately billed when used for clients with rented home oxygen equipment;

(B) DMAP does not cover use of a large volume nebulizer, related compressor/generator, and water or saline when used predominately to provide room humidification;

(C) A non-disposable unfilled nebulizer (A7017 or E0585) filled with water or saline (A4217 or A7018) by the client/caregiver is an acceptable alternative to the large volume nebulizer when used as indicated in (1)(a)(B)(i) of this rule;

(D) Kits and concentrates for use in cleaning respiratory equipment are not covered;

(E) Accessories are separately payable if the related aerosol compressor and the individual accessories are medically appropriate. The following table lists each covered compressor/ generator and its covered accessories. Other compressor/generator/accessory combinations are not covered;

(F) Compressor/Generator (Related Accessories): E0565 (A4619, A7006, A7010, A7011, A7012, A7013, A7014, A7015, A7017, A7525, E1372); E0570 (A7003, A7004, A7005, A7006, A7013, A7015, A7525); E0571 (A7003, A7004, A7005, A7006, A7013, A7015, A7525) ; E0572 (A7006, A7014); E0585 (A4619, A7006, A7010, A7011, A7012, A7013, A7014, A7015, A7525);

(G) This array of accessories represents all possible combinations but it may not be appropriate to bill any or all of them for one device;

(H) **Table 122-0204-1** lists the usual maximum frequency of replacement for accessories. DMAP will not cover claims for more than the usual maximum replacement amount unless the request has been prior approved by DMAP before dispensing. The provider must submit requests for more than the usual maximum replacement amount to DMAP for review.

(2) Coding Guidelines:

(a) Accessories:

(A) Code A7003, A7005, and A7006 include the lid, jar, baffles, tubing, T-piece and mouthpiece. In addition, code A7006 includes a filter;

(B) Code A7004 includes only the lid, jar and baffles;

(C) Code A7012 describes a device to collect water condensation, which is placed in line with the corrugated tubing, used with a large volume nebulizer;

(D) Code E0585 is used when a heavy-duty aerosol compressor (E0565), durable bottle type large volume nebulizer (A7017), and immersion heater (E1372) are provided at the same time. If all three items are not provided initially, the separate codes for the components would be used for billing;

(E) Code A7017 is billed for a durable, bottle type nebulizer when it is used with a E0572 compressor or a separately billed E0565 compressor;

(F) Code A7017 would not be separately billed when an E0585 system was also being billed. Code E0580 (Nebulizer, durable, glass or autoclavable plastic, bottle type, for use with regulator or flow meter) describes the same piece of equipment as A7017, but should only be billed when this type of nebulizer is used with a client-owned oxygen system.

(b) Equipment:

(A) In this policy, the actual equipment (i.e., electrical device) will generally be referred to as a compressor (when nebulization of liquid is achieved by means of air flow). The term nebulizer is generally used for the

actual chamber in which the nebulization of liquid occurs and is an accessory to the equipment. The nebulizer is attached to an aerosol compressor in order to achieve a functioning delivery system for aerosol therapy;

(B) Code E0565 describes an aerosol compressor, which can be set for pressures above 30 psi at a flow of 6-8 L/m and is capable of continuous operation;

(C) A nebulizer with compressor (E0570) is an aerosol compressor, which delivers a fixed, low pressure and is used with a small volume nebulizer. It is only AC powered;

(D) A portable compressor (E0571) is an aerosol compressor, which delivers a fixed, low pressure and is used with a small volume nebulizer. It must have battery or DC power capability and may have an AC power option;

(E) A light duty adjustable pressure compressor (E0572) is a pneumatic aerosol compressor which can be set for pressures above 30 psi at a flow of 6-8 L/m, but is capable only of intermittent operation.

(3) Documentation Requirements:

(a) When billing and dispensing for an item in **Table 122-0204**, medical records must corroborate that all criteria in this rule are met;

(b) When a battery powered compressor (E0571) is dispensed, supporting documentation which justifies the medical appropriateness must be on file with the durable medical equipment, prosthetics, orthotics and supplies (DMEPOS) provider;

(c) The DMEPOS provider must maintain these medical records and make them available to DMAP on request.

(4) **Table 122-0204-1.**

(5) **Table 122-0204-2.**

[ED. NOTE: Table referenced is available from the agency.]

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 4-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 94-2004, f. 12-30-04, cert. ef. 1-1-05; OMAP 11-2005, f. 3-9-05, cert. ef. 4-1-05; OMAP 25-2006, f. 6-14-06, cert. ef. 7-1-06; OMAP 47-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 12-2007, f. 6-29-07, cert. ef. 7-1-07

## 410-122-0320

### Manual Wheelchair Base

(1) Indications and Limitations of Coverage and/or Medical Appropriateness:

(a) The Division of Medical Assistance Programs (DMAP) may cover a manual wheelchair when all of the following criteria are met:

(A) The client has a mobility limitation that significantly impairs their ability to accomplish mobility-related activities of daily living (MRADL) entirely; places the client at reasonably determined heightened risk of morbidity or mortality secondary to the attempts to perform a MRADL; or the client is unable to sustain safely the performance of MRADLs throughout the course of a regular day. See OAR 410-122-0010, Definitions, for complete definition of MRADL;

(B) An appropriately fitted cane or walker cannot sufficiently resolve the client's mobility limitation;

(C) The client's home provides adequate maneuvering space, maneuvering surfaces, and access between rooms for use of the manual wheelchair that is being requested;

(D) Use of a manual wheelchair will significantly improve the client's ability to move within the home to the areas customarily used for their MRADL so that the client can complete these MRADLs within a reasonable time frame;

(E) The client is willing to use the requested manual wheelchair in the home, and will use it on a regular basis in the home;

(F) The client has either:

(i) Sufficient upper extremity function and other physical and mental capabilities needed to safely self-propel the requested manual wheelchair in the home, during a typical day. Proper assessment of upper extremity function should consider limitations of strength, endurance, range of motion, coordination, presence of pain, and deformity or absence of one or both upper extremities; or

(ii) A caregiver who is available, willing, and able to provide assistance with the wheelchair;

(b) Only when conditions of coverage as specified in (1)(a) of this rule are met, may DMAP authorize a manual wheelchair for any of the following situations:

(A) When the wheelchair can be reasonably expected to improve the client's ability to complete MRADLs by compensating for other limitations in addition to mobility deficits and the client is compliant with treatment:

(i) Besides MRADLs deficits, when other limitations exist, and these limitations can be ameliorated or compensated sufficiently such that the

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additional provision of a manual wheelchair will be reasonably expected to significantly improve the client's ability to perform or obtain assistance to participate in MRADLs in the home, a manual wheelchair may be considered for coverage;

(ii) If the amelioration or compensation requires the client's compliance with treatment, for example medications or therapy, substantive non-compliance, whether willing or involuntary, can be grounds for denial of a manual wheelchair coverage if it results in the client continuing to have a significant limitation. It may be determined that partial compliance results in adequate amelioration or compensation for the appropriate use of a manual wheelchair;

(B) For a purchase request, when a client's current wheelchair is no longer medically appropriate, or repair and/or modifications to the wheelchair exceed replacement cost;

(C) When a covered, client-owned wheelchair is in need of repair, DMAP may pay for one month's rental of a wheelchair. See OAR 410-122-0184 Repairs, Maintenance, Replacement, Delivery and Dispensing).

(c) DMAP does not reimburse for another wheelchair if the client has a medically appropriate wheelchair, regardless of payer;

(d) The client's living quarters must be able to accommodate and allow for the effective use of the requested wheelchair. DMAP does not reimburse for adapting living quarters;

(e) DMAP does not cover services or upgrades that primarily allow performance of leisure or recreational activities. Such services include but are not limited to backup wheelchairs, backpacks, accessory bags, clothing guards, awnings, additional positioning equipment if wheelchair meets the same need, custom colors, and wheelchair gloves;

(f) Reimbursement for wheelchair codes includes all labor charges involved in the assembly of the wheelchair, as well as support services such as emergency services, delivery, set-up, pick-up and delivery for repairs/modifications, education, and ongoing assistance with the use of the wheelchair;

(g) DMAP may cover an adult tilt-in-space wheelchair (E1161) when a client meets all of the following conditions:

(A) Is dependent for transfers;

(B) Spends a minimum of four hours a day continuously in a wheelchair;

(C) The client's plan of care addresses the need to change position at frequent intervals and the client is not left in the tilt position most of the time; and

(D) Has one of the following:

(i) High risk of skin breakdown;

(ii) Poor postural control, especially of the head and trunk;

(iii) Hyper/hypotonia;

(iv) Need for frequent changes in position and has poor upright sitting.

(h) DMAP may cover a standard hemi (low seat) wheelchair (K0002) when a client requires a lower seat height (17" to 18") because of short stature or needing assistance to place his/her feet on the ground for propulsion;

(i) DMAP may cover a lightweight wheelchair (K0003) when a client:

(A) Cannot self-propel in a standard wheelchair using arms and/or legs; and

(B) Can and does self-propel in a lightweight wheelchair.

(j) High-strength lightweight wheelchair (K0004):

(A) DMAP may cover a high-strength lightweight wheelchair (K0004) when a client:

(i) Self-propels the wheelchair while engaging in frequent activities that cannot be performed in a standard or lightweight wheelchair; and/or

(ii) Requires a seat width, depth, or height that cannot be accommodated in a standard, lightweight or hemi-wheelchair, and spends at least two hours per day in the wheelchair.

(B) If the expected duration of need is less than three months (e.g., post-operative recovery), a high-strength lightweight wheelchair is rarely medically appropriate;

(k) DMAP may cover an ultralightweight wheelchair (K0005) when a client has medical needs that require determination on a case by case basis;

(l) DMAP may cover a heavy-duty wheelchair (K0006) when a client weighs more than 250 pounds or has severe spasticity;

(m) DMAP may cover an extra heavy-duty wheelchair (K0007) when a client weighs more than 300 pounds;

(n) For a client residing in a nursing facility, an extra heavy-duty wheelchair (K0007) may only be covered when a client weighs more than 350 pounds;

(o) For more information on coverage criteria regarding repairs and maintenance, see 410-122-0184 Repairs, Maintenance, Replacement and Delivery;

(p) A manual wheelchair for use only outside the home is not covered.

(2) Coding Guidelines:

(a) Adult manual wheelchairs (K0001-K0007, K0009, E1161) have a seat width and a seat depth of 15" or greater;

(b) For codes K0001-K0007 and K0009, the wheels must be large enough and positioned so that the user can self-propel the wheelchair;

(c) In addition, specific codes are defined by the following characteristics:

(A) Adult tilt-in-space wheelchair (E1161):

(i) Ability to tilt the frame of the wheelchair greater than or equal to 45 degrees from horizontal while maintaining the same back-to-seat angle; and

(ii) Lifetime warranty on side frames and crossbraces.

(B) Standard wheelchair (K0001):

(i) Weight: Greater than 36 pounds; and

(ii) Seat height: 19" or greater; and

(iii) Weight capacity: 250 pounds or less.

(C) Standard hemi (low seat) wheelchair (K0002):

(i) Weight: Greater than 36 pounds; and

(ii) Seat height: Less than 19"; and

(iii) Weight capacity: 250 pounds or less.

(D) Lightweight wheelchair (K0003):

(i) Weight: 34-36 pounds; and

(ii) Weight capacity: 250 pounds or less.

(E) High strength, lightweight wheelchair (K0004):

(i) Weight: Less than 34 pounds; and

(ii) Lifetime warranty on side frames and crossbraces.

(F) Ultralightweight wheelchair (K0005):

(i) Weight: Less than 30 pounds;

(ii) Adjustable rear axle position; and

(iii) Lifetime warranty on side frames and crossbraces.

(G) Heavy duty wheelchair (K0006) has a weight capacity greater than 250 pounds;

(H) Extra heavy duty wheelchair (K0007) has a weight capacity greater than 300 pounds.

(d) Coverage of all adult manual wheelchairs includes the following features:

(A) Seat width: 15" — 19";

(B) Seat depth: 15" — 19";

(C) Arm style: Fixed, swingaway, or detachable, fixed height;

(D) Footrests: Fixed, swingaway, or detachable.

(e) Codes K0003-K0007 and E1161 include any seat height;

(f) For individualized wheelchair features that are medically appropriate to meet the needs of a particular client, use the correct codes for the wheelchair base, options and accessories (see 410-122-0340 Wheelchair Options/Accessories);

(g) For wheelchair frames that are modified in a unique way to accommodate the client, submit the code for the wheelchair base used and submit the modification with code K0108 (wheelchair component or accessory, not otherwise specified);

(h) Wheelchair "poundage" (pounds) represents the weight of the usual configuration of the wheelchair with a seat and back, but without front riggings;

(i) A manual wheelchair with a seat width and/or depth of 14" or less is considered a pediatric size wheelchair and is billed with codes E1231-E1238 or E1229 (see 410-122-0720 Pediatric Wheelchairs);

(j) For more information on other features included in the allowance for the wheelchair base, see 410-122-0340 Wheelchair Options/Accessories;

(k) Contact the Statistical Analysis Durable Medical Equipment Regional Carrier (SADMERC) regarding correct coding. See 410-122-0180 Healthcare Common Procedure Coding System (HCPCS) Level II Coding for more information.

(3) Documentation Requirements:

(a) Functional Mobility Evaluation Form (DMAP 3125):

(A) Providers must submit this form or other medical documentation that supports conditions of coverage in this rule are met for purchase and modifications of all covered, client-owned manual wheelchairs except for K0001, K0002, or K0003 (unless modifications are required).

(B) Information must include, but is not limited to:

(i) Medical justification, needs assessment, order, and specifications for the wheelchair, completed by a physical therapist, occupational thera-

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pist or treating physician. The person who provides this information must have no direct or indirect financial relationship, agreement or contract with the durable medical equipment, prosthetics, orthotics and supplies (DMEPOS) provider requesting authorization; and

(ii) Client identification and rehab technology supplier identification information which may be completed by the DMEPOS provider; and

(iii) Signature and date by the treating physician and physical or occupational therapist.

(C) If the information on this form includes all the elements of an order, the provider may submit the completed form in lieu of an order;

(b) Additional Documentation:

(A) Information from a physical therapist, occupational therapist or treating physician that specifically indicates:

(i) The client's mobility limitation and how it interferes with the performance of activities of daily living;

(ii) Why a cane or walker can't meet this client's mobility needs in the home;

(B) Pertinent information from a physical therapist, occupational therapist or treating physician about the following elements that support coverage criteria are met for a manual wheelchair; only relevant elements need to be addressed:

(i) Symptoms;

(ii) Related diagnoses;

(iii) History;

(I) How long the condition has been present;

(II) Clinical progression;

(III) Interventions that have been tried and the results;

(IV) Past use of walker, manual wheelchair, POV, or power wheelchair and the results;

(iv) Physical exam:

(I) Weight;

(II) Impairment of strength, range of motion, sensation, or coordination of arms and legs;

(III) Presence of abnormal tone or deformity of arms, legs, or trunk;

(IV) Neck, trunk, and pelvic posture and flexibility;

(V) Sitting and standing balance;

(v) Functional assessment — any problems with performing the following activities including the need to use a cane, walker, or the assistance of another person:

(I) Transferring between a bed, chair, and a manual wheelchair or power mobility device;

(II) Walking around their home — to bathroom, kitchen, living room, etc. — provide information on distance walked, speed, and balance;

(C) Documentation from a physical therapist, occupational therapist or treating physician that clearly distinguishes the client's abilities and needs within the home from any additional needs for use outside the home since DMAP determines coverage of a wheelchair solely by the client's mobility needs within the home, even though a client who qualifies for coverage of a manual wheelchair may use the wheelchair outside the home; and

(D) For all requested equipment and accessories, the manufacturer's name, product name, model number, standard features, specifications, dimensions and options;

(E) Detailed information about client-owned equipment (including serial numbers), as well as any other equipment being used or available to meet the client's medical needs, including how long it has been used by the client and why it can't be grown or modified, if applicable;

(F) For the home assessment, prior to delivery of the wheelchair, the DMEPOS provider or practitioner must perform an on-site, written evaluation of the client's living quarters. This assessment must support that the client's home can accommodate and allow for the effective use of a wheelchair. This assessment must include, but is not limited to, evaluation of physical layout, doorway widths, doorway thresholds, surfaces, counter/table height, accessibility (e.g., ramps), electrical service, etc.;

(G) All Healthcare Common Procedure Coding System (HCPCS) codes, including the base, options and accessories, whether prior authorization (PA) is required or not, that will be separately billed;

(c) A written order by the treating physician, identifying the specific type of manual wheelchair needed. If the order does not specify the type requested by the DMEPOS provider on the authorization request, the provider must obtain another written order that lists the specific manual wheelchair that is being ordered and any options and accessories requested. The DMEPOS provider may enter the items on this order. This order must be signed and dated by the treating physician, received by the DMEPOS provider and submitted to the authorizing authority; and

(d) For purchase of K0001, K0002 or K0003 (without modifications):

(A) Information from a physical therapist, occupational therapist or treating physician that specifically indicates:

(i) The client's mobility limitation and how it interferes with the performance of activities of daily living;

(ii) Why a cane or walker can't meet this client's mobility needs in the home;

(B) Pertinent information from a physical therapist, occupational therapist or treating physician about the following elements that support coverage criteria are met for a manual wheelchair; only relevant elements need to be addressed:

(i) Symptoms;

(ii) Related diagnoses;

(iii) History;

(I) How long the condition has been present;

(II) Clinical progression;

(III) Interventions that have been tried and the results;

(IV) Past use of walker, manual wheelchair, POV, or power wheelchair and the results;

(iv) Physical exam:

(I) Weight;

(II) Impairment of strength, range of motion, sensation, or coordination of arms and legs;

(III) Neck, trunk, and pelvic posture and flexibility;

(IV) Sitting and standing balance;

(v) Functional assessment — any problems with performing the following activities including the need to use a cane, walker, or the assistance of another person:

(I) Transferring between a bed, chair, and a manual wheelchair or power mobility device;

(II) Walking around their home — to bathroom, kitchen, living room, etc. — provide information on distance walked, speed, and balance.

(C) Documentation from a physical therapist, occupational therapist or treating physician that clearly distinguishes the client's abilities and needs within the home from any additional needs for use outside the home since DMAP's coverage of a wheelchair is determined solely by the client's mobility needs within the home, even though a client who qualifies for coverage of a manual wheelchair may use the wheelchair outside the home; and

(D) For all requested equipment and accessories, the manufacturer's name, product name, model number, standard features, specifications, dimensions and options; and

(E) Detailed information about client-owned equipment (including serial numbers) as well as any other equipment being used or available to meet the client's medical needs, including the age of the equipment and why it can't be grown or modified, if applicable;

(F) The DMAP 3125 Functional Mobility Evaluation Form is not required;

(e) For an ultralight wheelchair (K0005), documentation from a physical therapist, occupational therapist or treating physician that includes a description of the client's mobility needs within the home, even though a client who qualifies for coverage of a manual wheelchair may use the wheelchair outside the home. This may include what types of activities the client frequently encounters and whether the client is fully independent in the use of the wheelchair. Describe the features of the K0005 base which are needed compared to the K0004 base; and

(f) When code K0009 requested, all information from a physical therapist, occupational therapist or treating physician that justifies the medical appropriateness for the item; and

(g) Any additional documentation that supports indications of coverage are met as specified in this policy; and

(h) For a manual wheelchair rental, submit all of the following:

(A) A written order from the treating physician, identifying the specific type of manual wheelchair needed:

(i) If the order does not specify the type of wheelchair requested by the DMEPOS provider on the authorization request, the provider must obtain another written order that lists the specific manual wheelchair that is being ordered and any options and accessories requested;

(ii) The DMEPOS provider may enter the items on this order;

(iii) This order must be signed and dated by the treating physician, received by the DMEPOS provider and submitted to the authorizing authority;

(B) HCPCS codes;



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(C) Documentation from the DMEPOS provider which supports that the client's home can accommodate and allow for the effective use of the requested wheelchair;

(i) The above documentation must be kept on file by the DMEPOS provider; and

(j) Documentation that the coverage criteria have been met must be present in the client's medical records and this documentation must be made available to DMAP on request.

**(4) Table 122-0320.**

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

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Hist.: HR 13-1991, f. & cert. ef. 3-1-91; HR 10-1992, f. & cert. ef. 4-1-92; HR 32-1992, f. & cert. ef. 10-1-92; HR 9-1993, f. & cert. ef. 4-1-93; HR 10-1994, f. & cert. ef. 2-15-94; HR 18-1994(Temp), f. & cert. ef. 4-1-94; HR 26-1994, f. & cert. ef. 7-1-94; HR 41-1994, f. 12-30-94, cert. ef. 1-1-95; HR 17-1996, f. & cert. ef. 8-1-96; HR 7-1997, f. 2-28-97, cert. ef. 3-1-97; OMAP 11-1998, f. & cert. ef. 4-1-98; OMAP 13-1999, f. & cert. ef. 4-1-99; OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 44-2005, f. 9-9-05, cert. ef. 10-1-05; OMAP 25-2006, f. 6-14-06, cert. ef. 7-1-06; OMAP 47-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 12-2007, f. 6-29-07, cert. ef. 7-1-07

## 410-122-0330

### Power-Operated Vehicle

(1) Indications and Limitations of Coverage and Medical Appropriateness:

(a) The Division of Medical Assistance Programs (DMAP) may cover a power-operated vehicle (POV) when all of the following criteria are met:

(A) The client has a mobility limitation that significantly impairs their ability to accomplish mobility-related activities of daily living (MRADLs) entirely; places the client at reasonably determined heightened risk of morbidity or mortality secondary to the attempts to perform an MRADL; or the client is unable to sustain safely the performance of MRADLs throughout the course of a regular day. See OAR 410-122-0010 Definitions for complete definition of MRADLs;

(B) An appropriately fitted cane or walker cannot resolve the client's mobility limitation;

(C) The client does not have sufficient upper extremity function to self-propel an optimally-configured manual wheelchair in the home to perform MRADLs during a typical day:

(i) Assessment of upper extremity function should consider limitations of strength, endurance, range of motion, or coordination, presence of pain, and deformity or absence of one or both upper extremities;

(ii) An optimally-configured manual wheelchair features an appropriate wheelbase, device weight, seating options, and other appropriate non-powered accessories;

(D) The client has sufficient strength, postural stability, or other physical or mental capabilities needed to safely operate a POV in the home;

(E) The client's home provides adequate maneuvering space, maneuvering surfaces, and access between rooms for the operation of the POV being requested;

(F) Use of a POV will significantly improve the client's ability to move within the home to the areas customarily used for their MRADLs to allow completion of these activities within a reasonable time frame;

(G) The client is willing to use the requested POV in the home, and the client will use it on a regular basis in the home;

(H) DMAP does not cover services or upgrades that primarily allow performance of leisure or recreational activities. Such services include but are not limited to backup POVs, backpacks, accessory bags, clothing guards, awnings, additional positioning equipment if the POV meets the same need, custom colors, and wheelchair gloves;

(b) For a POV to be covered, the treating physician must conduct a face-to-face examination of the client before writing the order:

(A) The durable medical equipment, prosthetics, orthotics and supplies (DMEPOS) provider must receive a written report of this examination within 45 days after the face-to-face examination and prior to delivery of the device.

(B) When this examination is performed during a hospital or nursing home stay, the DMEPOS provider must receive the report of the examination within 45 days after date of discharge;

(C) The physician may refer the client to a licensed/certified medical professional, such as a physical therapist (PT) or occupational therapist (OT), to perform part of this face-to-face examination. This person may not be an employee of the DMEPOS provider or have any direct or indirect financial relationship, agreement or contract with the DMEPOS provider. When the DMEPOS provider is owned by a hospital, a PT/OT working in

the inpatient or outpatient hospital setting may perform part of the face-to-face examination:

(i) If the client was referred to the PT/OT before being seen by the physician, then once the physician has received and reviewed the written report of this examination, the physician must see the client and perform any additional examination that is needed. The report of the physician's visit should state concurrence or any disagreement with the PT/OT examination. In this situation, the physician must provide the DMEPOS provider with a copy of both examinations within 45 days after the face-to-face examination with the physician;

(ii) If the physician saw the client to begin the examination before referring the client to a PT/OT, then if the physician sees the client again in person after receiving the report of the PT/OT examination, the 45-day period begins on the date of that second physician visit. However, it is also acceptable for the physician to review the written report of the PT/OT examination, to sign and date that report, and to state concurrence or any disagreement with that examination. In this situation, the physician must send a copy of the note from his/her initial visit to evaluate the client plus the annotated, signed, and dated copy of the PT/OT examination to the DMEPOS provider. The 45-day period begins when the physician signs and dates the PT/OT examination;

(iii) If the POV is a replacement of a similar item that was previously covered by DMAP or when only POV accessories are being ordered and all other coverage criteria in this rule are met, a face-to-face examination is not required;

(c) DMAP may authorize a new POV when a client's existing POV is no longer medically appropriate; or repair and/or modifications to the POV exceed replacement costs;

(d) If a client has a medically appropriate POV regardless of payer, DMAP will not reimburse for another POV;

(e) The cost of the POV includes all options and accessories that are provided at the time of initial purchase, including but not limited to batteries, battery chargers, seating systems, etc.;

(f) Reimbursement for the POV includes all labor charges involved in the assembly of the POV and all covered additions or modifications. Reimbursement also includes support services such as emergency services, delivery, set-up, pick-up and delivery for repairs/modifications, education and on-going assistance with use of the POV;

(g) If a patient-owned POV meets coverage criteria, medically appropriate replacement items, including but not limited to batteries, may be covered;

(h) If a POV is covered, a manual or power wheelchair provided at the same time or subsequently will usually be denied as not medically appropriate;

(i) DMAP will cover one month's rental of a POV if a client-owned POV is being repaired;

(j) The following services are not covered:

(A) POV for use only outside the home; and

(B) POV for a nursing facility client.

(2) Coding Guidelines:

(a) Code E1230 is used only for POVs that can be operated inside the home;

(b) Codes K0800 — K0802 are not used for a manual wheelchair with an add-on tiller control power pack;

(c) A replacement item, including but not limited to replacement batteries, should be requested using the specific wheelchair option or accessory code if one exists (see 410-122-0340, Wheelchairs Options/Accessories). If a specific code does not exist, use code K0108 (wheelchair component or accessory, not otherwise specified);

(d) For guidance on correct coding, DMEPOS providers should contact the Statistical Analysis Durable Medical Equipment Regional Carrier (SADMERC). See 410-122-0180 Healthcare Common Procedure Coding System (HCPCS) Level II Coding for more information.

(3) Documentation Requirements: Submit all of the following documentation with the prior authorization (PA) request:

(a) A copy of the written report of the face-to-face examination of the client by the physician:

(A) The report must include information related to the following:

(i) This client's mobility limitation and how it interferes with the performance of activities of daily living;

(ii) Why a cane or walker can't meet this client's mobility needs in the home;

(iii) Why a manual wheelchair can't meet this client's mobility needs in the home;

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(iv) This client's physical and mental abilities to operate a POV (scooter) safely in the home:

(I) Besides a mobility limitation, if other conditions exist that limit a client's ability to participate in MRADLs, how these conditions will be ameliorated or compensated;

(II) How these other conditions will be ameliorated or compensated sufficiently such that the additional provision of mobility assistive equipment (MAE) will be reasonably expected to significantly improve the client's ability to perform or obtain assistance to participate in MRADLs in the home.

(B) The face-to-face examination should provide pertinent information about the following elements, but may include other details. Each element does not have to be addressed in every evaluation:

(i) Symptoms;

(ii) Related diagnoses;

(iii) History:

(I) How long the condition has been present;

(II) Clinical progression;

(III) Interventions that have been tried and the results;

(IV) Past use of walker, manual wheelchair, POV, or power wheelchair and the results;

(iv) Physical exam:

(I) Weight;

(II) Impairment of strength, range of motion, sensation, or coordination of arms and legs;

(III) Presence of abnormal tone or deformity of arms, legs or trunk;

(IV) Neck, trunk, and pelvic posture and flexibility;

(V) Sitting and standing balance;

(v) Functional assessment — any problems with performing the following activities including the need to use a cane, walker, or the assistance of another person:

(I) Transferring between a bed, chair, and power mobility device;

(II) Walking around their home — to bathroom, kitchen, living room, etc. — provide information on distance walked, speed, and balance;

(C) Although a client who qualifies for coverage of a POV may use that device outside the home, because DMAP's coverage of a POV is determined solely by the client's mobility needs within the home, the examination must clearly distinguish the client's abilities and needs within the home from any additional needs for use outside the home;

(b) The physician's written order, received by the DMEPOS provider within 30 days after the physician's face-to-face examination, which includes all of the following elements:

(A) Client's name;

(B) Description of the item that is ordered. This may be general — e.g., "POV" or "power mobility device" — or may be more specific:

(i) If this order does not identify the specific type of POV that is being requested, the DMEPOS provider must clarify this by obtaining another written order which lists the specific POV that is being ordered and any options and accessories requested;

(ii) The items on this order may be entered by the DMEPOS provider. This subsequent order must be signed and dated by the treating physician, received by the DMEPOS provider and submitted to the authorizing authority, but does not have to be received within 45 days following the face-to-face examination.

(C) Date of the face-to-face examination;

(D) Most significant ICD-9 diagnosis code that relates specifically to the need for the POV;

(E) Length of need;

(F) Physician's signature;

(G) Date of physician signature;

(c) For all requested equipment and accessories, include the manufacturer's name, product name, model number, standard features, specifications, dimensions and options;

(d) Detailed information about client-owned equipment (including serial numbers) as well as any other equipment being used or available to meet the client's medical needs, including the age of the equipment and why it can't be grown or modified, if applicable;

(e) A written evaluation of the client's living quarters, performed by the DMEPOS provider. This assessment must support that the client's home can accommodate and allow for the effective use of a POV, including, but is not limited to, evaluation of door widths, counter/table height, accessibility (e.g., ramps), electrical service, etc; and

(f) All Healthcare Common Procedure Coding System codes (HCPCS) to be billed on this claim (both codes that require authorization and those that do not require authorization); and

(g) Any additional documentation that supports indications of coverage are met as specified in this rule;

(h) The above documentation must be kept on file by the DMEPOS provider;

(i) Documentation that the coverage criteria have been met must be present in the client's medical record. This documentation and any additional medical information from the DMEPOS provider must be made available to DMAP on request.

(4) Billing:

(a) Procedure Codes:

(A) K0800 Power operated vehicle, group 1 standard, patient weight capacity up to and including 300 pounds — PA;

(B) K0801 Power operated vehicle, group 1 heavy duty, patient weight capacity, 301 to 450 pounds — PA;

(C) K0802 Power operated vehicle, group 1 very heavy duty, patient weight capacity, 451 to 600 pounds — PA;

(b) DMAP will purchase, rent and repair;

(c) Item considered purchased after 13 months of rent.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 8-2002, f. & cert. ef. 4-1-02; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 25-2006, f. 6-14-06, cert. ef. 7-1-06; DMAP 12-2007, f. 6-29-07, cert. ef. 7-1-07

### 410-122-0340

#### Wheelchair Options/Accessories

(1) Indications and Limitations of Coverage and Medical Appropriateness:

(a) The Division of Medical Assistance Programs (DMAP) may cover options and accessories for covered wheelchairs when the following criteria are met:

(A) The client has a wheelchair that meets DMAP coverage criteria; and

(B) The client requires the options/accessories to accomplish their mobility-related activities of daily living (MRADLs) in the home. See 410-122-0010 Definitions for definition of MRADLs;

(b) DMAP does not cover options/accessories whose primary benefit is allowing the client to perform leisure or recreational activities;

(c) Arm of Chair:

(A) Adjustable arm height option (E0973, K0017, K0018, K0020) may be covered when the client:

(i) Requires an arm height that is different than what is available using nonadjustable arms; and

(ii) Spends at least two hours per day in the wheelchair;

(B) An arm trough (K0106) is covered if the client has quadriplegia, hemiplegia, or uncontrolled arm movements;

(d) Foot rest/Leg rest:

(A) Elevating leg rests (E0990, K0046, K0047, K0053, K0195) may be covered when:

(i) The client has a musculoskeletal condition or the presence of a cast or brace which prevents 90 degree flexion at the knee; or

(ii) The client has significant edema of the lower extremities that requires having an elevating leg rest; or

(iii) The client meets the criteria for and has a reclining back on the wheelchair;

(B) Elevating leg rests that are used with a wheelchair that is purchased or owned by the patient are coded E0990. This code is per leg rest;

(C) Elevating leg rests that are used with a capped rental wheelchair base should be coded K0195. This code is per pair of leg rests;

(e) Nonstandard Seat Frame Dimensions:

(A) For all adult wheelchairs, DMAP includes payment for seat widths and/or seat depths of 15-19 inches in the payment for the base code. These seat dimensions must not be separately billed;

(B) Codes E2201-E2204 and E2340-E2343 describe seat widths and/or depths of 20 inches or more for manual or power wheelchairs;

(C) A nonstandard seat width and/or depth (E2201-E2204 and E2340-E2343) is covered only if the patient's dimensions justify the need;

(f) Rear Wheels for Manual Wheelchairs: Code K0064 (flat free insert) is used to describe either:

(A) A removable ring of firm material that is placed inside of a pneumatic tire to allow the wheelchair to continue to move if the pneumatic tire is punctured; or

(B) Non-removable foam material in a foam filled rubber tire;

(C) K0064 is not used for a solid self-skinning polyurethane tire;

(g) Batteries/Chargers:

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(A) Up to two batteries (E2360-E2365) at any one time are allowed if required for a power wheelchair;

(B) Batteries/chargers for motorized/power wheelchairs are separately payable from the purchased wheelchair base;

(h) Seating:

(A) DMAP may cover a general use seat cushion and a general-use wheelchair back-cushion for a client whose wheelchair that meets DMAP coverage criteria;

(B) A skin protection seat cushion may be covered for a client who meets both of the following criteria:

(i) The client has a wheelchair that meets DMAP coverage criteria; and

(ii) The client has either of the following:

(I) Current pressure ulcer or past history of a pressure ulcer on the area of contact with the seating surface; or

(II) Absent or impaired sensation in the area of contact with the seating surface or inability to carry out a functional weight shift due to one of the following diagnoses: spinal cord injury resulting in quadriplegia or paraplegia, other spinal cord disease, multiple sclerosis, other demyelinating disease, cerebral palsy, anterior horn cell diseases including amyotrophic lateral sclerosis), post polio paralysis, traumatic brain injury resulting in quadriplegia, spina bifida, childhood cerebral degeneration, Alzheimer's disease, Parkinson's disease;

(C) A positioning seat cushion, positioning back cushion, and positioning accessory (E0955-E0957, E0960) may be covered for a client who meets both of the following criteria:

(i) The client has a wheelchair that meets DMAP coverage criteria; and

(ii) The client has any significant postural asymmetries due to one of the diagnoses listed in criterion (h)(A)(ii)(II) or to one of the following diagnoses: monoplegia of the lower limb; hemiplegia due to stroke, traumatic brain injury, or other etiology; muscular dystrophy; torsion dystonias; spinocerebellar disease;

(D) A combination skin protection and positioning seat cushion may be covered when a client meets the criteria for both a skin protection seat cushion and a positioning seat cushion;

(E) Separate payment is allowed for a seat cushion solid support base (E2618) with mounting hardware when it is used on an adult manual wheelchair (K0001-K0009, E1161) or lightweight power wheelchair. There is no separate payment when this is used with other types of power wheelchairs because those wheelchairs include a solid support base;

(F) There is no separate payment for a solid insert (E0992) that is used with a seat or back cushion because a solid base is included in the allowance for a wheelchair seat or back cushion;

(G) There is no separate payment for mounting hardware for a seat or back cushion;

(H) There is no separate payment for a headrest (E0955, E0966) on a captain's seat on a power wheelchair;

(I) A custom fabricated seat cushion (E2609) and a custom fabricated back cushion (E2617) are cushions that are individually made for a specific patient:

(i) Basic materials include liquid foam or a block of foam and sheets of fabric or liquid coating material:

(I) A custom fabricated cushion may include certain prefabricated components (e.g., gel or multi-cellular air inserts); these components must not be billed separately;

(II) The cushion must have a removable vapor permeable or waterproof cover or it must have a waterproof surface;

(ii) The cushion must be fabricated using molded-to-patient-model technique, direct molded-to-patient technique, CAD-CAM technology, or detailed measurements of the patient used to create a configured cushion:

(I) If foam-in-place or other material is used to fit a substantially prefabricated cushion to an individual client, the cushion must be billed as a prefabricated cushion, not custom fabricated;

(II) The cushion must have structural features that significantly exceed the minimum requirements for a seat or back positioning cushion;

(iii) If a custom fabricated seat and back are integrated into a one-piece cushion, code as E2609 plus E2617;

(J) A custom fabricated seat cushion may be covered if criteria (i) and (iii) are met. A custom fabricated back cushion may be covered if criteria (ii) and (iii) are met:

(i) Client meets all of the criteria for a prefabricated skin protection seat cushion or positioning seat cushion;

(ii) Client meets all of the criteria for a prefabricated positioning back cushion;

(iii) There is a comprehensive written evaluation by a licensed clinician (who is not an employee of or otherwise paid by a durable medical equipment, prosthetics, orthotics and supplies (DMEPOS) provider) which clearly explains why a prefabricated seating system is not sufficient to meet the client's seating and positioning needs;

(K) A prefabricated seat cushion, a prefabricated positioning back cushion, or a brand name custom fabricated seat or back cushion which has not received a written coding verification from the Statistical Analysis DME Regional Carrier SADMERC or which does not meet the criteria stated in this rule is not covered;

(L) A headrest extension (E0966) is a sling support for the head. Code E0955 describes any type of cushioned headrest;

(M) The code for a seat or back cushion includes any rigid or semi-rigid base or posterior panel, respectively, that is an integral part of the cushion;

(N) A solid insert (E0992) is a separate rigid piece of wood or plastic which is inserted in the cover of a cushion to provide additional support and is included in the allowance for a seat cushion;

(O) A solid support base for a seat cushion is a rigid piece of plastic or other material that is attached with hardware to the seat frame of a wheelchair in place of a sling seat. A cushion is placed on top of the support base. Use code E2618 for this solid support base;

(i) DMAP will only cover accessories billed under the following codes when SADMERC has made written confirmation of use of the code for the specific product(s) being billed: E2601-E2608, E2611-E2616, E2620, E2621; E2609 and E2617 (brand-name products), K0108 (for wheelchair cushions):

(A) Information concerning the documentation that must be submitted to the SADMERC for a Coding Verification Request can be found on the SADMERC Web site or by contacting the SADMERC;

(B) A Product Classification List with products that have received a coding verification can be found on the SADMERC Web site;

(j) Code E1028 (swingaway or removable mounting hardware upgrade) may be billed in addition to codes E0955-E0957. It must not be billed in addition to code E0960. It must not be used for mounting hardware related to a wheelchair seat cushion or back cushion code;

(k) Power seating systems:

(A) A power-tilt seating system (E1002):

(i) Includes all the following:

(I) A solid seat platform and a solid back; any frame width and depth;

(II) Detachable or flip-up fixed height or adjustable height armrests;

(III) Fixed or swingaway detachable leg rests;

(IV) Fixed or flip-up footplates;

(V) Motor and related electronics with or without variable speed programmability;

(VI) Switch control that is independent of the power wheelchair drive control interface;

(VII) Any hardware that is needed to attach the seating system to the wheelchair base;

(ii) It does not include a headrest;

(iii) It must have the following features:

(I) Ability to tilt to greater than or equal to 45 degrees from horizontal;

(II) Back height of at least 20 inches;

(III) Ability for the supplier to adjust the seat to back angle;

(IV) Ability to support patient weight of at least 250 pounds.

(B) A power recline seating system (E1003-E1005):

(i) Includes all the following:

(I) A solid seat platform and a solid back;

(II) Any frame width and depth;

(III) Detachable or flip-up fixed height or adjustable height arm rests;

(IV) Fixed or swingaway detachable leg rests;

(V) Fixed or flip-up footplates;

(VI) A motor and related electronics with or without variable speed programmability;

(VII) A switch control that is independent of the power wheelchair drive control interface;

(VIII) Any hardware that is needed to attach the seating system to the wheelchair base;

(ii) It does not include a headrest;

(iii) It must have the following features:

(I) Ability to recline to greater than or equal to 150 degrees from horizontal;

(II) Back height of at least 20 inches;

(III) Ability to support patient weight of at least 250 pounds.

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(C) A power tilt and recline seating system (E1006-E1008):

- (i) Includes the following:
  - (I) A solid seat platform and a solid back;
  - (II) Any frame width and depth; detachable or flip-up fixed height or adjustable height armrests;
  - (III) Fixed or swingaway detachable leg rests; fixed or flip-up footplates;
  - (IV) Two motors and related electronics with or without variable speed programmability;
  - (V) Switch control that is independent of the power wheelchair drive control interface;
  - (VI) Any hardware that is needed to attach the seating system to the wheelchair base;
- (ii) It does not include a headrest;
- (iii) It must have the following features:
  - (I) Ability to tilt to greater than or equal to 45 degrees from horizontal;
  - (II) Ability to recline to greater than or equal to 150 degrees from horizontal;
  - (III) Back height of at least 20 inches; ability to support patient weight of at least 250 pounds.

(D) A mechanical shear reduction feature (E1004 and E1007) consists of two separate back panels. As the posterior back panel reclines or raises, a mechanical linkage between the two panels allows the client's back to stay in contact with the anterior panel without sliding along that panel;

(E) A power shear reduction feature (E1005 and E1008) consists of two separate back panels. As the posterior back panel reclines or raises, a separate motor controls the linkage between the two panels and allows the client's back to stay in contact with the anterior panel without sliding along that panel;

(F) A power leg elevation feature (E1010) involves a dedicated motor and related electronics with or without variable speed programmability which allows the leg rest to be raised and lowered independently of the recline and/or tilt of the seating system. It includes a switch control which may or may not be integrated with the power tilt and/or recline control(s);

- (I) Codes E2310 and E2311 (Power Wheelchair Accessory):
  - (A) Describe the electronic components that allow the client to control two or more of the following motors from a single interface (e.g., proportional joystick, touchpad, or non-proportional interface): power wheelchair drive, power tilt, power recline, power shear reduction, power leg elevation, power seat elevation, power standing;
  - (B) Include a function selection switch that allows the client to select the motor that is being controlled and an indicator feature to visually show which function has been selected;
  - (C) When the wheelchair drive function is selected the indicator feature may also show the direction that is selected (forward, reverse, left, right). This indicator feature may be in a separate display box or may be integrated into the wheelchair interface;
  - (D) Payment for the code includes an allowance for fixed mounting hardware for the control box and for the display box (if present);
  - (E) When a switch is medically appropriate and a client has adequate hand motor skills, a switch would be considered the least costly alternative;
  - (F) E2310 or E2311 may be considered for coverage when a client does not have hand motor skills or presents with cognitive deficits, contractures or limitation of movement patterns that prevents operation of a switch;
  - (G) In addition, an alternate switching system must be medically appropriate and not hand controlled (not running through a joystick);
  - (H) If a wheelchair has an electrical connection device described by code E2310 or E2311 and if the sole function of the connection is for a power seat elevation or power standing feature, it is not covered.
    - (m) Power Wheelchair Drive Control Systems:
      - (A) The term interface in the code narrative and definitions describes the mechanism for controlling the movement of a power wheelchair. Examples of interfaces include, but are not limited to, joystick, sip and puff, chin control, head control, etc.;
      - (B) A proportional interface is one in which the direction and amount of movement by the client controls the direction and speed of the wheelchair. One example of a proportional interface is a standard joystick;
      - (C) A non-proportional interface is one that involves a number of switches. Selecting a particular switch determines the direction of the wheelchair, but the speed is pre-programmed. One example of a non-proportional interface is a sip-and-puff mechanism;
      - (D) The term controller describes the microprocessor and other related electronics that receive and interpret input from the joystick (or other

drive control interface) and convert that input into power output to the motor and gears in the power wheelchair base;

(E) A switch is an electronic device that turns power to a particular function either "on" or "off". The external component of a switch may be either mechanical or non-mechanical. Mechanical switches involve physical contact in order to be activated. Examples of the external components of mechanical switches include, but are not limited to, toggle, button, ribbon, etc. Examples of the external components of non-mechanical switches include, but are not limited to, proximity, infrared, etc. Some of the codes include multiple switches. In those situations, each functional switch may have its own external component or multiple functional switches may be integrated into a single external switch component or multiple functional switches may be integrated into the wheelchair control interface without having a distinct external switch component;

(F) A stop switch allows for an emergency stop when a wheelchair with a non-proportional interface is operating in the latched mode. (Latched mode is when the wheelchair continues to move without the patient having to continually activate the interface.) This switch is sometimes referred to as a kill switch;

(G) A direction change switch allows the client to change the direction that is controlled by another separate switch or by a mechanical proportional head control interface. For example, it allows a switch to initiate forward movement one time and backward movement another time;

(H) A function selection switch allows the client to determine what operation is being controlled by the interface at any particular time. Operations may include, but are not limited to, drive forward, drive backward, tilt forward, recline backward, etc.;

(I) An integrated proportional joystick and controller is an electronics package in which a joystick and controller electronics are in a single box, which is mounted on the arm of the wheelchair;

(J) The interfaces described by codes E2320-E2322, E2325, and E2327-E2330 must have programmable control parameters for speed adjustment, tremor dampening, acceleration control, and braking;

(K) A remote joystick (E2320, E2321) is one in which the joystick is in one box that is mounted on the arm of the wheelchair and the controller electronics are located in a different box that is typically located under the seat of the wheelchair. These codes include remote joysticks that are used for hand control as well as joysticks that are used for chin control. Code E2320 includes any type of proportional remote joystick stick including, but not limited to standard, mini-proportional, compact, and short throw remote joysticks;

(L) When code E2320 or E2321 is used for a chin control interface, the chin cup is billed separately with code E2324;

(M) Code E2320 also describes a touchpad that is an interface similar to the pad-type mouse found on portable computers;

(N) Code E2322 describes a system of 3-5 mechanical switches that are activated by the client touching the switch. The switch that is selected determines the direction of the wheelchair. A mechanical stop switch and a mechanical direction change switch, if provided, are included in the allowance for the code;

(O) Code E2323 includes prefabricated joystick handles that have shapes other than a straight stick — e.g., U shape or T shape — or that have some other nonstandard feature — e.g., flexible shaft;

(P) A sip and puff interface (E2325) is a non-proportional interface in which the client holds a tube in their mouth and controls the wheelchair by either sucking in (sip) or blowing out (puff). A mechanical stop switch is included in the allowance for the code. E2325 does not include the breath tube kit that is described by code E2326;

(Q) A proportional, mechanical head control interface (E2327) is one in which a headrest is attached to a joystick-like device. The direction and amount of movement of the client's head pressing on the headrest control the direction and speed of the wheelchair. A mechanical direction control switch is included in the code;

(R) A proportional, electronic head control interface (E2328) is one in which a client's head movements are sensed by a box placed behind the client's head. The direction and amount of movement of the client's head (which does not come in contact with the box) control the direction and speed of the wheelchair. A proportional, electronic extremity control interface (E2328) is one in which the direction and amount of movement of the client's arm or leg control the direction and speed of the wheelchair;

(S) A non-proportional, contact switch head control interface (E2329) is one in which a client activates one of three mechanical switches placed around the back and sides of their head. These switches are activated by pressure of the head against the switch. The switch that is selected determines the direction of the wheelchair. A mechanical stop switch and a

# ADMINISTRATIVE RULES

mechanical direction change switch are included in the allowance for the code;

(T) A non-proportional, proximity switch head control interface (E2330) is one in which a client activates one of three switches placed around the back and sides of their head. These switches are activated by movement of the head toward the switch, though the head does not touch the switch. The switch that is selected determines the direction of the wheelchair. A mechanical stop switch and a mechanical direction change switch are included in the allowance for the code;

(U) Code E2399 (not otherwise classified interface) is appropriately used in the following situations:

(i) An integrated proportional joystick and controller box are being replaced due to damage; or

(ii) The item being replaced is a remote joystick box only (without the controller); or

(iii) The item being replaced is another type of interface, e.g. sip and puff, head control without the controller); or

(iv) The item being replaced is the controller box only (without the remote joystick or other type of interface); or

(v) There is no specific E code that describes the type of drive control interface system that is provided. In this situation, E2399 would be used at the time of initial issue or if the item was being provided as a replacement;

(V) The KC modifier (replacement of special power wheelchair interface):

(i) Is used in the following situations:

(I) Due to a change in the client's condition an integrated joystick and controller is being replaced by another drive control interface — e.g., remote joystick, head control, sip and puff, etc.; or

(II) The client has a drive control interface described by codes E2320-E2322, E2325, or E2327-E2330 and both the interface (e.g., joystick, head control, sip and puff) and the controller electronics are being replaced due to irreparable damage;

(ii) The KC modifier is never used at the time of initial issue of a wheelchair;

(iii) The KC modifier specifically states replacement, therefore, the RP modifier is not required. The KC modifier is not used when billing code E2399;

(n) Other Power Wheelchair Accessories: An electronic interface (E2351) to allow a speech generating device to be operated by the power wheelchair control interface may be covered if the client has a covered speech generating device. (See Division 129, Speech-Language Pathology, Audiology and Hearing Aid Services.);

(o) Miscellaneous Accessories:

(A) Anti-rollback device (E0974) is covered if the client propels himself/herself and needs the device because of ramps;

(B) A safety belt/pelvic strap (E0978) is covered if the client has weak upper body muscles, upper body instability or muscle spasticity that requires use of this item for proper positioning;

(C) A shoulder harness/straps or chest strap (E0960) and a safety belt/pelvic strap (E0978) are covered only to treat a client's medical symptoms:

(i) A medical symptom is defined as an indication or characteristic of a physical or psychological condition;

(ii) E0960 and E0978 are not covered when intended for use as a physical restraint or for purposes intended for discipline or convenience of others;

(D) One example (not all-inclusive) of a covered indication for swingaway, retractable, or removable hardware (E1028) would be to move the component out of the way so that a client could perform a slide transfer to a chair or bed;

(E) A fully reclining back option (E1226) is covered if the client spends at least 2 hours per day in the wheelchair and has one or more of the following conditions/needs:

(i) Quadriplegia;

(ii) Fixed hip angle;

(iii) Trunk or lower extremity casts/braces that require the reclining back feature for positioning;

(iv) Excess extensor tone of the trunk muscles; and/or

(v) The need to rest in a recumbent position two or more times during the day and transfer between wheelchair and bed is very difficult.

(2) Documentation Requirements: Submit documentation that supports coverage criteria in this rule are met and the specified information as follows with the prior authorization (PA) request:

(a) A Certificate of Medical Necessity (CMN) for E0973, E0990, K0017, K0018, K0020, E1226, K0046, K0047, K0053, and K0195. For

these items, the CMN may act as a substitute for a written order if it contains all of the required elements of an order. Depending on the type of wheelchair, the CMN for these options/accessories is either CMS Form 843 (power wheelchairs) or CMS Form 844 (manual wheelchairs);

(b) When code K0108 is billed, a narrative description of the item, the manufacturer, the model name or number (if applicable), and information justifying the medical appropriateness for the item;

(c) Options/accessories for individual consideration might include documentation on the client's diagnosis, the client's abilities and limitations as they relate to the equipment (e.g., degree of independence/dependence, frequency and nature of the activities the client performs, etc.), the duration of the condition, the expected prognosis, past experience using similar equipment;

(d) For a custom-fabricated seat cushion:

(A) A comprehensive written evaluation by a licensed clinician (who is not an employee of or otherwise paid by a DMEPOS provider) which clearly explains why a prefabricated seating system is not sufficient to meet the client's seating and positioning needs, and;

(B) Diagnostic reports that support the medical condition;

(C) Dated and clear photographs;

(D) Body contour measurements;

(e) Documentation that the coverage criteria in this rule have been met must be present in the client's medical record. This documentation and any additional medical information from the DMEPOS provider must be made available to DMAP on request.

(3) **Table 122-0340.**

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 13-1991, f. & cert. ef. 3-1-91; HR 10-1992, f. & cert. ef. 4-1-92; HR 32-1992, f. & cert. ef. 10-1-92; HR 9-1993, f. & cert. ef. 4-1-93; HR 10-1994, f. & cert. ef. 2-15-94; HR 26-1994, f. & cert. ef. 7-1-94; HR 41-1994, f. 12-30-94, cert. ef. 1-1-95; HR 17-1996, f. & cert. ef. 8-1-96; HR 7-1997, f. 2-28-97, cert. ef. 3-1-97; OMAP 11-1998, f. & cert. ef. 4-1-98; OMAP 13-1999, f. & cert. ef. 4-1-99; OMAP 1-2000, f. 3-31-00, cert. ef. 4-1-00; OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 4-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 25-2004, f. & cert. ef. 4-1-04; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 94-2004, f. 12-30-04, cert. ef. 1-1-05; OMAP 44-2005, f. 9-9-05, cert. ef. 10-1-05; OMAP 25-2006, f. 6-14-06, cert. ef. 7-1-06; OMAP 47-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 12-2007, f. 6-29-07, cert. ef. 7-1-07

## 410-122-0520

### Glucose Monitors and Diabetic Supplies

(1) Indications and Limitations of Coverage and Medical Appropriateness:

(a) The Division of Medical Assistance Programs (DMAP) may cover medically appropriate diabetic supplies including home blood glucose monitors for clients with diabetes, including gestational diabetes who can better control their blood glucose levels by checking them and contacting their treating practitioner for advice and treatment, as appropriate;

(b) Coverage of home blood glucose monitors is limited to clients meeting all of the following conditions:

(A) The client has diabetes which is being treated by a practitioner; and

(B) The glucose monitor and related accessories and supplies have been ordered by a practitioner who is treating the client's diabetes; and

(C) The client or caregiver has successfully completed training or is scheduled to begin training in the use of the monitor, test strips, and lancing devices; and

(D) The client or caregiver is capable of using the test results to assure the client's appropriate glycemic control; and

(E) The device is designed for home use;

(c) A home blood glucose monitor with special features (E2100 or E2101) may be covered for clients who meet the basic coverage criteria (1)(b)(A)–(E) of this rule; and:

(A) For code E2100, the treating practitioner certifies that the client has a severe visual impairment (i.e., best corrected visual acuity of 20/200 or worse) requiring use of this special monitoring system; or

(B) For code E2101, the treating practitioner certifies that the client has an impairment of manual dexterity severe enough to require the use of this special monitoring system. Coverage of E2101 for a client with manual dexterity impairments is not dependent upon a visual impairment;

(d) If a glucose monitor is covered, lancets (A4259), blood glucose test reagent strips (A4253), glucose control solutions (A4256), and spring powered devices for lancets (A4258) may also be covered. Coverage limitations for these supplies are as follows:

(A) A4258 — only one spring powered device every six months;

(B) A4253 and A4259 — The durable medical equipment, prosthetics, orthotics and supplies (DMEPOS) provider of the test strips and lancets

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must maintain in its records the order from the treating practitioner. Before providing more test strips and lancets, the client must have nearly exhausted their supply. The amount of test strips and lancets covered are based on the needs of the client according to the following utilization guidelines:

(i) Up to 100 test strips and 100 lancets every three months for clients who are not currently being treated with insulin injections;

(ii) Up to 100 test strips and 100 lancets every month for clients who are currently being treated with insulin injections;

(iii) For amounts that exceed the utilization guidelines, the treating practitioner must have:

(I) Documented in the client's medical record the specific reason for the additional supplies for that particular client; and

(II) Seen the client and have evaluated their diabetes control within six months prior to ordering quantities that exceed the utilization guidelines; and

(III) Documented in the client's medical record, a specific narrative statement that adequately specifies the frequency at which the client is actually testing or a copy of the client's log; or there must be documentation in the DMEPOS provider's records, (e.g., a copy of the client's log) that the client is actually testing at a frequency that corroborates the quantity of supplies that have been dispensed. If the client is regularly using quantities of supplies that exceed the utilization guidelines, new documentation must be present at least every six months;

(e) DMEPOS providers must not dispense a quantity of supplies exceeding a client's expected utilization. DMEPOS providers should stay attuned to atypical utilization patterns on behalf of their clients and verify with the ordering practitioner that the atypical utilization is, in fact, warranted. Regardless of utilization, a DMEPOS provider must not dispense more than a three month quantity of glucose testing supplies at a time;

(f) Providers may contact the treating practitioner to renew an order; however, the request for renewal may only be made with the client's continued monthly use of testing supplies and only with the client's or caregiver's request to the DMEPOS provider for order renewal;

(g) An order refill does not have to be approved by the ordering practitioner; however, a client or their caregiver must specifically request refills of glucose monitor supplies before they are dispensed. The DMEPOS provider must not automatically dispense a quantity of supplies on a predetermined regular basis, even if the client has "authorized" this in advance;

(h) Codes in this rule ordered by the practitioner on an "as needed" basis are not covered;

(i) Purchase fee includes normal, low and high-calibrator solution/chips (A4256), a battery (A4233, A4234, A4235 or A4236) and a spring-powered lancet device (A4258).

(2) Guidelines:

(a) Insulin-treated means that the client is receiving insulin injections to treat their diabetes. Insulin does not exist in an oral form and therefore patients taking oral medication to treat their diabetes are not insulin-treated;

(b) A severe visual impairment is defined as a best corrected visual acuity of 20/200 or worse;

(c) An order renewal is the act of obtaining an order for an additional period of time beyond that previously ordered by the treating practitioner;

(d) An order refill is the act of replenishing quantities of previously ordered items during the time period in which the current order is valid;

(e) A4256 describes control solutions containing high, normal, and low concentrations of glucose that can be applied to test strips to check the integrity of the test strips. This code does not describe the strip or chip which is included in a vial of test strips and which calibrates the glucose monitor to that particular vial of test strips;

(f) For glucose test strips (A4253), 1 unit of service = 50 strips. For lancets (A4259), 1 unit of service = 100 lancets;

(g) Blood glucose test or reagent strips that use a visual reading and are not used in a glucose monitor are not covered. Do not use code A4253 for these items;

(h) DMEPOS providers should contact the Statistical Analysis Durable Medical Equipment Regional Carrier (SADMERC) for guidance on the correct coding of these items.

(3) Documentation Requirements:

(a) For codes requiring prior authorization (PA), submit documentation which supports coverage criteria as specified in this rule are met;

(b) The order for home blood glucose monitors and/or diabetic testing supplies must include all of the following:

(A) All item(s) to be dispensed;

(B) The specific frequency of testing;

(C) The treating practitioner's signature;

(D) The date of the treating practitioner's signature;

(E) A start date of the order — only required if the start date is different than the signature date;

(c) A new order must be obtained when there is a change in the testing frequency;

(d) For E2100 or E2101 in a client with impaired visual acuity, submit documentation which includes a narrative statement from the practitioner that indicates the client's specific numerical visual acuity (e.g., 20/400) and that this result represents "best corrected" vision;

(e) For E2101 — clients with impaired manual dexterity, submit documentation which includes a narrative statement from the practitioner that indicates an explanation of the client's medical condition necessitating the monitor with special features;

(f) When requesting quantities of supplies which exceed utilization guidelines as specified in (1)(d)(B)(i)-(ii) (e.g., more than 100 blood glucose test strips per month for insulin-dependent diabetes mellitus), submit documentation supporting the medical appropriateness for the higher utilization as specified in (1)(d)(B)(iii)(I)-(III) to the appropriate authorization authority for PA;

(g) Documentation which supports condition of coverage requirements for codes billed in this rule must be kept on file by the DMEPOS provider and made available to DMAP on request;

(h) The ICD-9 diagnosis code describing the condition that necessitates glucose testing must be included on each claim for the monitor, accessories and supplies;

(i) If the client is being treated with insulin injections, the KX modifier must be added to the code for the monitor and each related supply on every claim submitted;

(j) If the client is not being treated with insulin injections, the KS modifier must be added to the code for the monitor and each related supply on every claim submitted;

(k) DMEPOS providers are not prohibited from creating data collection forms in order to gather medically appropriate information; however, DMAP will not rely solely on those forms to prove the medical appropriateness of services provided;

(l) A client's medical records must support the justification for supplies dispensed and billed to DMAP.

(3) Procedure Codes: **Table 122-0520 — Diabetic Supplies.**

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 13-1991, f. & cert. ef. 3-1-91; HR 9-1993, f. & cert. ef. 4-1-93; HR 10-1994, f. & cert. ef. 2-15-94; HR 41-1994, f. 12-30-94, cert. ef. 1-1-95; HR 17-1996, f. & cert. ef. 8-1-96; HR 7-1997, f. 2-28-97, cert. ef. 3-1-97; OMAP 11-1998, f. & cert. ef. 4-1-98; OMAP 13-1999, f. & cert. ef. 4-1-99; OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 8-2002, f. & cert. ef. 4-1-02; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 35-2006, f. 9-15-06, cert. ef. 10-1-06; DMAP 12-2007, f. 6-29-07, cert. ef. 7-1-07

## 410-122-0540

### Ostomy Supplies

(1) Indications and Limitations of Coverage and Medical Appropriateness: The Division of Medical Assistance Programs (DMAP) may cover ostomy supplies for a client with a surgically created opening (stoma) to divert urine or fecal contents outside the body:

(a) Only one liquid barrier may be dispensed at a time:

(A) A liquid or spray (A4369); or

(B) Individual wipes or swabs (A5120);

(b) For a client with a continent stoma, only one of the following means to prevent/manage drainage may be covered on a given day:

(A) Stoma cap (A5055);

(B) Stoma plug (A5081); or

(C) Gauze pads (A6216);

(c) For a client with a urinary ostomy, only one of the following may be covered for drainage at night:

(A) Bag (A4357); or

(B) Bottle (A5102);

(d) Provision of ostomy supplies for a client is limited to a three month supply;

(e) Ostomy clamps (A4363) are used with drainable pouches and are not covered with urinary pouches;

(f) Ostomy clamps are only payable when ordered as a replacement and are not separately payable with ostomy pouches;

(g) The following services are not covered:

(A) Pouch cover;

(B) Ostomy supplies when a client is in a covered home health episode.

(2) Documentation Requirements:

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(a) For services requiring prior authorization (PA), submit documentation which supports coverage criteria as specified in this rule are met;

(b) Medical records which support conditions of coverage as specified in this rule are met must be kept on file by the durable medical equipment, prosthetics, orthotics and supplies (DMEPOS) provider and made available to DMAP on request;

(c) A client's medical records must support the justification for supplies billed to DMAP.

(3) **Table 122-0540-1, Maximum Quantity of Supplies — Monthly Basis.**

(4) **Table 122-0540-2, Maximum Quantity of Supplies — 6-Month Basis.**

(5) **Table 122-0540-3, Faceplate Systems.**

(6) **Table 122-0540-4, Procedure Codes.**

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 13-1991, f. & cert. ef. 3-1-91; HR 10-1992, f. & cert. ef. 4-1-92; HR 9-1993, f. & cert. ef. 4-1-93; HR 10-1994, f. & cert. ef. 2-15-94; HR 41-1994, f. 12-30-94, cert. ef. 1-1-95; HR 17-1996, f. & cert. ef. 8-1-96; HR 7-1997, f. 2-28-97, cert. ef. 3-1-97; OMAP 11-1998, f. & cert. ef. 4-1-98; OMAP 13-1999, f. & cert. ef. 4-1-99; OMAP 1-2000, f. 3-31-00, cert. ef. 4-1-00; OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 4-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 8-2002, f. & cert. ef. 4-1-02; OMAP 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 25-2004, f. & cert. ef. 4-1-04; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 35-2006, f. 9-15-06, cert. ef. 10-1-06; DMAP 12-2007, f. 6-29-07, cert. ef. 7-1-07

## 410-122-0560

### Urological Supplies

(1) Indications and Limitations of Coverage and Medical Appropriateness:

(a) The Division of Medical Assistance Programs (DMAP) may cover the following urinary catheters, external urinary collection devices, and medically appropriate related supplies when used to drain or collect urine for a client who has permanent urinary incontinence or permanent urinary retention;

(b) Indwelling Catheters (A4311 – A4316, A4338 – A4346):

(A) No more than one catheter per month for routine catheter maintenance;

(B) Non-routine catheter changes when documentation substantiates medical appropriateness, such as for the following indications:

(i) Catheter is accidentally removed (e.g., pulled out by client);

(ii) Catheter malfunctions (e.g., balloon does not stay inflated, hole in catheter);

(iii) Catheter is obstructed by encrustation, mucous plug, or blood clot;

(iv) History of recurrent obstruction or urinary tract infection for which it has been established that an acute event is prevented by a scheduled change frequency of more than once per month;

(C) A specialty indwelling catheter (A4340) or an all silicone catheter (A4344, A4312, or A4315) when documentation in the client's medical record supports the medical appropriateness for that catheter rather than a straight Foley type catheter with coating (such as recurrent encrustation, inability to pass a straight catheter, or sensitivity to latex);

(D) A three way indwelling catheter either alone (A4346) or with other components (A4313 or A4316) only if continuous catheter irrigation is medically appropriate;

(c) Catheter Insertion Tray (A4310-A4316, A4353, and A4354):

(A) Only one insertion tray per episode of indwelling catheter insertion;

(B) One intermittent catheter with insertion supplies (A4353) per episode of medically appropriate sterile intermittent catheterization;

(d) Urinary Drainage Collection System (A4314-A4316, A4354, A4357, A4358, A5102, and A5112):

(A) For routine changes of the urinary drainage collection system as noted in Table 122-0560-1;

(B) Additional charges for medically appropriate non-routine changes when the documentation substantiates the medical appropriateness (e.g., obstruction, sludging, clotting of blood, or chronic, recurrent urinary tract infection);

(C) A vinyl leg bag (A4358) or a latex leg bag (A5112) only for clients who are ambulatory or are chair or wheelchair bound.

(e) Intermittent Irrigation of Indwelling Catheters:

(A) Supplies for the intermittent irrigation of an indwelling catheter when they are used on an as needed (non-routine) basis in the presence of acute obstruction of the catheter;

(B) Routine intermittent irrigations of a catheter are not covered;

(C) Routine irrigations are defined as those performed at predetermined intervals;

(D) Covered supplies for medically appropriate non-routine irrigation of a catheter include either an irrigation tray (A4320) or an irrigation syringe (A4322), and sterile water/saline (A4217);

(f) Continuous Irrigation of Indwelling Catheters:

(A) Supplies for continuous irrigation of a catheter when there is a history of obstruction of the catheter and the patency of the catheter cannot be maintained by intermittent irrigation in conjunction with medically appropriate catheter changes;

(B) Continuous irrigation as a primary preventative measure (i.e., no history of obstruction) is not covered;

(C) Documentation must substantiate the medical appropriateness of catheter irrigation and in particular continuous irrigation as opposed to intermittent irrigation;

(D) The records must also indicate the rate of solution administration and the duration of need;

(E) Covered supplies for medically appropriate continuous bladder irrigation include a three-way Foley catheter (A4313, A4316, and A4346), irrigation tubing set (A4355), and sterile water/saline (A4217):

(i) DMAP may cover one irrigation tubing set per day for continuous catheter irrigation;

(ii) Continuous irrigation is considered a temporary measure and may only be covered for up to 14 days.

(g) Intermittent Catheterization: Intermittent catheter supplies when basic coverage criteria are met and the client or caregiver can perform the procedure:

(A) Clean, Non-Sterile Technique: Intermittent catheter supplies (A4351-A4352) on a weekly basis:

(i) Non-sterile lubricating gel (A4402) must be billed when used for clean, non-sterile catheterization technique;

(ii) No more than eight units of A4402 (8 oz.) may be billed per month;

(iii) An individual packet of lubricant (A4332) is not covered for clean, non-sterile intermittent catheterization.

(B) Sterile Technique: Intermittent catheter supplies using sterile technique only when the client meets one of the following criteria (i-iv):

(i) The client is immunosuppressed. Examples of immunosuppressed clients include (but are not limited to) clients who are:

(I) On a regimen of immunosuppressive drugs post-transplant;

(II) On cancer chemotherapy;

(III) Have AIDS;

(IV) Have a drug-induced state such as chronic oral corticosteroid use.

(ii) The client has radiologically documented vesico-ureteral reflux while on a program of intermittent catheterization;

(iii) The client is a pregnant, spinal cord-injured female with neurogenic bladder (for duration of pregnancy only);

(iv) The client has had distinct, recurrent urinary tract infections, while on a program of clean intermittent catheterization, twice within the 12 month period prior to the initiation of sterile intermittent catheterization. A urinary tract infection means a urine culture with greater than 10,000 colony forming units of a urinary pathogen; and documentation in the client's medical records of concurrent presence of one or more of the following signs, symptoms or laboratory findings:

(I) Fever (oral temperature greater than 38° C);

(II) Systemic leukocytosis;

(III) Change in urinary urgency, frequency, or incontinence;

(IV) Appearance of new or increase in autonomic dysreflexia (sweating, bradycardia, blood pressure elevation);

(V) Physical signs of prostatitis, epididymitis, orchitis;

(VI) Increased muscle spasms;

(VII) Pyuria (greater than five white blood cells per high-powered field);

(v) For each episode of covered sterile catheterization, DMAP may cover either:

(I) One catheter (A4351, A4352) and an individual packet of lubricant (A4332); or

(II) One intermittent catheter kit (A4353). The kit code must be used for billing even if the components are packaged separately rather than together as a kit. The charge billed for A4353 is the total of the usual charge for each item had they been billed separately (A4332, A4351, etc.), but may not exceed DMAP's allowable for A4353;

(h) Coude (Curved) Tip Catheters:

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(A) Use of a Coude (curved) tip catheter (A4352) in female clients is rarely medically appropriate;

(B) For any client, when a Coude tip catheter is dispensed and billed, there must be specific documentation in the client's medical record why a Coude tip catheter is required rather than a straight tip catheter;

(i) External Catheters/Urinary Collection Devices:

(A) Male external catheters (condom-type) or female external urinary collection devices for clients who have permanent urinary incontinence when used as an alternative to an indwelling catheter;

(B) Coverage for male external catheters (A4349) is limited to 35 per month;

Greater utilization of these devices must be accompanied by documentation of medical appropriateness;

(C) Male external catheters (condom-type) or female external urinary collection devices are not covered for clients who also use an indwelling catheter;

(D) DMAP may cover specialty type male external catheters such as those that inflate or that include a faceplate (A4326) or extended wear catheter systems (A4348) only when documentation substantiates the medical appropriateness for such a catheter;

(E) Coverage of female external urinary collection devices is limited to one metal cup (A4327) per week or one pouch (A4328) per day;

(j) Miscellaneous Supplies:

(A) Appliance cleaner (A5131): One unit of service (16 oz) per month when used to clean the inside of certain urinary collecting appliances (A5102, A5112);

(B) One external urethral clamp or compression device (A4356) every three months or sooner if the rubber/foam casing deteriorates;

(C) Adhesive catheter anchoring devices (A4333, three per week) and catheter leg straps (A4334, one per month) for indwelling urethral catheters;

(D) A catheter/tube anchoring device (A5200) separately payable when it is used to anchor a covered suprapubic tube or nephrostomy tube;

(E) Non-Sterile Gloves:

(i) Up to 200 pairs of non-sterile gloves (A4927) per month only when the client or caregiver is performing intermittent catheterizations;

(ii) DMAP will not pay for more than 200 pairs of non-sterile gloves (A4927) per month;

(k) Non-Covered Items: The following are not covered:

(A) Creams, salves, lotions, barriers (liquid, spray, wipes, powder, paste) or other skin care products (A6250);

(B) Catheter care kits (A9270);

(C) Adhesive remover (A4365, A4455);

(D) Catheter clamp or plug (A9270);

(E) Drainage bag holder or stand (A9270);

(F) Urinary suspensory without leg bag (A4359);

(G) Measuring container (A9270);

(H) Urinary drainage tray (A9270);

(I) Gauze pads (A6216-A6218) and other dressings;

(J) Other incontinence products not directly related to the use of a covered urinary catheter or external urinary collection device (A9270);

(K) Irrigation supplies that are used for care of the skin or perineum of incontinent clients;

(L) Syringes, trays, sterile saline, or water used for routine irrigation.

(2) Guidelines:

(a) Permanent urinary retention is defined as retention that is not expected to be medically or surgically corrected within three months. A determination that there is no possibility that the client's condition may improve sometime in the future is not required. If the medical records, including the judgment of the attending treating physician, indicate the condition is of long and indefinite duration (ordinarily at least three months), the test of permanence is considered met;

(b) A urinary intermittent catheter with insertion supplies (A4353) is a kit, which includes a catheter, lubricant, gloves, antiseptic solution, applicators, drape, and a tray or bag in a sterile package intended for single use;

(c) Adhesive strips or tape used with male external catheters are included in the allowance for the code and are not separately payable;

(d) Catheter insertion trays (A4310-A4316, A4353, and A4354) that contain component parts of the urinary collection system, (e.g., drainage bags and tubing) are inclusive sets and payment for additional component parts may be allowed only per the stated criteria in each section of the policy;

(e) Extension tubing (A4331) may be covered for use with a latex urinary leg bag (A5112) and is included in the allowance for codes A4314, A4315, A4316, A4354, A4357, A4358, and A5105;

(f) Use A4333 when used to anchor an indwelling urethral catheter.

(3) Documentation Requirements:

(a) For services requiring prior authorization (PA), submit documentation which supports coverage criteria as specified in this rule are met;

(b) Intermittent Catheterization: When requesting quantities of supplies which exceed coverage criteria as specified in (1)(g) (e.g., more than one intermittent catheter per week), submit documentation supporting the medical appropriateness for the higher utilization as specified in (1)(g)(B) to the appropriate authorization authority for prior authorization (PA);

(c) Documentation, which supports condition of coverage requirements for codes billed in this rule, must be kept on file by the durable medical equipment, prosthetics, orthotics and supplies (DMEPOS) provider and made available to DMAP on request;

(d) A client's medical records must support the justification for supplies billed to DMAP.

(4) **Table 122-0560-1**, Maximum Quantity of Supplies.

(5) **Table 122-0560-2**.

(6) **Table 122-0560-3**, Procedure Codes.

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 13-1991, f. & cert. ef. 3-1-91; HR 10-1992, f. & cert. ef. 4-1-92; HR 9-1993, f. & cert. ef. 4-1-93; HR 10-1994, f. & cert. ef. 2-15-94; HR 41-1994, f. 12-30-94, cert. ef. 1-1-95; HR 17-1996, f. & cert. ef. 8-1-96; HR 7-1997, f. 2-28-97, cert. ef. 3-1-97; OMAP 11-1998, f. & cert. ef. 4-1-98; OMAP 13-1999, f. & cert. ef. 4-1-99; OMAP 1-2000, f. 3-31-00, cert. ef. 4-1-00; OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 4-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 8-2002, f. & cert. ef. 4-1-02; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 25-2004, f. & cert. ef. 4-1-04; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 94-2004, f. 12-30-04, cert. ef. 1-1-05; OMAP 44-2005, f. 9-9-05, cert. ef. 10-1-05; OMAP 35-2006, f. 9-15-06, cert. ef. 10-1-06; DMAP 12-2007, f. 6-29-07, cert. ef. 7-1-07

## 410-122-0590

### Patient Lifts

(1) Indications and Coverage — A lift is covered if transfer between bed and a chair, wheelchair, or commode requires the assistance of more than one person and, without the use of a lift, the client would be bed confined.

(2) A sling or seat for a client lift may be covered as an accessory when ordered as a replacement for the original equipment item.

(3) E0621 is included in the allowance for E0630 when provided at the same time.

(4) E0635 may be covered only when a client weighs 450 pounds or more;

(5) Procedure Codes:

(a) E0621 — Sling or seat, client lift, canvas or nylon — Purchase — Prior authorization (PA) required;

(b) E0630 — Client lift, hydraulic with seat or sling (considered purchased after 13 months of rental) — Purchase, rent or repair — PA required;

(c) E0635 — Client lift, electric, with seat or sling — Rent only. This item is a capped rental and becomes the property of the client after 13 months of continuous rental or when the usual purchase price is reached, whichever is lesser. May be covered for a nursing facility client. — PA required.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 11-2005, f. 3-9-05, cert. ef. 4-1-05; DMAP 12-2007, f. 6-29-07, cert. ef. 7-1-07

## 410-122-0600

### Toilet Supplies

(1) The Division of Medical Assistance Programs (DMAP) may consider coverage for commodes when:

(a) The client is physically incapable of utilizing regular toilet facilities. This would occur when the client is confined to:

(A) A single room; or

(B) One level of the home environment and there is no toilet on that level; or

(C) The home and there are no toilet facilities in the home.

(b) Extra-wide/heavy-duty commodes may be covered when a client weighs 300 pounds or more and meets the conditions of coverage for commodes;

(c) Only bariatric commodes coded as E1399 (durable medical equipment, miscellaneous) may be covered for a client residing in a nursing facility, subject to service limitations of DMAP rules, when all of the following requirements are met:

(A) The client meets the conditions of coverage as specified in this rule; and



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(B) The bariatric commode has been assigned code E1399 by the Statistical Analysis Durable Medical Equipment Regional Carrier (SAD-MERC).

(2) Documentation Requirements:

(a) Documentation must include the practitioner's order, the client's height and weight and information supporting the medical appropriateness for the commode dispensed;

(b) For codes requiring prior authorization (PA), submit documentation which supports conditions of coverage are met as specified in this rule.

(3) Procedure Codes: **Table 122-0600 Toilet Supplies.**

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 13-1991, f. & cert. ef. 3-1-91; HR 32-1992, f. & cert. ef. 10-1-92; HR 9-1993, f. & cert. ef. 4-1-93; HR 10-1994, f. & cert. ef. 2-15-94; HR 26-1994, f. & cert. ef. 7-1-94; HR 17-1996, f. & cert. ef. 8-1-96; OMAP 13-1999, f. & cert. ef. 4-1-99; OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 4-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 8-2002, f. & cert. ef. 4-1-02; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 47-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 12-2007, f. 6-29-07, cert. ef. 7-1-07

## 410-122-0620

### Miscellaneous Supplies

Procedure Codes — **Table 122-0620.**

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 13-1991, f. & cert. ef. 3-1-91; HR 10-1992, f. & cert. ef. 4-1-92; HR 9-1993, f. & cert. ef. 4-1-93; HR 10-1994, f. & cert. ef. 2-15-94; HR 41-1994, f. 12-30-94, cert. ef. 1-1-95; HR 17-1996, f. & cert. ef. 8-1-96; HR 7-1997, f. 2-28-97, cert. ef. 3-1-97; OMAP 11-1998, f. & cert. ef. 4-1-98; OMAP 13-1999, f. & cert. ef. 4-1-99; OMAP 32-1999, f. & cert. ef. 10-1-99; OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 8-2002, f. & cert. ef. 4-1-02; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 25-2004, f. & cert. ef. 4-1-04; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 35-2006, f. 9-15-06, cert. ef. 10-1-06; OMAP 47-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 12-2007, f. 6-29-07, cert. ef. 7-1-07

## 410-122-0625

### Surgical Dressing

Procedure Codes: **Table 122-0625 Surgical Dressing.**

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 4-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 8-2002, f. & cert. ef. 4-1-02; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 25-2004, f. & cert. ef. 4-1-04; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 11-2005, f. 3-9-05, cert. ef. 4-1-05; OMAP 35-2006, f. 9-15-06, cert. ef. 10-1-06; DMAP 12-2007, f. 6-29-07, cert. ef. 7-1-07

## 410-122-0655

### External Breast Prostheses

(1) Indications and Limitations of Coverage and Medical Appropriateness:

(a) The Division of Medical Assistance Programs (DMAP) may cover an external breast prosthesis for a client who has had a mastectomy;

(b) An external breast prosthesis garment, with mastectomy form (L8015) may be covered for use in the postoperative period prior to a permanent breast prosthesis or as an alternative to a mastectomy bra and breast prosthesis;

(c) An external breast prosthesis of a different type may be covered if there is a change in the client's medical condition necessitating a different type of item;

(d) DMAP will pay for only one breast prosthesis per side for the useful lifetime of the prosthesis;

(e) DMAP will pay for a breast prosthesis for a client residing in a nursing facility;

(f) Two prostheses, one per side, are allowed for a client who has had bilateral mastectomies;

(g) More than one external breast prosthesis per side is not covered;

(h) An external breast prosthesis of the same type may be replaced if it is lost or is irreparably damaged (this does not include ordinary wear and tear);

(i) Replacement sooner than the useful lifetime because of ordinary wear and tear is not covered.

(2) Guidelines:

(a) Use code A4280 when billing for an adhesive skin support that attaches an external breast prosthesis directly to the chest wall;

(b) L8000 is limited to a maximum of four units every 12 months;

(c) Code L8015 describes a camisole type undergarment with polyester fill used post mastectomy;

(d) The right (RT) and left (LT) modifiers must be used with these codes. When the same code for two breast prostheses are billed for both

breasts on the same date, the items (RT and LT) must be entered on the same line of the claim form using the RTLTL modifier and two units of service;

(e) The useful lifetime expectancy for silicone breast prostheses is two years;

(f) For fabric, foam, or fiber filled breast prostheses, the useful lifetime expectancy is six months.

(3) Documentation Requirements:

(a) For services that do not require prior authorization (PA), the Durable Medical Equipment, Prosthetic, Orthotic and Supplies (DMEPOS) provider must have documentation on file which supports conditions of coverage as specified in this rule are met;

(b) For services that require PA, the DMEPOS provider must submit documentation for review which supports conditions of coverage as specified in this rule are met;

(c) Medical records must be made available to DMAP on request.

(4) **Table 122-0655 (Procedure Codes):** The procedure codes in this table may be covered for purchase.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 8-2002, f. & cert. ef. 4-1-02; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 44-2004, f. & cert. ef. 7-1-04; Renumbered from 410-122-0255, DMAP 12-2007, f. 6-29-07, cert. ef. 7-1-07

## 410-122-0720

### Pediatric Wheelchairs

(1) Indications and Limitations of Coverage and Medical Appropriateness:

(a) The Division of Medical Assistance Programs (DMAP) may cover a pediatric wheelchair when all of the following criteria are met:

(A) The client has a mobility limitation that significantly impairs their ability to accomplish mobility-related activities of daily living (MRADLs) entirely; places the client at reasonably determined heightened risk of morbidity or mortality secondary to the attempts to perform a MRADL; or the client is unable to sustain safely the performance of MRADLs throughout the course of a regular day. See OAR 410-122-0010 Definitions for complete definition of MRADL;

(B) An appropriately fitted cane or walker cannot sufficiently resolve the client's mobility limitation;

(C) The client's home provides adequate maneuvering space, maneuvering surfaces, and access between rooms for use of the pediatric wheelchair that is being requested;

(D) Use of a pediatric wheelchair will significantly improve the client's ability to move within the home to the areas customarily used for their MRADL so that the client can complete these MRADLs within a reasonable time frame;

(E) The client is willing to use the requested pediatric wheelchair in the home, and will use it on a regular basis in the home;

(F) The client has either:

(i) Sufficient upper extremity function and other physical and mental capabilities needed to safely self-propel the requested pediatric wheelchair in the home, during a typical day. Proper assessment of upper extremity function should consider limitations of strength, endurance, range of motion, coordination, presence of pain, and deformity or absence of one or both upper extremities; or

(ii) A caregiver who is available, willing, and able to provide assistance with the wheelchair;

(b) Only when conditions of coverage as specified in (1)(a) of this rule are met, may DMAP authorize a pediatric wheelchair for any of the following situations:

(A) When the wheelchair can be reasonably expected to improve the client's ability to complete MRADLs by compensating for other limitations in addition to mobility deficits and the client is compliant with treatment:

(i) Besides MRADLs deficits, when other limitations exist, and these limitations can be ameliorated or compensated sufficiently such that the additional provision of a pediatric wheelchair will be reasonably expected to significantly improve the client's ability to perform or obtain assistance to participate in MRADLs in the home, a pediatric wheelchair may be considered for coverage;

(ii) If the amelioration or compensation requires the client's compliance with treatment, for example medications or therapy, substantive non-compliance, whether willing or involuntary, can be grounds for denial of a pediatric wheelchair coverage if it results in the client continuing to have a significant limitation. It may be determined that partial compliance results in adequate amelioration or compensation for the appropriate use of a pediatric wheelchair;

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(B) For a purchase request, when a client's current wheelchair is no longer medically appropriate, or repair and/or modifications to the wheelchair exceed replacement cost;

(C) When a covered, client-owned wheelchair is in need of repair (for one month's rental of a wheelchair). See OAR 410-122-0184 Repairs, Maintenance, Replacement, Delivery and Dispensing);

(c) A pediatric tilt-in space wheelchair (E1231- E1234) may be covered when a client:

(A) Is dependent for transfers; and

(B) Spends a minimum of four hours a day continuously in a wheelchair; and

(C) The plan of care addresses the need to change position at frequent intervals and the client is not left in the tilt position most of the time; and

(D) Has one of the following:

(i) High risk of skin breakdown;

(ii) Poor postural control, especially of the head and trunk;

(iii) Hyper/hypotonia;

(iv) Need for frequent changes in position and has poor upright sitting;

(d) DMAP does not reimburse for another wheelchair if the client has a medically appropriate wheelchair, regardless of payer;

(e) The client's living quarters must be able to accommodate and allow for the effective use of the requested wheelchair. DMAP does not reimburse for adapting living quarters;

(f) DMAP does not cover services or upgrades that primarily allow performance of leisure or recreational activities. Such services include but are not limited to backup wheelchairs, backpacks, accessory bags, clothing guards, awnings, additional positioning equipment if wheelchair meets the same need, custom colors, and wheelchair gloves;

(g) Reimbursement for wheelchair codes includes all labor charges involved in the assembly of the wheelchair, as well as support services such as emergency services, delivery, set-up, pick-up and delivery for repairs/modifications, education, and ongoing assistance with the use of the wheelchair;

(h) A Group 5 (Pediatric) PWC with Single Power Option (K0890) or with Multiple Power Options (K0891) may be covered when:

(i) The coverage criteria for a PWC (see 410-122-0325, Motorized/Power Wheelchair Base) are met; and

(ii) The client is expected to grow in height; and

(iii) Either of the following criteria is met:

(I) The Group 2 Single Power Option in 410-122-0325, Motorized/Power Wheelchair Base, (2)(a)(C)(i)(I) and (2)(a)(C)(i)(II); or

(II) Multiple Power Options in 410-122-0325, Motorized/Power Wheelchair Base, (2)(a)(D)(i)(I) and (2)(a)(D)(i)(II);

(iv) The delivery of a PWC must be within 120 days following completion of the face-to-face examination with the physician;

(v) A PWC may not be ordered by a podiatrist;

(j) A pediatric wheelchair for use only outside the home is not covered;

(k) For more information on coverage criteria regarding repairs and maintenance, see 410-122-0184 Repairs, Maintenance, Replacement, Delivery and Dispensing.

(2) Coding Guidelines:

(a) For individualized wheelchair features that are medically appropriate to meet the needs of a particular client, use the correct codes for the wheelchair base, options and accessories (see 410-122-0340 Wheelchair Options/Accessories);

(b) For wheelchair frames that are modified in a unique way to accommodate the client, submit the code for the wheelchair base used and submit the modification with code K0108 (wheelchair component or accessory, not otherwise specified);

(c) Wheelchair "poundage" (pounds) represents the weight of the usual configuration of the wheelchair with a seat and back, but without front riggings;

(d) A manual wheelchair with a seat width and/or depth of 14" or less is considered a pediatric size wheelchair and is billed with codes E1231-E1238 or E1229;

(e) A power wheelchair (PWC) with a seat width or depth of 14" or less is considered a pediatric PWC base and is coded E1239, PWC, pediatric size, not otherwise specified;

(f) Pediatric seating system codes E2291 — E2294 may only be billed with pediatric wheelchair base codes;

(g) Contact the Statistical Analysis Durable Medical Equipment Regional Carrier (SADMERC) regarding correct coding. See 410-122-

0180 Healthcare Common Procedure Coding System (HCPCS) Level II Coding for more information.

(3) Documentation Requirements:

(a) Functional Mobility Evaluation:

(A) DMEPOS providers must submit DMAP 3125 form or other medical documentation which supports conditions of coverage in this rule are met for purchase and modifications of all covered, client-owned pediatric wheelchairs;

(B) Information must include, but is not limited to:

(i) Medical justification, needs assessment, order, and specifications for the wheelchair, completed by a physical therapist, occupational therapist or treating physician. The person who provides this information must have no direct or indirect financial relationship, agreement or contract with the durable medical equipment, prosthetics, orthotics and supplies (DMEPOS) provider requesting authorization; and

(ii) Client identification and rehab technology supplier identification information which may be completed by the DMEPOS provider; and

(iii) Signature and date by the treating physician and physical or occupational therapist.

(C) If the information on this form includes all the elements of an order, the provider may submit the completed form in lieu of an order;

(b) Additional Documentation:

(A) Information from a physical therapist, occupational therapist or treating physician that specifically indicates:

(i) The client's mobility limitation and how it interferes with the performance of activities of daily living;

(ii) Why a cane or walker can't meet this client's mobility needs in the home;

(B) Pertinent information from a physical therapist, occupational therapist or treating physician about the following elements that support coverage criteria are met for a pediatric wheelchair; only relevant elements need to be addressed:

(i) Symptoms;

(ii) Related diagnoses;

(iii) History:

(I) How long the condition has been present;

(II) Clinical progression;

(III) Interventions that have been tried and the results;

(IV) Past use of walker, pediatric wheelchair, POV, or power wheelchair and the results;

(iv) Physical exam:

(I) Weight;

(II) Impairment of strength, range of motion, sensation, or coordination of arms and legs;

(III) Presence of abnormal tone or deformity of arms, legs, or trunk;

(IV) Neck, trunk, and pelvic posture and flexibility;

(V) Sitting and standing balance;

(v) Functional assessment — any problems with performing the following activities including the need to use a cane, walker, or the assistance of another person:

(I) Transferring between a bed, chair, and a wheelchair or power mobility device;

(II) Walking around their home — to bathroom, kitchen, living room, etc. — provide information on distance walked, speed, and balance;

(C) Documentation from a physical therapist, occupational therapist or treating physician that clearly distinguishes the client's abilities and needs within the home from any additional needs for use outside the home since DMAP determines coverage of a wheelchair solely by the client's mobility needs within the home, even though a client who qualifies for coverage of a pediatric wheelchair may use the wheelchair outside the home; and

(D) For all requested equipment and accessories, the manufacturer's name, product name, model number, standard features, specifications, dimensions and options, including growth capabilities; and

(E) Detailed information about client-owned equipment (including serial numbers), as well as any other equipment being used or available to meet the client's medical needs, including how long it has been used by the client and why it can't be grown or modified, if applicable; and

(F) For the home assessment, prior to delivery of the wheelchair, the DMEPOS provider or practitioner must perform an on-site, written evaluation of the client's living quarters. This assessment must support that the client's home can accommodate and allow for the effective use of a wheelchair. This assessment must include, but is not limited to, evaluation of physical layout, doorway widths, doorway thresholds, surfaces, counter/table height, accessibility (e.g., ramps), electrical service, etc.; and

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(G) All Healthcare Common Procedure Coding System (HCPCS) codes, including the base, options and accessories, whether prior authorization (PA) is required or not, that will be separately billed;

(c) A written order by the treating physician, identifying the specific type of pediatric wheelchair needed. If the order does not specify the type requested by the DMEPOS provider on the authorization request, the provider must obtain another written order that lists the specific pediatric wheelchair that is being ordered and any options and accessories requested. The DMEPOS provider may enter the items on this order. This order must be signed and dated by the treating physician, received by the DMEPOS provider and submitted to the authorizing authority; and

(d) For a PWC request: See 410-122-0325, Motorized/Power Wheelchair Base for documentation requirements; and

(e) Any additional documentation that supports indications of coverage are met as specified in this policy; and

(f) For a manual wheelchair rental, submit all of the following:

(A) A written order from the treating physician, identifying the specific type of manual wheelchair needed:

(i) If the order does not specify the type of wheelchair requested by the DMEPOS provider on the authorization request, the provider must obtain another written order that lists the specific manual wheelchair that is being ordered and any options and accessories requested;

(ii) The DMEPOS provider may enter the items on this order;

(iii) This order must be signed and dated by the treating physician, received by the DMEPOS provider and submitted to the authorizing authority;

(B) HCPCS codes;

(C) Documentation from the DMEPOS provider which supports that the client's home can accommodate and allow for the effective use of the requested wheelchair;

(g) The above documentation must be kept on file by the DMEPOS provider; and

(h) Documentation that the coverage criteria have been met must be present in the client's medical records and this documentation must be made available to DMAP on request; and

(i) For PWC's furnished on a rental basis with dates of services prior to October 1, 2006, use code E1239 as appropriate.

(4) **Table 122-0720.**

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: OMAP 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 44-2004, f. & cert. ef. 7-1-04;

OMAP 94-2004, f. 12-30-04, cert. ef. 1-1-05; OMAP 44-2005, f. 9-9-05, cert. ef. 10-1-05;

OMAP 47-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 12-2007, f. 6-29-07, cert. ef. 7-1-07

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## Department of Human Services, Public Health Division Chapter 333

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

**Adm. Order No.:** PH 8-2007

**Filed with Sec. of State:** 6-20-2007

**Certified to be Effective:** 6-20-07

**Notice Publication Date:** 5-1-07

**Rules Amended:** 333-039-0015, 333-039-0055

**Subject:** The Department of Human Services, Public Health Division is permanently amending 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—(971) 673-1291

### 333-039-0015

#### Water Supply

(1) Required Amounts:

(a) A minimum of 12 gallons per person per day shall be available for the anticipated assembly;

(b) Storage facilities equal to one day's total water usage shall be provided, unless a greater or lesser amount, with a minimum of five gallons per person per day, is determined by the Division as sufficient or necessary, based on the availability and quantity of the reserve water supply and the required water demands for toilets, food vendors, camping areas and other facilities;

(c) A Division approved well or water system may be used as a source of water, or in addition to Division approved outside sources, to meet all requirements;

(d) An amount of water equal to one day's total usage shall be kept in reserve at all times.

(2) Bacteriological and Chemical Requirements:

(a) All water provided shall give a negative result for the presence of coliform bacteria when subjected to standard laboratory test procedures for detecting the presence of coliform bacteria and shall be from sources and in containers approved by the Division;

(b) Water provided shall not contain the following substances in excess of amounts listed. The organizer shall provide a laboratory analysis report as evidence of this: Substance Concentration in mg/l:

(A) Arsenic — 0.1;

(B) Cadmium — 1.0;

(C) Chloride — 250.0;

(D) Copper — 1.0;

(E) Cyanide — 0.01;

(F) Fluoride — 1.7;

(G) Iron — 0.3;

(H) Lead — 0.05;

(I) Selenium — 0.01;

(J) Nitrate (NO<sub>3</sub>) — 45.0;

(K) Total Dissolved Solids — 500.0;

(L) Zinc — 5.0.

(3) Construction, Maintenance, and Design:

(a) All parts of the water supply system shall be constructed of non-toxic materials;

(b) All water distribution lines and fittings shall be constructed of galvanized wrought iron, galvanized steel, copper, or NSF approved plastic pipe. All plastic pipe and fittings must bear the NSF seal;

(c) Pressure tanks and storage tanks shall be constructed of non-toxic materials. Tanks which have previously been used to contain toxic substances shall not be used;

(d) Prior to placing the water supply system into use, all portions of the system including storage tanks and distribution system shall be disinfected by adding a chlorine solution of not less than 50 mg/l and retaining the mixture within all portions of the system for at least 24 hours. Following disinfection, the system is to be thoroughly flushed of the chlorine solution;

(e) Hydrants equipped with self-closing faucets shall be provided at a ratio of not less than one for every 250 persons or fraction thereof anticipated;

(f) Each faucet shall be mounted on a minimum 36 inch riser. The riser is to be securely fastened to a supporting structure equal in strength to a four inch by four inch timber which is securely anchored in the ground;

(g) Each faucet and riser shall be accompanied by a seepage pit located directly beneath the faucet which shall have a minimum inside diameter of 12 inches and a minimum depth of three feet and shall be backfilled with clean coarse rock;

(h) All water distribution lines shall be installed at a minimum depth of 12 inches in the soil and shall be covered;

(i) If camping and activity areas are separately designated, 60 percent of the total required faucets shall be located within the area designated for camping, and 40 percent of the total required faucets shall be located in the area designated for activities;

(j) A minimum of one faucet shall be located not more than 25 lineal feet from each food service facility and a minimum of one faucet shall be located not more than 25 lineal feet from any emergency medical facility;

(k) Garden hoses, flexible hoses, pipes, or similar devices shall not be connected to any faucet or any other portion of the water supply system for personal convenience or any other reason;

(l) A minimum pressure of 20 pounds per square inch shall be maintained at all times and at all points within the water distribution system.

Stat. Auth.: ORS 433.760

Stats. Implemented: ORS 433.735 - 433.770

Hist.: HD 2, f. 9-15-71, ef. 10-1-71; PH 12-2005(Temp), f. & cert. ef. 7-21-05 thru 1-13-06;

PH 15-2005(Temp), f. & cert. ef. 9-22-05 thru 1-13-06; Administrative correction 1-19-06;

PH 8-2007, f. & cert. ef. 6-20-07

### 333-039-0055

#### Traffic

(1) The organizer shall provide easily accessible roads of all-weather construction at the outdoor mass gathering site.

(2) All roads shall be graded so as to be self-draining and shall be maintained in such condition that emergency and other required vehicles

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can move upon them unencumbered and can carry out their functions at all times.

(3) An ungraveled dirt road shall not be considered as being an all-weather road.

(4) No road or portion of any road constructed shall exceed a maximum grade of 12 percent.

(5) The organizer shall acquire approval from the local agency having jurisdiction for fire safety that the minimum width of all roads complies with state and local laws, ordinances, and regulations, and is satisfactory with respect to anticipated crowds and locations of the outdoor mass gatherings.

(6) The organizer shall provide and designate a suitable area at the outdoor mass gathering for parking of motor vehicles:

(a) The total area provided for motor vehicle parking shall be based on the following ratio: 300 square feet for every four persons anticipated;

(b) Each motor vehicle parking space shall have a minimum width of ten feet and a minimum length of twenty feet and shall be clearly marked with lime;

(c) The motor vehicle parking spaces shall be arranged to eliminate blockage of parked vehicles and allow vehicles free access to exits at all times.

Stat. Auth.: ORS 433.760

Stats. Implemented: ORS 433.735 - 433.770

Hist.: HD 2, f. 9-15-71, ef. 10-1-71; PH 8-2007, f. & cert. ef. 6-20-07

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**Rule Caption:** Organizational Camp Rules.

**Adm. Order No.:** PH 9-2007

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**Subject:** The Department of Human Services, Public Health Division is permanently adopting and amending their Oregon Administrative Rules relating to organization camps.

**Rules Coordinator:** Cat McGinnis—(971) 673-1291

## 333-030-0005

### Purpose

These rules prescribe the requirements for the construction, operation and use of organizational camps. They are for the purpose of protecting the health and welfare of persons using these camps. Various types of activities are found in organizational camps and the rules are designed to assure the protection of individuals consistent with those activities.

Stat. Auth.: ORS 446.330

Stats. Implemented: ORS 445.310 - 446.350

Hist.: HD 25-1981, f. & ef. 11-25-81; PH 9-2007, f. & cert. ef. 7-13-07

## 333-030-0010

### Adoption by Reference

Outside standards, listings and publications referred to in these rules are by reference made a part of these rules as if fully set forth.

Stat. Auth.: ORS 446.330

Stats. Implemented: ORS 445.310 - 446.350

Hist.: HD 25-1981, f. & ef. 11-25-81; PH 9-2007, f. & cert. ef. 7-13-07

## 333-030-0015

### Definitions

As used in these rules unless otherwise required by context:

(1) "Administrator" means the Public Health Director of the Department of Human Services or designee.

(2) "Activity Leader or Supervisor" means the staff member providing direct onsite supervision for a camp program or activity.

(3) "Ancillary Activity" means an individual or group using the camp facilities in a manner unrelated to the camp's mission or programs. An example might include a wedding party or a business group using a Boy Scout Camp for a reception or meeting. Such activities may require the camp to maintain a food service or traveler's accommodation license in addition to the organization camp license.

(4) "Approved" means approved in writing by the Department of Human Services, Public Health Division.

(5) "Aquatic Director" means a person over 18 years of age who is employed by or within the organizational camp and is a currently certified Red Cross Water Safety Instructor, Boy Scouts of America National Aquatic Instructor or having equivalent certification as determined by the Department of Human Services, Public Health Division.

(6) "Camp Director" means the person on-site who has the overall responsibility for all camp activities and functions.

(7) "Camp Staff" include paid and volunteer leaders working directly for the camp operator and may include contract or rental (user group) individuals.

(8) "Contract groups" or "Rental groups" are organized groups that are not participating in ancillary activities or the normal camp activities, but that use the camp facilities under contracted arrangement with the camp operator whether or not a fee is paid. These groups may or may not use all of the camp's facilities or staff.

(9) "Day Camp" means an organizational camp facility that campers attend for an established period of time, leaving at the end of the camping day. It provides creative and recreational opportunities in the out-of-doors utilizing trained leadership and the resources of the natural surroundings to contribute to the camper's mental, physical and spiritual growth. It is oriented to providing such programming for children between the ages of 5-13 when school is not in session.

(10) "Delegated County" means a county delegated to administer the Organizational Camp Program under ORS 446.425.

(11) "Division" means the Public Health Division of the Department of Human Services or delegated county.

(12) "Family Camp" means sessions operated or staffed by the camp or user group for parents and children as family groups. Parents and guardians are on-site and have frequent contact with and make decisions on behalf of their children.

(13) "Health History" means an up-to-date record of the camper's or staff's past and present health status. It should be as accurate and complete as possible and list immunizations, past medical treatment, allergies, medications currently being taken, date of the last tetanus shot, health problems and other health issues of concern.

(14) "Health Services" means the services provided to campers and staff including first aid, medication management, provision of prescribed medical treatment and health practices.

(15) "Lifeguard" means a currently certified Red Cross Lifeguard (with waterfront module where applicable), YMCA Lifeguard, Boy Scout Lifeguard, National Pool and Waterpark Lifeguard, or a person having equivalent certification as determined by the Department of Human Services, Public Health Division.

(16) "On-Site" means within the boundaries of the camp facility.

(17) "Organizational Camp" means any facility operating for recreational use by groups or organizations. Organizational Camps include, but are not limited to, youth camps, scout camps, summer camps, day camps, nature camps, science camps, survival camps, athletic camps, camps operated and maintained under the guidance, supervision or auspices of religious, public and private educational systems and community service organizations or other persons or organizations whether for-profit or non-profit. Organizational camps are distinguished from recreation parks, or hotels and motels by the existence of organized group activities comprising the majority of activities by all participants rather than individual or family recreation. Camps operating less than one week per year are excluded from these rules unless they have permanent structures or operate as a "day camp."

(18) "Outdoor Youth Program" means a program that provides, in an outdoor living setting, treatment services to youth who are enrolled in the program because they have behavioral problems, mental health problems or problems with abuse of alcohol or drugs. "Outdoor Youth Programs" must meet the requirements of OAR 413-210-0800 through 0883. Licensing with the Department of Human Services is required.

(19) "Permanent Sleeping Unit" means cabins, tents, huts and other shelters that are used for sleeping and remain stationary for more than six nights in an organizational camp.

(20) "Person" means individuals, corporations, associations, firms, partnerships and joint stock companies as well as public entities such as schools, colleges, public or private educational corporations.

(21) "Primitive Camping" means camp activities that take place in a wilderness setting far enough away from the organizational camp to require eating meals or sleeping away from the camp facilities.

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(22) "Public Spa Pool" means any public swimming pool or wading pool designed primarily to direct water or air-enriched water under pressure onto the bather's body with the intent of producing a relaxing or therapeutic effect.

(23) "Public Swimming Pool" means an artificial structure, and its appurtenances, that contains water more than two feet deep that is used, or intended to be used, for swimming or recreational bathing and is for the use of any segment of the public. A "public swimming pool" includes, but is not limited to, swimming pools owned or operated by organizational camps.

(24) "Public Wading Pool" means an artificial structure, and its appurtenances, that contains water less than two feet deep that is expressly designated or is used with the knowledge and consent of the owner or operator for wading or recreational bathing and is for the use of any segment of the public, whether limited to patrons of a companion facility or not.

(25) "Recreation Park" means any area designated by the person establishing, operating, managing or maintaining the same for picnicking or overnight camping by the general public or any segment of the public. Recreation park includes, but is not limited to, areas open to use free of charge or through payment of a tax or fee or by virtue of rental, lease, license, membership, association or common ownership and further includes, but is not limited to, those areas divided into two or more lots, parcels, units or other interests for purposes of such use.

(26) "These Rules" means OAR 333-030-0005 through 333-030-0130.

(27) "Trip Camping" means camp activities that involve travel. Such travel may include eating meals or sleeping away from the organizational camp.

(28) "Unregulated Small Drinking Water System" means a facility licensed under the authority of these rules that is not regulated under OAR 333-061, (Public Water Systems). These systems must comply with the requirements of OAR 333-030-0080.

(29) "Waterfront Program" means those activities occurring in or on bodies of water other than public swimming and spa pools.

(30) "Wilderness Camping" means camp activities that take place in a wilderness setting far enough away from the organizational camp to require eating meals or sleeping away from the camp facilities.

Stat. Auth.: ORS 446.330

Stats. Implemented: ORS 445.310 - 446.350

Hist.: HD 25-1981, f. & ef. 11-25-81; HD 7-1996, f. & cert. ef. 12-10-96; PH 1-2005, f. & cert. ef. 1-14-05; PH 9-2007, f. & cert. ef. 7-13-07

## 333-030-0020

### Licensing Required

(1) No person shall establish, operate, manage or maintain an organizational camp without first securing a license from the Public Health Division or the Local Public Health Authority. Either the landlord or tenant may license organizational camps operated under contract, rental or leasehold arrangements. The license holder is responsible for compliance with these rules.

(2) All licenses issued under ORS 446.310 to 446.350 terminate and are renewable on December 31 of each year.

Stat. Auth.: ORS 446.330

Stats. Implemented: ORS 446.322

Hist.: HD 25-1981, f. & ef. 11-25-81; HD 18-1983(Temp), f. & ef. 10-18-83; HD 11-1984, f. & ef. 6-20-84; HD 7-1996, f. & cert. ef. 12-10-96; PH 9-2007, f. & cert. ef. 7-13-07

## 333-030-0025

### Application

(1) Application for a license accompanied by the required fee must be made upon forms provided by the Division or Local Public Health Authority prior to opening an organizational camp.

(2) Any change of operator must be promptly reported to the Division or Local Public Health Authority, and an application for a new license accompanied by the required fee must be submitted by the new owner or operator.

Stat. Auth.: ORS 446.330

Stats. Implemented: ORS 446.322

Hist.: HD 25-1981, f. & ef. 11-25-81; HD 18-1983(Temp), f. & ef. 10-18-83; HD 11-1984, f. & ef. 6-20-84; HD 7-1996, f. & cert. ef. 12-10-96; PH 9-2007, f. & cert. ef. 7-13-07

## 333-030-0030

### Required Fees

The fee for an original license or the annual renewal of a license shall be \$60 or as specified by county ordinance by the delegated Local Public Health Authority.

Stat. Auth.: ORS 446.330

Stats. Implemented: ORS 446.321

Hist.: HD 25-1981, f. & ef. 11-25-81; HD 18-1983(Temp), f. & ef. 10-18-83; HD 11-1984, f. & ef. 6-20-84; HD 27-1994, f. 10-27-94, cert. ef. 12-31-94; PH 9-2007, f. & cert. ef. 7-13-07

## 333-030-0035

### Renewal of License and Accreditation Exemption

(1) Application for renewal licenses must be submitted on the forms supplied by the Division or Local Public Health Authority and must be accompanied by the required fee.

(2) Renewal licenses shall be issued upon determination of compliance with ORS 446 and these rules. Any organizational camp that has received an original license for compliance with these rules and that subsequently is surveyed and achieves compliance status from The American Camp Association or another camp accreditation program that meets or exceeds standards of these rules, shall be deemed to meet the requirements of a license, and shall receive a license upon filing current accreditation or compliance records including site visit report, and a fee with the Division or Local Public Health Authority. At least once every four years, the renewal license shall be based upon a survey by the Division or Local Public Health Authority to determine compliance with these rules.

(3) Food service facilities, swimming pools and spa pools shall not be exempt from annual Division or Local Public Health Authority inspections.

Stat. Auth.: ORS 446.330

Stats. Implemented: ORS 446.330

Hist.: HD 25-1981, f. & ef. 11-25-81; HD 18-1983(Temp), f. & ef. 10-18-83; HD 11-1984, f. & ef. 6-20-84; HD 7-1996, f. & cert. ef. 12-10-96; PH 9-2007, f. & cert. ef. 7-13-07

## 333-030-0040

### Plans

(1) No person shall construct, enlarge or alter any organizational camp or convert the use of an existing structure to an organizational camp without first submitting complete plans and receiving approval from the Division.

(2) Plan submission is not required when:

(a) The work proposed constitutes maintenance; or

(b) The Division has been fully advised of the nature of the construction, enlargement or alteration and has determined that the proposal does not affect camp capacity, the health or safety of campers.

(3) Where plan review is made by the Oregon Department of Consumer and Business Services, Building Codes Division or by jurisdictions exempt under ORS 476.030, and such review covers the requirements of these rules, a written plan approval from such plan review authority may, at the discretion of the Division, be substituted for plan submission and review and approval by the Division.

(4) Plans must be submitted in duplicate and must be drawn to scale. They must clearly indicate the nature and extent of the work proposed and must show in detail how conformance will be achieved with these rules and all statutes and rules of the State of Oregon adopted by reference by these rules which pertain to organizational camps. The following information must be furnished on all plans:

(a) Name of organizational camp and location;

(b) Legal description of property;

(c) Name of owner;

(d) Name of operator;

(e) Name of person who prepared plans;

(f) Scale used;

(g) Explanation of all symbols used; and

(h) Identification of proposed and existing construction.

(5) The plans required in section (4) of this rule must be accompanied by the plot plan showing the general layout of the organizational camp. Plans must be drawn at a scale no smaller than one inch equals one hundred feet. Plot plans may be drawn at a smaller scale. The location for each of the following must be clearly shown and identified:

(a) Property lines;

(b) Proposed and existing construction;

(c) Building floor plans;

(d) The number, size, type and location of all permanent structures and facilities;

(e) Location of all proposed and existing water supply and sewage disposal systems;

(f) Location of water and sewer lines;

(g) Estimated total number of campers and staff to be using the facilities at any given time; and

(h) Location of storage, collection and disposal facilities of solid waste.

(6) Where construction, enlargement or alteration of the organizational camp involved areas described in sections (5)(c), (5)(d), (5)(e), (5)(f), (5)(g) or (5)(h), details must be provided as part of the plans. Finish schedules must be provided for toilet, bath, lavatory and kitchen facilities.

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(7) A copy of a building plan approval or building permits issued by the building department having jurisdiction must accompany the plot plan. Approval or permit in this context may be limited to the work proposed. Floor plans must show the location of all plumbing fixtures.

(8) Whenever a food service facility is constructed or extensively remodeled and whenever an existing structure is converted to use as a food service facility, properly prepared plans and specifications for such construction, remodeling or conversion must be submitted to the Administrator or Designee for approval before construction. Plans must be submitted in accordance with Oregon Food Sanitation Rules OAR 333-150-0000 part 8-2.

Stat. Auth.: ORS 446.330  
Stats. Implemented: ORS 446.330  
Hist.: HD 25-1981, f. & ef. 11-25-81; HD 18-1983(Temp), f. & ef. 10-18-83; HD 11-1984, f. & ef. 6-20-84; HD 7-1996, f. & cert. ef. 12-10-96; PH 1-2005, f. & cert. ef. 1-14-05; PH 9-2007, f. & cert. ef. 7-13-07

## 333-030-0045

### Building Construction

All new buildings constructed or existing buildings remodeled, enlarged or converted after the effective date of these rules must meet the requirements of:

- (1) The 2007 Oregon Structural Specialty Code.
- (2) The 2007 Oregon Mechanical Specialty Code.
- (3) The 2005 Oregon Electrical Specialty Code.
- (4) The 2005 Oregon Plumbing Specialty Code.

Stat. Auth.: ORS 446.330  
Stats. Implemented: ORS 446.330  
Hist.: HD 25-1981, f. & ef. 11-25-81; HD 7-1996, f. & cert. ef. 12-10-96; PH 1-2005, f. & cert. ef. 1-14-05; PH 9-2007, f. & cert. ef. 7-13-07

## 333-030-0050

### Sleeping Space

(1) Each permanent sleeping unit must have:

(a) At least thirty inches (76.2 cm) separation between beds and sleeping bags.

(b) At least thirty inches (76.2 cm) separation between the heads of sleepers must be provided. In lieu of such separation, partitions or physical barriers are acceptable.

(c) At least thirty inches (76.2 cm) vertical separation between tiers of beds or between the top tier and the ceiling.

(d) Where two tiers of beds are provided, there must be at least ten inches (25.4 cm) of space between the floor of the sleeping units and the underside of the first tier of beds. In lieu of such spacing, the first tier of bunks must have a continuous base, which must be sealed to the floor.

(2) Permanent sleeping units must be provided with cross ventilation or must comply with the ventilation requirements of the Oregon Department of Consumer and Business Services, Building Codes Division.

(3) Sleeping units and furnishings must be kept clean and in good repair.

Stat. Auth.: ORS 446.330  
Stats. Implemented: ORS 446.330  
Hist.: HD 25-1981, f. & ef. 11-25-81; HD 7-1996, f. & cert. ef. 12-10-96; PH 1-2005, f. & cert. ef. 1-14-05; PH 9-2007, f. & cert. ef. 7-13-07

## 333-030-0055

### Bathing, Handwashing and Toilet Facilities

(1) Facilities for toileting, bathing and handwashing must:

- (a) Be illuminated for cleaning;
- (b) Be ventilated by mechanical or natural means;
- (c) Have floors that are smooth, impervious and easily cleanable;
- (d) Have an effective water-tight union where a floor and wall join;
- (e) Have smooth, easily cleanable and impervious wall surfaces; and
- (f) Be kept clean, sanitary, free of mold, mildew and in good repair.

(2) Toilet facilities in all organizational camps must meet the following requirements:

(a) There must be one toilet for every ten campers or fraction thereof except in day camps in which one toilet for every 20 campers or fraction thereof is required;

(b) Separate toilet rooms must be provided for each gender when both genders are to be accommodated simultaneously;

(c) Urinals may be substituted for no more than one-third the required toilets for males;

(d) If day crowds exceed 100 persons, one toilet must be provided for each additional 50 people or fraction thereof;

(e) Toilets or urinals must not be located in sleeping rooms; and

(f) Toilet tissue must be provided at each privy or toilet at all times the camp is in operation.

(3) Bathing and handwashing facilities in all organizational camps must meet the following requirements:

(a) A minimum of one handwashing sink must be provided for every ten campers. A handwash set-up must be conveniently provided wherever a toilet facility is located. Where permanently plumbed handwash sinks cannot be provided, a water container may be used provided it allows a stream of water without needing to be held open and waste water must be collected in a container and disposed of properly or must flow into an approved waste water drain system. Each Handwash set-up must:

(A) Be located in close proximity to privies, toilets or urinals;

(B) Be supplied with a change of clean water for each use;

(C) Be supplied with soap;

(D) Be provided with single use towels; and

(E) Have mixing faucets capable of running for a minimum of 15 seconds; In lieu of mixing faucets, a maximum water temperature of 110 degrees Fahrenheit must be provided.

(b) In any camp where participants are present for four or more nights, there must be one bathing facility (shower or bathtub) provided for every 20 campers or fraction thereof. Bathing facilities must:

(A) Be supplied with a change of clean warm water for each use;

(B) Separate bathing facilities must be provided for each gender when both genders are to be accommodated simultaneously;

(C) Shower walls, ceilings and partitions must be impervious to water;

(D) Bathtub and shower floor areas must be finished with nonslip, impervious and easily cleanable surfaces;

(E) Shower floors must be sloped so as to effectively drain all waste water;

(F) Wooden racks or duck boards over shower floors are prohibited; and

(G) Where glass bath or glass shower doors are used, such doors must be made of safety glass.

Stat. Auth.: ORS 446.330  
Stats. Implemented: ORS 446.330  
Hist.: HD 25-1981, f. & ef. 11-25-81; HD 7-1996, f. & cert. ef. 12-10-96; PH 9-2007, f. & cert. ef. 7-13-07

## 333-030-0060

### Laundry Facilities

(1) Laundry facilities, when provided, must be located in areas separate from sleeping units, food preparation areas and perishable food storage area.

(2) Laundry facilities must be kept clean and well maintained.

(3) All clean linen must be stored in clean storage rooms or cupboards.

(4) Soiled linen and clothing must be stored in an area separate from food preparation and perishable food storage areas prior to laundering.

Stat. Auth.: ORS 446.330  
Stats. Implemented: ORS 446.330  
Hist.: HD 25-1981, f. & ef. 11-25-81; HD 7-1996, f. & cert. ef. 12-10-96; PH 9-2007, f. & cert. ef. 7-13-07

## 333-030-0065

### Solid Waste

(1) Solid waste must be disposed of in a manner, which complies with the applicable rules of the Department of Environmental Quality, OAR chapter 340, divisions 93, 94, 95 and 96.

(2) Solid waste must be stored in individual garbage containers, storage bins or storage vehicles. All such containers, bins or vehicles must:

(a) Have tight-fitting lids, covers or closable tops;

(b) Be durable, rust-resistant watertight, rodent proof and readily washable; and

(c) During times of food preparation and service, waste containers in food preparation and service areas may be uncovered.

(3) The premises of each organizational camp must be kept orderly and free of litter and refuse.

(4) All solid waste must be collected for disposal or recycling at regular intervals so as not to create:

(a) Vector harborage and sustenance;

(b) Objectionable odors; or

(c) Any overflowing of solid waste or other unsanitary conditions.

(5) Solid waste containing putrescible waste must be collected for disposal at regular intervals not to exceed seven days.

(6) Solid waste must be transported in a manner that complies with the rules of the Department of Environmental Quality OAR 340-093-0220 (Transportation).

Stat. Auth.: ORS 446.330  
Stats. Implemented: ORS 446.340

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Hist.: HD 25-1981, f. & ef. 11-25-81; HD 7-1996, f. & cert. ef. 12-10-96; PH 9-2007, f. & cert. ef. 7-13-07

## 333-030-0070

### Insect and Rodent Control

(1) The grounds, buildings and structures used or intended for human habitation must be kept clean and maintained to prevent harborage and infestation of insects, rodents and vermin.

(2) During the season when flies, mosquitoes and other insects are prevalent, all openings into the outer air of permanent kitchens and dining room must be effectively screened, unless other effective means are provided to prevent the entrance of insects or rodents. Where screens are used, there must be not less than sixteen meshes per lineal inch, and all screen doors must be equipped with a self-closing device.

(3) For insecticide and rodenticide extermination methods, only pesticides registered with the Environmental Protection Agency and the State Department of Agriculture can be used. Pesticides must be applied in accordance with the directions on the labels and must be handled and stored as to avoid health hazards.

(4) Poisons, chemicals, rodenticides, insecticides, pesticides, herbicides and other toxic materials must be properly labeled, or in the original containers, and stored in locked areas not accessible to campers separate from all food service, food storage and food preparation areas, sleeping areas and linens. Except that insecticides, rodenticides and cleaning and sanitizing materials necessary for maintaining the food service facility may be present in the food service facility and must be stored separately from cleaning and sanitizing materials. Both must be stored in cabinets or compartments used for no other purpose and must not be stored above or intermingled with food, food equipment and dishes or utensils. Detergents and sanitizers may be conveniently stored at warewashing facilities.

Stat. Auth.: ORS 446.330

Stats. Implemented: ORS 446.330

Hist.: HD 25-1981, f. & ef. 11-25-81; HD 7-1996, f. & cert. ef. 12-10-96; PH 9-2007, f. & cert. ef. 7-13-07

## 333-030-0075

### Recreational Vehicles

Organizational camps that provide accommodations for recreational vehicles as defined in ORS 446.003 must comply with the Oregon State Public Health Division Rules for the Construction, Operation and Maintenance of Recreation Parks, OAR 333-031-0002 through 333-031-0020, and 333-031-0059 through 333-031-0075 and must comply with the Building Codes Agency's rules for the Design and Construction of Recreational Parks and Organizational Camps, OAR 918-650-0000 through 918-650-0085. The licensure requirement of ORS 446.320 for a recreation park does not have to be met unless the park is used by organizational camp non-participants.

Stat. Auth.: ORS 446.330

Stats. Implemented: ORS 446.330

Hist.: HD 25-1981, f. & ef. 11-24-81; HD 7-1996, f. & cert. ef. 12-10-96; PH 9-2007, f. & cert. ef. 7-13-07

## 333-030-0080

### Water Quality, Source and Distribution

(1) Definitions applicable to this rule:

(a) "Maximum Contaminant Level (MCL)" means the maximum allowable level of a contaminant in water for consumption delivered to the users of a system, except in the case of turbidity where the maximum allowable level is measured at the point of entry to the distribution system.

(b) "Quarterly Sampling" means a sample is taken and submitted according to the following schedule:

(A) 1st Quarter is from January 1 through March 31;

(B) 2nd Quarter is from April 1 through June 30;

(C) 3rd Quarter is from July 1 through September 30; and the

(D) 4th Quarter is from October 1 through December 31.

(2) Water supply systems serving travelers' accommodations and hostels must comply with Oregon Administrative Rules for Public Water Systems, OAR 333-061-0005 through 333-061-0095, and must be:

(a) Regulated as a Public Drinking Water System under OAR 333-061; or

(b) Water systems serving travelers' accommodations and hostels that are not regulated under OAR 333-061 as a Public Drinking Water System must meet the requirements in section (3) of this rule.

(3) Unregulated Public Drinking Water Systems:

(a) Plan Review. All new facilities that are not regulated by OAR 333-061 must submit plans to the Division for review prior to construction or major modification of system. Systems regulated prior to January 1, 2003 by OAR 333-061 are not required to re-submit plans.

(b) Surface Water Sources. New facilities with surface water sources not regulated under OAR 333-061 will not be licensable after January 1, 2005. Facilities existing prior to January 1, 2005 in compliance with OAR 333-061-0032 may continue to operate.

(c) Sampling frequency:

(A) For seasonal facilities, a coliform sample must be taken prior to the camp's operational period and each quarterly sampling period while open to public. A minimum of two samples will be required for coliform, regardless of length of operation.

(B) For year round facilities:

(i) Coliform: Monthly for surface water. Quarterly for populations under 1000 using ground water.

(ii) Inorganic Samples. One time sampling required for new facilities before beginning operation.

(d) MCL Violations. An item is not considered a violation until confirmed by second sample taken within 24 hours. Four repeat samples must be taken within 24 hours of the original sample for a sample result above the maximum contaminant level (MCL).

(A) Total Coliform. Any positive total coliform samples must be reported to the Division or Local Public Health Authority within 24 hours of being notified of the positive sample.

(B) Fecal Coliform. Any positive fecal coliform sample must be reported to the Division or Local Public Health Authority within 24 hours of being notified of the positive sample.

(i) Public notification for this potential acute health risk is required.

(ii) An alternative procedure approved by the Division must be in place before serving the public.

(C) Inorganic Samples. One time sampling is required for new facilities. Additional testing is not required for facilities that were previously regulated under OAR 333-061 and have tested prior to January 1, 2003. Inorganics include: antimony, arsenic, asbestos, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, nitrate, nitrite, selenium and thallium.

(D) Nitrate. A sample must be submitted for testing annually.

(i) Any samples exceeding the MCL for nitrate must be reported to the Division within 24 hours.

(ii) When a test on a sample is reported to exceed the MCL for nitrate, public notification is required. Bottled water must be provided to public upon request.

(E) The Division may require more frequent monitoring than specified or may require confirmation samples for positive and negative results. It is the responsibility of the operator to correct any problems and get a laboratory test result that is less than the maximum contaminant level.

(e) Sample collection methods.

(A) For the purpose of determining compliance with the MCL and the sampling requirements of these rules, sampling results may be considered only if they have been analyzed by a laboratory certified by the State Drinking Water Program.

(B) Samples submitted to laboratories for analysis must be clearly identified with the name of the water system, facility license number, sampling date, time, sample location identifying the sample tap, the name of the person collecting the sample and whether it is a routine or a repeat sample.

(i) Routine. These are samples collected from established sampling locations within a water system at specified frequencies to satisfy monitoring requirements as prescribed in this rule. These samples are used to calculate compliance with maximum contaminant levels for inorganics prescribed in OAR 333-061-0030 (Table 1);

(ii) Repeat. These are samples collected as a follow-up to a routine sample that has exceeded a maximum contaminant level.

(iii) Test results. Sample results must be submitted to the Local Public Health Authority by the 10th of the month following the sampling period.

(iv) The Division may take additional samples to determine compliance with applicable requirements of these rules.

(f) Public Notice. Public Notice must be posted conspicuously on-site and must include:

(A) A description of the violation or situation of concern;

(B) Corrective actions taken to improve water quality;

(C) Any potential adverse health effects;

(D) The population at risk; and

(E) The alternative measures in place to provide safe drinking water.

Stat. Auth.: ORS 446.330

Stats. Implemented: ORS 446.330

Hist.: HD 25-1981, f. & ef. 11-25-81; HD 7-1996, f. & cert. ef. 12-10-96; PH 1-2005, f. & cert. ef. 1-14-05; PH 9-2007, f. & cert. ef. 7-13-07

# ADMINISTRATIVE RULES

## 333-030-0085

### Building Plumbing

All building plumbing must comply with the applicable requirements of the Oregon Department of Consumer and Business Services, Building Codes Division. New water supply distribution systems, or systems remodeled, enlarged or converted after the effective date of these rules must meet the requirements of the 2005 Oregon Plumbing Specialty Code.

Stat. Auth.: ORS 446.330  
Stats. Implemented: ORS 446.330  
Hist.: HD 25-1981, f. & ef. 11-25-81; HD 7-1996, f. & cert. ef. 12-10-96; PH 1-2005, f. & cert. ef. 1-14-05; PH 9-2007, f. & cert. ef. 7-13-07

## 333-030-0090

### Sewage Collection and Disposal

(1) No untreated or partially treated sewage, liquid waste or septic tank effluent shall be discharged directly or indirectly onto the surface of the ground or into the public waters.

(2) All sewage and waste water plumbing must be designed, constructed and maintained in compliance with the minimum standards set forth in the 2005 Oregon State Plumbing Specialty Code.

(3) Sewage and waste water must be disposed of into an area-wide sewerage system or in a manner approved by the Department of Environmental Quality in accordance with the rules for On-Site Sewage Disposal, OAR 340-071-0100 through 340-071-0600.

(4) Any construction, alteration or repair of an on-site sewage disposal system or any part thereof must comply with the rules of the Department of Environmental Quality, OAR chapter 340, division 71.

(5) If non-water carried waste disposal facilities are provided, such facilities must comply with the rules of the Department of Environmental Quality, OAR 340-071-0330.

Stat. Auth.: ORS 446.330  
Stats. Implemented: ORS 446.340  
Hist.: HD 25-1981, f. & ef. 11-25-81; HD 7-1996, f. & cert. ef. 12-10-96; PH 9-2007, f. & cert. ef. 7-13-07

## 333-030-0095

### Food Service

Eating and drinking facilities, commissaries, mobile units and vending machines operated in conjunction with organizational camps must be constructed, operated and maintained in compliance with ORS chapter 624 and the Division's Food Sanitation Rules, OAR 333-150-0000 with the following exceptions:

(1) Areas for food storage, preparation and serving restricted to individual or single-family use;

(2) Public toilet and handwashing facilities associated with the food service facility are not required for the participants of the camp; however, toilet and handwashing facilities are required for food handlers;

(3) Milk may be served from containers other than individual containers in any of the following ways:

(a) Food Service Lines. On a food service line, milk may be served from the original container if poured by food service workers. Any milk leftover in the original containers may be re-served for drinking provided it is not combined with milk from other containers. Pre-pouring milk is allowed provided any milk of refrigeration is discarded after one hour. Milk may be self-served from commercially filled bulk dispensers stored mechanically refrigerated or from pitchers. Milk left over in pitchers must be discarded;

(b) Family Style Meals. At family style meals, milk may be served at the table from pitchers only. Any left over milk must be discarded.

(4) Food service facilities operated for participants of the camp shall not be graded as "Complied" or "Failed to Comply"; and

(5) Screens are required on doors and windows when insects are present.

Stat. Auth.: ORS 446  
Stats. Implemented: ORS 446.330  
Hist.: HD 25-1981, f. & ef. 11-25-81; HD 27-1994, f. 10-27-94, cert. ef. 12-31-94; HD 7-1996, f. & cert. ef. 12-10-96; OHD 11-2002, f. & cert. ef. 8-7-02; PH 5-2004(Temp), f. & cert. ef. 2-13-04 thru 7-30-04; PH 15-2004, f. & cert. ef. 4-9-04; PH 9-2007, f. & cert. ef. 7-13-07

## 333-030-0100

### Emergency Procedures

(1) Each organizational camp must retain on-site a written emergency plan outlining procedures to be followed in each of the following situations:

- (a) Natural disasters and other emergencies;
- (b) Lost camper or lost swimmer, if applicable;
- (c) Fires;
- (d) Transportation emergencies;
- (e) Severe illnesses, injuries or communicable diseases;

(f) Stranger in camp; and  
(g) Transition of supervision and release of campers to designated responsible party.

(2) The emergency plan must contain at least evacuation procedures, procedures for communication with emergency medical facilities and the nearest fire station and procedures for the control of vehicular traffic through the camp.

(3) The licensee must:

(a) Designate individuals to be responsible for carrying out the emergency plan;

(b) Instruct all employees in the emergency plan and their duties in the event of an emergency situation; and

(c) Retain on-site written documentation that all employees are aware of their responsibilities under the emergency plan and their duties therein.

(4) Where organizational camp programs involve overnight travel:

(a) A day-by-day itinerary must be established before departure and must be filed with a designated person before departure. Notice of change of itinerary needs to be communicated as soon as possible; and

(b) Sources of emergency care and methods of communicating with such sources must be identified for each stop on the itinerary prior to departure.

(5) Day camps must provide a written plan, retained on-site, setting forth procedures to be followed in the following situations:

(a) Contacting the parent or guardian of registered campers, under 18 years of age, who:

(A) Are absent or fail to arrive within the first hour without explanation for a given day's activities; or

(B) Lacks transportation home from a designated pickup location following a given day's activities.

(b) Persons, under 18 years of age, who appear at camp without having registered and without prior notification;

(c) Transition of supervision and release of campers to a designated responsible party; and

(d) Accommodating campers with disabilities.

(6) The following emergency information must be posted conspicuously, accessible at all hours of operation and maintained in all organizational camps:

(a) When telephones are provided, camp operators must post by each telephone:

(A) The current telephone numbers of physicians, hospitals, poison control, police, ambulances and fire departments in the immediate area;

(B) The telephone number of the organizational camp office; and

(C) The locations of the nearest medical facility and the organizational camp including highway number, street number, rural route and box number or other data to aid in assuring prompt emergency response.

(b) When no camp telephone is provided, the location of the nearest public telephone or other emergency communication system must be posted in a designated location or its location must be common knowledge.

Stat. Auth.: ORS 446.330  
Stats. Implemented: ORS 446.330  
Hist.: HD 25-1981, f. & ef. 11-25-81; HD 7-1996, f. & cert. ef. 12-10-96; PH 9-2007, f. & cert. ef. 7-13-07

## 333-030-0103

### Camp Administration

(1) A record of all campers and staff attending camp must be kept by the camp operator (license holder) for a period of at least two years from the date of their last attendance.

(a) The record must include their name, address, phone number and dates of attendance.

(b) If the camp is contracted or rented out to a group, the camp may require the group to maintain a record of campers. The camp must keep a record of the group with contact information.

(2) The camp must have a system to track visitors in and out of the camp property during a camping session to prevent unauthorized persons from visiting camp.

(3) The camp must have a log of campers and staff that leave or arrive at camp during the camp session. The record must include the identity of the person taking responsibility for any camper or staff person under 18 years of age.

(4) When the camp is being used under lease, contract or rental by a group, the promotional and informational materials distributed to attendees of the contract program must include information identifying the license holder.



# ADMINISTRATIVE RULES

(5) The camp operator must develop and implement written procedures that specify the behavioral management and disciplinary methods to be used in camp. The procedures must:

- (a) Forbid corporal punishment and physical, sexual, emotional and verbal abuse of campers and staff;
- (b) Provide measures to recognize, prevent and report child abuse;
- (c) Be provided to and practiced by camp staff and adult leaders; and
- (d) Camp facilities operating as an "Outdoor Youth Program" must comply with the requirements for behavioral management and disciplinary methods required by OAR 413-210-0800 through 413-210-0883.

Stat. Auth.: ORS 446.330  
Stats. Implemented: ORS 446.330  
Hist.: PH 9-2007, f. & cert. ef. 7-13-07

## 333-030-0105 Health Services

All camps must have health and first aid services available whenever the camp is operating.

(1) **HEALTH SERVICES.** Before a camp opens for the first time, and at least annually thereafter, the camp operator must make written arrangements for:

- (a) Medical protocols by a staff physician or consulting physician;
- (b) Emergency admission to a designated hospital;
- (c) Emergency Medical Services (EMS) (ambulance) response. The written arrangements must include a camp procedure for directing or making sure EMS personnel can find the emergency location within the camp; and

(d) A camp must have a vehicle available at all times to transport a camper or staff member requiring additional medical services to a hospital or clinic when the camp cannot provide the needed services.

**Note:** It is recommended that a parent's or guardian's written consent for emergency medical care be secured by the camp director prior to or upon the camper's arrival at camp.

(2) **HEALTH HISTORY.** Except in a family camping program or when the camp is contracted or rented for ancillary activities, the camp health services must have an up-to-date written health history for each camper and each staff member describing any physical condition, medications or allergies requiring special consideration. For a camper or staff member under 18 years of age, the written health history must be prepared and signed by a parent or guardian. Health services staff must review all health histories and notify the camp director of campers or staff with special health concerns.

**Note:** It is recommended that each camper and staff member, upon arrival at the camp, also present to the health services staff a written report of a physical examination performed within the preceding 24 months by a physician, a physician assistant or a registered nurse.

(3) **ISOLATION AREA.** The camp must have space for the temporary isolation of sick or injured campers and staff members. Any person reasonably suspected of having a communicable disease must be suitably isolated.

(a) The designated area must be in reasonable proximity to drinking water, bathing and toileting facilities. Bathing and toileting facilities must meet the requirements of OAR 333-030-0055.

(b) The camp operator must develop and provide written procedures for the temporary isolation of sick or injured campers and staff. The procedures must include staffing requirements to provide care and supervision of the sick or injured person.

(4) In lieu of an infirmary, the camp shall have a plan for providing isolation, privacy, toilet, drinking water and bathing facilities. Toilet and bathing facilities shall meet the requirements of these rules.

(5) When parents or guardians are not accompanying a child at camp, a health history shall be required for each non-adult camper and shall be prepared and signed by a parent, guardian or other adult responsible for the individual non-adult camper. Such health histories do not require preparation by a physician but shall include:

- (a) A record of any prescriptions currently being taken, tetanus immunization and any allergies;
- (b) A description of any physical or medical condition requiring special consideration.

(6) Individuals whose sincerely held religious beliefs preclude physical examination, immunization or medical treatment may complete those portions of the health history that do not compromise their religious beliefs.

(7) **FIRST AID SUPPLIES.** A camp must have on had first aid supplies as determined by the health services staff and consulting physician.

**Note:** A list of the minimum suggested items to be included in the first aid supplies can be obtained by contacting the Public Health Division, Organization Camp Program, 800 NE Oregon St., Suite 608, Portland, OR 97232-2612 or visiting the website.

(8) **AUTOMATIC EXTERNAL DEFIBRILLATOR (AED).** By June 1, 2009, all residential camps with 100 or more campers and staff on-site at any one time must have at least one AED with pediatric capability, located at the camp. The camp operator must comply with the following:

(a) Each AED must have documented maintenance inspections and service records, including the battery and electrodes according to the guidelines set forth by the manufacturer.

(b) Equipment to be stored with the AED must include scissors, CPR face mask, protective gloves, a disposable razor for removing excess hair, and an absorbent cloth or pad.

(c) There must be a sufficient number of staff trained in the use of the AED so that there is at least one trained adult on-site whenever the camp is used for more than three consecutive nights for the normal camp programs or by a contract or rental group.

(d) The AED must be stored in a central location where the AED is accessible and can be quickly retrieved.

(e) Signage must be provided that indicates the location of the AED.  
(f) A policy must be developed for the use of the AED, including the need to contact 911 as soon as possible. This policy should be made available to camp staff and must be posted with the AED.

**Note:** It is recommended that all camps consider obtaining AEDs, in compliance with sections (5)(a) through (5)(f), as their budget allows.

## (9) HEALTH CARE.

(a) Camp health supervisor. A camp must have an adult camp health supervisor who is responsible for routine and emergency health care supervision at the camp. This person is responsible to assure that:

(A) Health services staff are properly qualified and trained;

(B) Arrangements are made with off-site care providers as required in sections (1)(a), (b) and (c) of this rule;

(C) Medical and emergency communication protocols are established and used;

(D) The camp's procedures and protocols for health care are followed;

(E) Records are maintained as required by this rule and camp policy; and

(F) The camp has a program to supervise the general health, safety and sanitation in the camp.

(b) Health services staff qualifications.

(A) Except as provided under sections (6)(e) and as permitted in (6)(b)(D), the adult on-site health services staff must include at least one of the following:

(i) A physician licensed in Oregon;

(ii) A registered nurse licensed in Oregon;

(iii) A physician assistant licensed in Oregon;

(iv) A practical nurse licensed in Oregon;

(v) A national athletic trainers association certified trainer;

(vi) An emergency medical technician or a paramedic;

(vii) A person currently certified as completing the American Red Cross emergency response course or equivalent;

(viii) A person currently certified as completing Wilderness Advanced First Aid, or better, from a nationally recognized provider;

(ix) A currently qualified military medical corpsman; or

(x) Other training approved by the Division.

(B) Except as permitted in (6)(b)(D), anyone working as a member of the on-site health services staff at a camp must hold current certification from the:

(i) American Red Cross for CPR for the Professional Rescuer;

(ii) American Health Association for Heart Saver AED; or

(iii) Equivalent age-appropriate CPR.

(C) Camp staff responsible for persons susceptible to severe allergic reactions or hypoglycemia and all health services staff must have training in:

(i) Severe Allergic Reaction Response (per ORS 442.805); and

(ii) Emergency Glucagon Providers Training (per ORS 442.805).

(D) Adults holding a current certificate for the complete on of the American Red Cross community first-aid and safety course or equivalent and a current certificate for the completion of a course for adult, child and infant cardiopulmonary resuscitation may serve as health services staff provided all of the following conditions are met:

(i) The users of the camp are coming as an organized group such as a school class, a church group or a scout troop.

(ii) The program is for a period of three nights or less or is a day camp program.

(iii) The local ambulance service provider or emergency medical service states in writing that there is a target response time of 20 minutes or less to the camp unless the Division approves a longer response time.

# ADMINISTRATIVE RULES

(iv) There is a telephone or other communication device capable of connecting with emergency medical services without the use of coins or calling card, accessible at all times during camp operation and located in close proximity to the camp buildings or lodging units.

(c) Health Services Staff Coverage. Except as provided under section (6)(e), a camp must have an adult health services staff person qualified under sections (6)(b)(A), (6)(b)(B), and (6)(b)(C) of this rule available on the premises of the camp at all times while the camp is in operation.

(A) A health services staff person qualified under section (6)(b)(A),

(6)(b)(B) and (6)(b)(C) must accompany all overnight programs going to a physical location not owned or operated by the camp.

(B) The health services staff person must:

(i) Work under the direction of the camp health supervisor;

(ii) Have the appropriate camper records, medications, and treatment log;

(iii) Have first aid supplies appropriate for the occasion as determined by the camp health supervisor and the staff or consulting physician; and

(iv) Have access to a means of communication to summon emergency help and communicate with the camp health supervisor.

(C) A health services staff person who has at least the training required under section (6)(b)(D) and complying with (6)(c)(B)(i) through (6)(c)(B)(iv) must:

(i) Accompany all overnight programs going to an on-site primitive camping area away from the main camp facilities; and

(ii) Accompany all non-overnight off-camp trips involving groups of campers.

(d) Staff or Consulting Physician. Health services staff must work under the delegation of a physician licensed under ORS chapter 677, who is available on-site or for consultation services. The staff physician or consulting physician, in cooperation with the camp operator, must develop written protocols, signed by the physician, for the administration of medications, routine health care and emergency medical care at the camp. The physician must review and re-sign the protocol annually.

**Note:** A suggested outline for the contents of a protocol document may be obtained from the American Camp Association or from the Public Health Division, Organizational Camp Program, 800 NE Oregon St., Suite 608, Portland, OR 97232-2162 or visit the website.

(e) Health Services for Groups Using the Camp under Contract or Agreement. If the camp's permanent facilities are used for more than three nights by a group entering into a contract or agreement with the camp operator (the license holder), the camp operator must:

(A) Provide camp health services for the group; or

(B) Require the group to provide health services.

(i) The minimum levels of training required cannot be less than that established in (6)(b)(A), (6)(b)(B), and (6)(b)(C).

(ii) The camp operator (license holder) is responsible for assuring the group meets and follows the requirements of this rule.

(f) The camp health supervisor must assure camp staff are informed if they are working with campers or staff with special health needs or restrictions; including diet, allergies, medication, rest or activity restrictions, seizures or hypoglycemia; or the care and handling of campers with wheelchairs, prosthetic or orthopedic devices or other special needs.

## (10) MEDICATIONS.

(a) All medications brought to camp by a camper or staff member must be in containers that are clearly labeled with the name of the camper or staff member, the name of the medication, the dosage, the frequency of administration and the route of administration. All medication prescribed by a physician must, in addition, be labeled with the name of the prescribing physician, the prescription number, date prescribed, possible adverse reactions, the specific conditions when contact should be made with the physician and other special instructions as needed.

(b) Except as allowed in section (7)(c) and (7)(e) of this rule, all medication brought to camp by a camper or staff member under 18 years of age must be kept in a locked unit and must be administered by health services staff qualified under section (6)(b) of this rule.

(c) Emergency bee sting medication, inhalers, an insulin syringe or other medication or device used in the event of life-threatening situations should be carried by the camper or staff member.

(d) Each camper or staff member, 18 years of age or older, may take responsibility for the security of his or her personal medication.

(e) When a camp's facilities are used for a program of three or fewer nights and health services are being provided as allowed under (6)(b)(D), a trained adult leader of the organized group must keep all medications brought to camp by a camper or staff member under 18 years of age in a locked unit. The adult leader must be responsible for the administration of the medications.

## (11) HEALTH AND TREATMENT RECORDS.

(a) A camp's health supervisor must keep available the health history required under section (2) of this rule for each camper and staff member.

(b) When a medication is administered or treatment provided to a camper or staff member, health services staff must make a record of the action in a bound book with pre-printed page numbers, indicating the following information:

(A) Name of the person receiving the medication or treatment;

(B) Ailment;

(C) Name of the medication or treatment;

(D) Quantity given;

(E) Date and time administered;

(F) By whom administered; and

(G) Comments.

(c) The camp operator (license holder) must maintain camper and staff health history and treatment records, except that an organized group using a camp's facilities may maintain its own separate health histories and treatment records. Health history and treatment records must be accessible, upon request, to the camp operator (license holder) and public health officials.

(d) The camp operator, or group under section (8)(c) of this rule, must retain health history and treatment records for at least three years.

(12) The licensee must report to the Oregon Public Health Division and Local Public Health Authority any communicable disease, unusual illness outbreaks, serious injuries requiring further medical follow-up or fatality that occurs at the camp. If possible, these incidents should be reported within 24 hours of occurrence.

Stat. Auth.: ORS 446.330

Stats. Implemented: ORS 446.330

Hist.: HD 25-1981, f. & ef. 11-25-81; HD 7-1996, f. & cert. ef. 12-10-96; PH 9-2007, f. & cert. ef. 7-13-07

## 333-030-0110

### Special Programs and Facilities

#### (1) Camp Activities:

(a) At the time of annual inspection the camp director must provide the inspecting sanitarian with a list of all camp activities.

(b) The activity supervisor or leader must have:

(A) Certification from an organization qualified to conduct instructor training in the discipline of the program; or

(B) Documentation of competence for the particular activity.

(c) The camp must have written safety procedures for the conduct of the activity. Procedures must be adequate, communicated to necessary camp staff and participants and strictly enforced. Safety procedures should include at least:

(A) Eligibility requirements for participation;

(B) Camper/staff supervision ratios;

(C) Safety regulations; and

(D) Emergency procedures.

(d) Equipment used in camp activities must be maintained in good condition and must not present safety risk to users.

#### (2) Target Sports Activities, when provided:

(a) Gun sports activity leaders must have certification as an instructor from the National Rifle Association (NRA) or equivalent. Other target sport activity leaders, which include but are not limited to archery, must have documented training and experience in the activity being led. Certification must be valid for each type of gun sport activity supervised.

(b) Written operating procedures must be developed and strictly enforced for each target sport activity. These procedures must address at least:

(A) Eligibility requirements for participation;

(B) Camper/staff supervision ratios;

(C) Safety regulations; and

(D) Emergency procedures.

(c) Procedures must be in place to control access to the target sports activity area.

(d) A policy must be in place that target sports equipment may be used only when a qualified activity leader is present and safety rules are followed.

(e) Participants must be trained to utilize clear safety signals and/or range commands to control both the activity at the firing line and the retrieval of targets or arrows;

(f) Equipment used in a target sports activity, including the transport of equipment to and from the firearms use area, must be under the direct supervision of a responsible individual of at least 21 years of age.

# ADMINISTRATIVE RULES

(g) Equipment and ammunition used in riflery programs must be stored in locked areas.

(3) Public swimming pools, wading pools and spa pools.

(a) Swimming pools in organizational camps must comply with OAR chapter 333, division 60 (Public Swimming Pools).

(b) Spa pools in organizational camps must comply with OAR chapter 333, division 62 (Public Spa Pool Rules).

(c) Adult and family swimming and spa use must operate in accordance with OAR chapter 333, division 60 (Public Swimming Pools) and OAR chapter 333, division 62 (Public Spa Pool Rules).

(4) Aquatic Program held in swimming pool:

(a) When children are within the swimming pool enclosure at least one lifeguard for every 40 bathers or fraction thereof must be on duty. An overall ratio of one lifeguard or adult observer for each ten persons in the water must be maintained.

(b) An aquatics program conducted in a public swimming pool or spa pool is not required to be under the supervision of an Aquatic Director.

(5) Waterfront Activities:

(a) An Aquatic Director must supervise any waterfront activity serving a total of ten or more persons;

(b) There must be at least one lifeguard for each 25 persons in or on the water. An overall ratio of one observer or lifeguard for every ten persons in or on the water must be maintained;

(c) Waterfront activities serving less than ten persons in or on the water may operate with only the supervision of a lifeguard;

(d) If waterfront activities take place at more than one location, a lifeguard must be present at each location. Lifesaving, first aid, and safety equipment must be present at each location. Such equipment must be suitable for the users and conditions under which the equipment is expected to be used; and

(e) All watercraft must be equipped with a U.S. Coast Guard approved personal flotation device (PFD) in good, serviceable condition and of appropriate size for each person on board whenever the watercraft is in use.

(6) Camps engaging in wilderness or primitive camping must ensure that group leaders are knowledgeable about and practice the following health and safety guidelines:

(a) Methods and equipment for keeping perishable food safe:

(A) Perishable foods need to be held at or below 45 degrees Fahrenheit. Foods such as meat, poultry, fish, cheese or other dairy products are capable of supporting the rapid growth of illness causing organisms and are considered "potentially hazardous foods".

(B) Adequate coolers and ice, or mechanical refrigeration must be available to ensure that potentially hazardous food can be maintained at safe temperatures.

(C) Accurate thermometers should be available for verifying safe food temperatures.

(D) Meal planning should minimize or avoid the serving of high risk (potentially hazardous) foods. Thought must be given to length of time food must be held.

(E) Potentially hazardous foods should be stored so that contamination of foods to be eaten raw, precooked food and/or utensils or containers (such as pop cans and water bottles) is prevented.

(b) Equipment and procedures for washing and sanitizing dishes and utensils:

(A) To prevent the spread of illness causing organisms, dishes must be washed, rinsed and sanitized. A container large enough to immerse the largest dish or utensil must be available to properly wash rinse and sanitize dishes and utensils. Preferably, two or three such containers should be available. If one or two containers are used instead of three, dishes must first be washed, then rinsed, then either the wash or rinse container must be cleaned and refilled with sanitizing rinse of at least 50 ppm (1 teaspoon liquid household chlorine per gallon) chlorine or other acceptable sanitizer. Dishes may be sanitized by immersion for one half minute in 180 degree water.

(B) If it is not practical or feasible to carry a container large enough to immerse dishes and utensils, then campers should use individual mess kits and utensils.

(c) Handwashing system — procedures, methods and supplies outlined:

(A) Proper handwashing requires running water, soap and paper towels.

(B) Campers should not use common towels for hand drying. If it is not possible or practical to use disposal towels for hand drying, then campers should use personal towels. Sharing of towels should not be allowed.

(C) Hand sanitizing is not an alternative to handwashing. If hand sanitization is desired, commercial hand sanitizers or immersing washed hands into a 50 part per million bleach solution may only be used after handwashing.

(d) Assure an adequate supply of safe drinking water or equipment, methods and procedures for purifying drinking water. Whenever possible, drinking water should be obtained from an approved water system. If that is not possible, then drinking water must be purified by boiling for one to five minutes followed by the addition of three to four drops of liquid chlorine per quart of water and allowing 30 minutes contact before drinking.

(e) At least one group leader must have American Red Cross or equivalent (as determined by the Division) First Aid Certification.

(f) Appropriate first aid equipment must be on hand. Such first aid equipment must be suitable to the users and conditions under which it is expected to be used. Leaders must have knowledge of emergency procedures and transportation must be available.

(g) Leaders must have knowledge of whereabouts of nearest medical facility.

(h) Leaders must have in possession health histories of campers. Group leaders must screen campers or their health histories to ascertain what medications to bring along.

(i) Campers must be versed in safe operation of camp stoves and handling of flammable liquids.

(j) Lifeguarding at aquatic or waterfront activities must be provided according to this rule.

(k) Proper methods and necessary equipment for disposal of human waste must be available and used.

Stat. Auth.: ORS 446.330

Stats. Implemented: ORS 446.330

Hist.: HD 25-1981, f. & ef. 11-25-81; HD 7-1996, f. & cert. ef. 12-10-96; PH 9-2007, f. & cert. ef. 7-13-07

## 333-030-0115

### Transportation

(1) All organizational camps must provide transportation for use in emergency situations. When emergency transportation does not include an on-site vehicle in good running condition, a specific written plan for emergency transportation must be maintained at the camp.

(2) Campers must only be transported in areas of vehicles designed for passengers. Drivers must have a current driver's license and must be a minimum of 18 years of age.

(3) All camp vehicles used to transport campers or staff off the camp area must have:

(a) A first aid kit; and

(b) Emergency reflectors.

Stat. Auth.: ORS 446.330

Stats. Implemented: ORS 446.330

Hist.: HD 25-1981, f. & ef. 11-25-81; HD 7-1996, f. & cert. ef. 12-10-96; PH 9-2007, f. & cert. ef. 7-13-07

## 333-030-0120

### Fire Safety

(1) Permanent buildings within the organizational camp that are accessible to entry by the campers must meet the requirements of the 2007 Oregon Fire Code. Fire escape plans and/or routes must be communicated to campers prior to overnight occupancy.

(2) Buildings with an occupancy of more than 12 persons must be provided with at least two separate and independent means of emergency exit, located as far apart as possible but in no case closer than 50 percent of the longest dimension of the building.

(3) Where wood burning stoves or combustible fuel heaters are used in sleeping quarters, a carbon monoxide detector that meets the Consumer Products Safety Commission's UL-2034 specification must be provided and kept in good working order.

(4) Smoke detectors, in good working order must be provided in all buildings used for sleeping by camp participants or staff.

Stat. Auth.: ORS 446.330

Stats. Implemented: ORS 446.330

Hist.: HD 25-1981, f. & ef. 11-25-81; HD 7-1996, f. & cert. ef. 12-10-96; PH 1-2005, f. & cert. ef. 1-14-05; PH 9-2007, f. & cert. ef. 7-13-07

## 333-030-0125

### Chemical and Physical Hazards

(1) Cleaning equipment and supplies, all insecticides, chemicals, paints, flammable liquids, and other toxic substances that bear the warning "keep out of reach of children" must be stored isolated from campers and stored so as to prevent contamination of clothing, toweling, bedding materials and food supplies. All applications of chemicals including, but

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not limited to, cleaners and disinfectants must be in accordance with the manufacturer's recommendations and by appropriately trained personnel.

(2) All toxic substances must be clearly labeled or stored in the original container. All toxic materials must be stored locked when not in use.

(3) Organizational camps must be a safe environment and must minimize or eliminate safety hazards including, but not limited to, debris, open excavations, abandoned wells, unused refrigerators or freezers with latchable doors. The camp must take measures to limit unsupervised access to natural hazards such as cliffs or bodies of water. All buildings and equipment must be kept in good repair.

(4) Gasoline and other volatile petroleum products must be clearly labeled and stored in accordance with OAR 837-020-0005 through 837-020-0015 State of Oregon 2007 Fire Code and Amendments.

Stat. Auth.: ORS 446.330

Stats. Implemented: ORS 446.330

Hist.: HD 25-1981, f. & ef. 11-25-81; HD 7-1996, f. & cert. ef. 12-10-96; PH 9-2007, f. & cert. ef. 7-13-07

## 333-030-0130

### Variance

The Division may grant a variance from requirements of these rules as follows:

(1) Where it is demonstrated to the satisfaction of the Division that strict compliance with the rule would be highly burdensome or impractical due to special conditions or cause;

(2) Where the public or private interest in the granting of the variance is found by the Division to clearly outweigh the interest of the application of uniform rules; and

(3) Where such alternative measures are provided which in the opinion of the Division will provide adequate public health and safety protection.

Stat. Auth.: ORS 446.330

Stats. Implemented: ORS 446.330

Hist.: HD 25-1981, f. & ef. 11-25-81; PH 9-2007, f. & cert. ef. 7-13-07

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**Rule Caption:** Public Swimming Pools.

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

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**Rules Adopted:** 333-060-0206, 333-060-0207, 333-060-0208, 333-060-0209

**Rules Amended:** 333-060-0015, 333-060-0105, 333-060-0170, 333-060-0210, 333-060-0215

**Subject:** The Department of Human Services, Public Health Division is permanently adopting and amending their Oregon Administrative Rules relating to public swimming pools.

**Rules Coordinator:** Cat McGinnis—(971) 673-1291

## 333-060-0015

### Definitions

As used in these rules unless otherwise required by context:

(1) "Administrator" means the State Public Health Director or designee of the Department of Human Services, Public Health Division.

(2) "Approved" means approved in writing by the Division.

(3) "Athletic club" means a facility constructed to provide athletic or physical conditioning for its members, guests and/or patrons. It includes but is not limited to racquetball clubs, health spas, fitness facilities, aerobics, etc.

(4) "Bathhouse" means a structure, which contains dressing rooms, showers and toilet facilities for use with an adjacent public swimming pool.

(5) "Builder" means a person who, in the pursuit of an independent business, undertakes, or offers to undertake, or submits a bid, to construct, alter, repair, or improve any public swimming pool, spa pool or bathhouse and the appurtenances thereto.

(6) "Certified Operator" means a person performing the duties of the responsible supervisor, and responsible for providing direction and training to non-certified responsible supervisors and other pool personnel in regards to pool maintenance and operation. This person shall be certified by an organization providing training in pool safety, maintenance and operation recognized by the Division. Such courses and organizations include the Certified Pool Operator Program, by the National Swimming Pool Foundation, and the Aquatic Facility Operator Program, by the National Recreation and Parks Association, or equivalent, as determined by the Division.

(7) "Cross connection" means an unprotected connection between the piping carrying potable water and the piping or fixtures which carry other water or other substances.

(8) "Division" means the Department of Human Services, Oregon State Public Health Division.

(9) "General-use Public Swimming Pool" means any public swimming pool other than a limited-use public swimming pool. Public swimming pools operated in conjunction with a companion facility but not limited to use of the residents, patrons or members of the companion facility are general-use swimming pools.

(10) "Guest protection zone" means a defined and prescribed area of a swimming pool or aquatic feature. A designated lifeguard is responsible for scanning a guest protection zone. Scanning refers to the actions performed by the lifeguard to visually survey and continuously and comprehensively monitor the guest protection zone.

(11) "10/20 Guest Protection Standard" means using a lifeguard planning standard that will place guards in numbers and locations, with identified areas of responsibility, so that they can theoretically identify a victim within 10 seconds and reach the victim within 20 more seconds. This is only a planning tool and actual response times will vary depending on the abilities of the lifeguard, their alertness, their vigilance and what else is happening in the pool.

(12) "Horseplay" means any unsafe activity, which in the opinion of the Division or the pool operator endangers the pool users and/or bystanders.

(13) "Instructor" means a currently certified American Red Cross Water Safety Instructor, YMCA Swim Instructor, or a person having equivalent certification as determined by the Division.

(14) "Lifeguard" means a person holding current certification in the following three areas:

(a) Lifeguard certification. Certification in one of the following:

(A) American Red Cross Lifeguard Training;

(B) Young Men's Christian Association (YMCA) Lifeguarding;

(C) International Lifeguard Training Program (ILTP) for deep water;

(D) Starfish Aquatics Institute StarGuard; or

(E) Other lifeguard training approved by the Division.

(b) First aid certification. Certification in one of the following:

(A) American Red Cross First Aid;

(B) American Safety and Health Institute Universal Basic First Aid;

(C) Emergency Medical Planning America Medic First Aid (MFA); or

(D) Other equivalent First Aid Course approved by the Division.

(c) CPR certification. Certification in one of the following:

(A) American Red Cross CPR for the Professional Rescuer;

(B) American Heart Association Healthcare Provider CPR;

(C) American Safety and Health Institute CPR Pro for the Professional Rescuer; or

(D) Other equivalent CPR training approved by the Division.

(15) "Limited-use Public Swimming Pool" means any public swimming pool located at and operated in connection with a companion facility such as a residential housing facility having five or more living units, travelers' accommodations, mobile home park, recreation park, boarding school, organizational camp, dude ranch, club or association where use of the pool is limited to residents, patrons or members of the companion facility.

(16) "Person" includes, in addition to the definition in ORS 174.100, municipalities, recreation districts, counties and state agencies, instrumentalities, or builder.

(17) "Private Swimming Pool" means any swimming pool, wading pool or spray pool owned by no more than four individuals, either jointly, individually or through association, incorporation or otherwise, and operated and maintained in conjunction with a companion residential housing facility having no more than four living units, for the use of the occupants thereof and their personal friends only. Private pools shall not be subject to the provisions of these rules.

(18) "Public Spa Pool" means any public swimming pool or wading pool designed primarily to direct water or air-enriched water under pressure onto the bather's body with the intent of producing a relaxing or therapeutic effect.

(19) "Public Swimming Pool" means an artificial structure, and its appurtenances, which contains water more than two feet (600mm) deep which is expressly designated or which is used with the knowledge and consent of the owner or operator for swimming or recreational bathing and which is for the use of any segment of the public. "Public swimming pool" includes, but is not limited to, swimming pools owned or operated by:

(a) Traveler's accommodations;

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- (b) Recreation parks;
- (c) Colleges;
- (d) Schools;
- (e) Organizational camps as defined in ORS 446.310;
- (f) Clubs;
- (g) Associations;
- (h) Business establishments for their patrons or employees;
- (i) Private persons and that are open to the public;
- (j) Recreation districts;
- (k) Municipalities;
- (l) Counties; or
- (m) A state agency.

(20) "Public Wading Pool" means an artificial structure, and its appurtenances, which contains water less than two feet (600mm) deep which is expressly designated or which is used with the knowledge and consent of the owner or operator for wading or recreational bathing and which is for the use of any segment of the public, whether limited to patrons of a companion facility or not. Special types of wading pools include but are not limited to:

(a) "Spray Pool" or "Water Playground" meaning a wading pool containing spray features intended for recreational use, but that does not allow water to pond in the basin. Spray pools or water playgrounds that do not pond water and use potable water once then send it to waste are not regulated by these rules.

(b) "Interactive Fountain" meaning a wading pool designed for esthetic appreciation, which is expressly designated or which is used with the knowledge and consent of the owner or operator for wading or recreational bathing by any segment of the public. Interactive fountains are a type of wading pool. Interactive fountains that do not pond water and use potable water once then send it to waste are not regulated by these rules.

(c) "Non-Regulated Fountain" means a fountain designed and operated solely for visual appreciation and for that function only. The Division does not license or regulate this type of fountain.

(21) "Responsible Supervisor" means a person, or persons, designated by the operator to provide emergency assistance to patrons, maintain order and enforce pool use regulations, governing safety and sanitation, including pool closure, and who is knowledgeable about pool maintenance and operation and the testing of pool water.

(22) "Shallow Water Lifeguard" means a person with training in the skills needed to lifeguard in four feet (1.2 m) of water or less. This person shall have current certification in:

(a) International Lifeguard Training Program (ILTP) for shallow water guards;

(b) Starfish Aquatics Institute StarGuard with a competency assessment designation of three feet of water or less, or;

(c) Equivalent training, as approved by the Division.

(23) "Special-use pool" means a public swimming pool which is designed specifically for sporting or recreational purposes and may include but are not limited to special features such as wave pools, diving pools, splash pools, zero depth pools, portable slides, and water slides.

(24) "Supplemental Disinfectant" means a disinfectant, which is intended to augment water quality in a public swimming pool or spa and will provide disinfection in conjunction with the approved disinfectant.

(25) "Swimming Pool" means an artificial structure, basin, chamber or tank used for wading, swimming, diving, water recreation, therapy or bathing. It does not include facilities where the water is drained after each use, when such facility has no heater, filter, or sanitizing equipment or spray pools that use potable water once and send to waste and that do not pond water in the basin. Types of pools are as follows:

(a) "Combination pool" means a pool used for swimming and diving, having both shallow and deep portions.

(b) "Diving pool" means a pool used exclusively for diving.

(c) "Exercise pool" means a pool small in area and of shallow depth usually associated with a health spa.

(d) "Mobile pool" means a pool constructed on a mobile structure, which can be transported from place to place.

(e) "Reverse flow pool" means a pool of a design in which the water enters at the bottom and leaves at the water line.

(f) "Spa" means a relatively small pool, which uses high temperature water and which may include a water agitation system or air-enriched water under pressure, with the intent of producing a relaxing or therapeutic effect. A spa is sometimes called a whirlpool.

(g) "Special-use pool" means a pool used for a purpose not otherwise defined, such as for apparatus swimming, diving, and underwater photography training, therapy, or other use by the public.

(h) "Spray Pool" means a type of wading pool that provides water for recreational bathing through the use of sprays, fountains, buckets or other means, that allows the water to run by gravity to a drain and does not pond water in the basin. Spray pools that use potable water once and waste it to the drain without ponding of the water are not regulated by these rules.

(i) "Wading Pool" means a shallow pool used primarily by children, and designed to have a water depth no greater than 24 inches.

(j) "Waterslide plunge pool" means a pool located at the exit end of a waterslide flume and intended and designed to receive sliders emerging from the flume.

(k) "Water recreation attraction" means a special-use pool designed and intended for recreational use with special design or operational features that provide the patron recreational activity which may be different from that associated with a conventional swimming pool, and that purposefully involves immersion of the body partially or totally in the water.

**Note:** Examples of water recreation attractions are waterslide plunge pools, lazy or slow rivers, tubing pools, and wave pools.

(l) "Wave pool" means a pool designed for generating waves for recreational purposes.

(m) "Zero-depth pool" means a pool having a bottom slope, which continues through decreasing depth until the bottom joins with the deck around either part or all of the pool perimeter. It may have no walls, or may have walls around part of the perimeter.

(26) "Variance" means written permission from the Division for a public swimming pool, public spa pool or public wading pool to be operated when it does not comply with all the applicable rules for public swimming pools, public spa pools or public wading pools.

(27) "Waterpark slide" means a slide at a public pool, which has a length of at least twenty feet (6.1m), not including the platform.

Stat. Auth.: ORS 448.011

Stats. Implemented: ORS 448.005 - 448.100, 448.990

Hist.: HD 2-1979, f. 1-25-79, ef. 3-1-79, Renumbered from 333-042-0086; HD 7-1986, f. & ef. 5-1-86; HD 17-1991, f. & cert. ef. 10-15-91; HD 22-1994, f. 8-22-94, cert. ef. 9-1-94; PH 17-2006, f. 6-30-06, cert. ef. 7-1-06; PH 10-2007, f. & cert. ef. 7-13-07

## 333-060-0105

### Swimming Pool Enclosure

(1) Public swimming pools shall be protected by an enclosure. Such enclosure shall be a fence, wall, or building without private entrances to the pool area.

(2) Swimming pool enclosures including windows, gates and doors shall be constructed in such a manner so as to discourage access to the pool by unsupervised children and/or domestic animals and shall incorporate the following construction standards:

(a) Enclosures shall be not less than 4' (1.2m) in height measured from the outside ground level at a point 1' (30cm) horizontal from the base of the enclosure;

(b) There shall be not more than 4" (10cm) of space between the bottom of the enclosure and the ground's surface or pool deck;

(c) Separation between vertical sections and bars shall be a maximum of 4" (10cm);

(d) Horizontal rails shall be spaced with a minimum 42" (105cm) separation;

(e) All exterior projections or recessions shall be 42" (105cm) from either the top or bottom of the fence;

(f) Gates and doors in swimming pool enclosures shall be self-closing and shall be equipped with a lockable self latching device. The operating controls for the self-latching device shall be located at least 42" (105cm) above the exterior ground surface or pool deck. Gates and doors on new pools must swing "out" of the pool enclosure, or away from the pool. Existing pools must make the door or gate swing change when there is not an undo economic impact.

(g) Entrances with self-closing and self-locking devices requiring the use of a key, key card, or combination code to gain access may have controls 36" to 54" (0.9 m to 1.35 m) above the exterior ground surface. The gates or doors cannot require a key, keycard or combination to exit the pool area;

(h) Construction methods and materials shall be used that provide a durable and low maintenance structure; and

(i) Buildings enclosing public swimming pools shall be constructed in accordance with the requirements of the **Oregon State Structural Specialty Code 2007 Edition**, as amended by the Building Codes Agency, adopted April 1, 2007.

(3) The Division may approve alternate enclosure materials and methods where the Division finds such materials and methods equivalent to those described in section (2) of this rule.

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(4) Swimming pool enclosures constructed prior to March 1, 1979, which are a minimum of 42" (105cm) in height; or with spacing not greater than 5" (13cm) between vertical boards (bars); or with spacing not greater than 5" (13cm) between the bottom of the fence and the pool deck; or with spaces between the horizontal rails not less than 38" (95cm), shall be acceptable until such time as the enclosure requires repair or replacement.

(a) Pools without constant supervision in the pool area may provide access through controlled entry points based on one of the following conditions:

(A) When only adults over the age of 18 are allowed access to the pool area through a controlled-access point such as a registration or check-in desk, they may have direct access to the pool without passing through closed doors or gates. The pool entry must be able to be locked and secured when the pool is closed.

(B) If persons under the age of 18 might have access to the pool area, then the operator must provide a lockable, self-closing door or gate with a self-latching device. The operating controls for the latch must be located 42" to 54" (1.2 m to 1.35 m) above the exterior ground surface; or

(b) When a pool is closed to patrons, all entry/exit points are to be properly maintained and secured against unauthorized entry.

**Note:** For outdoor pools, a security-type pool cover may be added as an additional layer of security for the pool, especially during the off season for those pools which maintain water in the pool basin.

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

Stat. Auth.: ORS 448.011

Stats. Implemented: ORS 448.005-448.100, 448.990

Hist.: HD 2-1979, f. 1-25-79, ef. 3-1-79; Renumbered from 333-042-0133; HD 7-1986, f. & ef. 5-1-86; HD 22-1994, f. 8-22-94, cert. ef. 9-1-94; PH 10-2007, f. & cert. ef. 7-13-07

## 333-060-0170

### Bathhouses and Sanitary Facilities

(1) A bathhouse shall be provided at all general-use swimming pools.

(2) Where a general-use swimming pool is operated in conjunction with a companion facility, a bathhouse common to both facilities shall be acceptable, provided the minimum facility ratios and locations described in sections (3), (4) and (5) of this rule are followed.

(3) Bathhouses shall:

(a) Meet requirements of:

(A) The **Oregon State Structural Specialty Code, 2007 Edition;**

(B) The **Oregon State Mechanical Specialty Code, 2007 Edition;**

(C) The **Oregon State Electrical Specialty Code, 2005 Edition;**

(D) The **Oregon State Plumbing Specialty Code, 2005 Edition;**

(b) Be located within 200 feet (61m) of the general-use swimming pool;

(c) Have floors which are slip resistant, easily cleanable, and covered to a height of four inches (10cm);

(d) Have shower compartments with walls, which are impervious to water to a height of six (6) feet (1.8m) above the floor. An effective water-tight joint between the wall and the floor shall be maintained. (Wooden racks or duck boards over shower floors are prohibited.);

(e) Have interior wall and ceiling finishes which are smooth, easily cleanable, and impervious to water;

(f) Where rubber or impervious mats are used, have such mats clean and dry between usages;

(g) Have shower stall floors that are finished with non-slip, impervious surfaces;

(h) Where glass bath or glass shower doors are used, have such doors made of safety glass;

(i) Have a first-aid room equipped with a minimum of one cot, one blanket and first-aid supplies as described in Appendix 1A;

(j) Hose bibs shall be provided for washing down the bathhouse interior; and

(k) Floors shall slope a minimum of 1/4 inch per foot (6mm/30cm) and shall drain to floor drains.

(4) General-use swimming pools shall provide sanitary facilities in the following numbers based upon maximum user load:

(a) Toilets — Women, one per 40 pool users or fraction thereof, with a minimum of two; Men, one per 60 pool user or fraction thereof, with a minimum of two (urinals shall be an acceptable substitute for no more than 1/2 of the toilets);

**EXCEPTIONS:** Pools built prior to June 5, 1956, may have a minimum of one (1) toilet. If the bathhouse is remodeled, it shall comply with the current standards.

(b) Lavatories adjacent to toilets — One per 60 pool users or fraction thereof;

(c) Showers — One head per 40 pool users or fraction thereof, with a minimum of two.

(5) Showers shall be located so as to provide users immediate access to the pool deck.

(6) Limited-use swimming pools shall provide sanitary facilities based on the maximum bather load of OAR 333-060-0055 in the following numbers:

(a) Provide toilets and lavatories as described in sections (4)(a) and (4)(b) of this rule; and

(b) Provide such toilets and lavatories within 1,000 feet (305m) of the swimming pool;

(c) Private accommodations located within 1,000 feet (305m) of the swimming pool shall constitute compliance with the requirements of section (6)(a) of this rule. When provided, additional bathhouse facilities adjacent to the pool shall comply with sections (3)(a), (3)(c), (3)(d), (3)(e), (3)(f), (3)(g) and (3)(h) of this rule, and are exempt from the fixture requirements of section (4) of this rule.

(7) Hot and cold or tempered water only shall be provided at all shower heads.

(8) Soap shall be provided at all shower heads and lavatories.

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

Stat. Auth.: ORS 448.011

Stats. Implemented: ORS 448.005-448.100, 448.990

Hist.: HD 2-1979, f. 1-25-79, ef. 3-1-79; Renumbered from 333-042-0165; HD 7-1986, f. & ef. 5-1-86; HD 22-1994, f. 8-22-94, cert. ef. 9-1-94; PH 10-2007, f. & cert. ef. 7-13-07

## 333-060-0206

### Supervision – Limited-Use Pools

(1) **RESPONSIBLE SUPERVISOR.** A responsible supervisor or certified operator must be accessible any time the pool is open to bathers. This person or persons, are delegated and accountable for the supervision of the pool, but may not need to be in the pool area at all times. The owner, operator, or certified operator delegates the responsibilities.

(2) A responsible individual appointed by the owner or responsible supervisor must maintain surveillance over the pool during all hours of operation. Such

surveillance shall be no less frequent than the frequency of manual pool water testing required in OAR 333-060-0200(3) (Pool Water Quality).

(3) **LIFEGUARDS.** Lifeguards are not required at most limited-use pools. If they are provided they must meet requirements of OAR 333-060-0208. Lifeguards must be provided at:

(a) Pools with waterslide flumes more than six feet in height.

(b) Pools with drop slides more than six feet in height or that drop into the water from a height of more than six inches above the water.

(c) Pools that have water features, water play equipment, or have a design that is determined by the Division to need supervision during use. Such pools might include, but are not limited to, pools with slides or waterslides, pools with equipment such as rope swings, lily pad walks, zip lines, and other interactive equipment, and pools with features such as current rivers, vortexes, and other uses of rapidly moving water.

(d) Pools that are required to provide lifeguards must meet the staffing requirements of OAR 333-060-0207(2).

Stat. Auth.: ORS 448.011

Stats. Implemented: ORS 448.005-448.100, 448.990

Hist.: PH 10-2007, f. & cert. ef. 7-13-07

## 333-060-0207

### Supervision — General-Use Pools

(1) **Certified Operator.** By January 1, 2009, all public swimming pools serving or installed for the state or any political subdivision of the state, including a school district, municipality, or recreation district with 2000 square feet (185 m<sup>2</sup>) or more pool surface area in one or more pools must have at least one currently Certified Pool Operator, on staff, as defined in OAR 333-060-0015(6). This person must be in a position with management responsibility for the way the pool is operated, including the authority to close the pool.

(2) **Lifeguards.** Lifeguards must be provided at all general-use pools during all hours of operation. The number of lifeguards is determined by the type of pool.

(a) One lifeguard for every 40 patrons in the pool, or fraction thereof, shall be provided.

(b) **Lifeguarding Plan.** Any pool operator may submit a lifeguarding plan as an alternative to compliance with section (2)(a) of this rule. The 10/20 guest protection standard, or equivalent, provides a method for evaluating and developing a lifeguard staffing plan providing rapid emergency response.

(A) All general-use specialty pools and water recreation attraction pools and limited-use pools required to have lifeguards are required to submit a lifeguarding plan to the Division or its agent for approval. Unless otherwise determined by the Division or its agent, the number of lifeguards

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determined by the lifeguard plan shall be provided, with the additional guards required in sections (2)(c) and (2)(d) of this rule.

(B) A shallow water lifeguard as defined by OAR 333-066-0015(31) may substitute for the required lifeguard at pools less than four feet (1.2 m) deep and at wading pools. At no time may they substitute for lifeguards at pools with water depths greater than four feet.

(C) A lifeguard near the exit to slides or waterslide flumes shall be provided. A lifeguard may guard two slides or waterslide flumes, situated near each other so they are both easily supervised.

(D) An attendant, responsible for enforcing slide usage rules at the entrance to slides or waterslide flumes shall be provided. One attendant may supervise two slides located near each other, on the same tower.

(E) Slides less than six feet high, discharging six inches or less above the water, with open slide trays or flumes so the landing area is easily visible, may be exempted by the Division from some or all of the dedicated supervision requirements in sections (2)(C) and (2)(D) of this rule.

Stat. Auth.: ORS 448.011

Stats. Implemented: ORS 448.005-448.100, 448.990

Hist.: PH 10-2007, f. & cert. ef. 7-13-07

## 333-060-0208

### Lifeguard Supervision & Training

(1) TRAINING. A qualified lifeguard must be currently certificated in lifeguarding, first-aid and CPR as defined in OAR 333-060-0015(13), as well as having regular in-service training and training as required by OAR 333-060-0208(4) and 333-060-0209.

(2) DUTIES. When on duty, a lifeguard shall scan and supervise the pool with no other distracting activities such as cleaning, water testing, or minimal unnecessary conversing with patrons.

(a) Rotation. Lifeguards must change duty stations at least hourly. The intent of this requirement is to maintain vigilance, if one guard is on duty a major shift in position or activity is required and suggested much more frequently than hourly. (e.g. changing sides of the pool, walking instead of sitting, etc.)

(b) Breaks. Lifeguards are to be allowed breaks in accordance with Oregon Bureau of Labor and Industry standards. More frequent breaks are recommended when the weather is very hot, extremely sunny, or the patron loading is very high.

(c) Lifeguards may teach lessons or coach swim teams during times when that is the only activity they are responsible for supervising.

(d) Lifeguard Orientation. New lifeguards must be provided an orientation to the pool which should include guarding expectations, emergency procedures, communication procedures, and other facility specific information needed to perform the job.

(e) In-service. Lifeguards are to be provided with in-service training arranged or conducted by the pool operator at least annually to review and practice skills and procedures.

(f) Performance Evaluation. At the time of hire and at least once yearly, each lifeguard's on deck, on duty performance must be evaluated. The certified pool supervisor, responsible supervisor, or other designated management personnel may conduct the evaluation, and provide documentation of the lifeguard's performance. Performance evaluation deficiencies should be used to organize in-service training.

**Note:** Lifeguards who cannot demonstrate proficiency in their lifeguarding skills may be a danger to the bathers and to themselves. Serious deficiencies that are not immediately corrected may cause the serious injury or death of a bather, the lifeguard, or other staff member.

(3) IDENTIFICATION. Lifeguards are to be readily identifiable when on duty.

(4) SOLAR PROTECTION. Lifeguards and staff at outdoor facilities must be informed of the risks of solar exposure. To avoid excessive employee exposure to solar radiation, the operator must require proper solar protection through the use of appropriate swimsuits, clothing and hats designed to cover the body, sunglasses with ultra-violet radiation protection, lotions with high Sun Protection Factor (SPF) ratings, umbrellas, and other means of protection.

Stat. Auth.: ORS 448.011

Stats. Implemented: ORS 448.005-448.100, 448.990

Hist.: PH 10-2007, f. & cert. ef. 7-13-07

## 333-060-0209

### Pool Staff Training & Safety

(1) Bloodborne Pathogens. The pool operator must provide the training, equipment, medical services, and written procedures and protocols needed to protect the pool staff against bloodborne pathogens. Lifeguards would be expected to have the potential to come into accidental contact with bodily fluids during their regular duties.

**Note:** OSHA requires compliance with 29 CFR 1910.1030, Bloodborne Pathogen Standard.

(2) Automatic External Defibrillators (AEDs). When an operator provides AED equipment at the pool, they must train the staff on the use and operation of the equipment including periodic training drills to assure continued staff competency.

(3) Oxygen Equipment. When an operator provides oxygen equipment at the pool, they must train the staff on the use and operation of the equipment including periodic training drills to assure continued staff competency.

Stat. Auth.: ORS 448.011

Stats. Implemented: ORS 448.005-448.100, 448.990

Hist.: PH 10-2007, f. & cert. ef. 7-13-07; PH 10-2007, f. & cert. ef. 7-13-07

## 333-060-0210

### Pool Safety

(1) GENERAL. Any object or material not specifically approved under OAR chapter 333, division 060, which might cause hazardous conditions or interfere with the efficient operation of pool is not permitted in the pool area.

(2) TELEPHONE. The operator must provide a telephone that is accessible during all hours the pool is open for operation. The phone must be capable of reaching emergency assistance without the use of cards or coins. The operator must conspicuously post, within the pool area, the address of the pool facility.

(3) LIFESAVING EQUIPMENT. The operator and staff must keep the lifesaving equipment in good repair and in ready condition. Mount the lifesaving equipment in a conspicuous place where it is readily accessible and used only for its intended purpose.

(a) Life Hook. The operator must provide a life hook in the pool area. Spa pools and wading pools do not need life hooks. The life hook has a crook design and is securely attached to a non-telescoping pole between eight and 16 feet long. Size the pole so that the life hook is usable in the intended pool, while being as long as possible.

(b) Life Buoy. If the pool is over 25 feet (7.6 m) wide a US Coast Guard approved ring buoy or rescue bouy must be provided by the operator. Attach a 1/4 in. (15 mm) rope, 30 feet (9 m) long, with a float or knot tied in the end to step on when tossing the device. Pools providing lifeguards during all hours of operation do not need to supply a life buoy.

(c) Rescue Tube. The operator must provide each lifeguard on guard duty a rescue tube. The tube is a closed-cell foam tube with an attached towline and shoulder strap. The lifeguard certifying agency will have more complete specifications for the tubes and their use. The tubes must be worn and used properly by the guards.

(d) First Aid Supplies. All general-use public pools must have a first aid kit, supplied with at least the items in Appendix A. The kit must be stored in an area close to the pool, where it is accessible for use. The operator must keep the kit supplied and not allow it to deteriorate.

(e) Bloodborne Pathogen Cleanup Kit. A bodily fluid cleanup and disinfection kit must be maintained and completely supplied at each general-use public pool facility. The minimum contents of the kit include:

(A) A storage and collection bucket with cover;

(B) Plastic gloves;

(C) A face mask;

(D) Disposable towels, disposable sponges or other absorbent material;

(E) Chlorine disinfectant in a watertight package; and

(F) A properly identified biohazard disposal bag.

**NOTE:** OSHA may require other facilities to also provide bloodborne cleanup kits.

(f) Water Rescue Spineboards or Backboards. The operator of every pool providing lifeguards must also provide a long spineboard or backboard. The board must be appropriate for water rescue and meet the lifeguard training agency's specifications or equivalent. If a pool has obtained a letter from the local emergency medical services provider stating that the emergency response team would prefer the pool not have a spineboard for stabilization purposes, a spineboard need not be provided.

(g) Automatic External Defibrillators (AED). All general-use pools, and pools at health clubs serving 100 patrons or more a day, must provide an AED on-site and accessible for use.

(A) General-use pools have until January 1, 2009 to comply with section (3)(b) of this rule. Health Clubs serving 100 patrons or more were required by the legislature to provide AEDs by July 1, 2006.

(B) The AED must be maintained, inspected and serviced, including the battery and electrodes according to the guidelines set forth by the manufacturer.

# ADMINISTRATIVE RULES

(C) There must be a sufficient number of employees, including all lifeguards, trained in the use of the AED so that there is one on-site whenever the pool is open.

(D) The AED must be stored in a location from which the AED is accessible and can be quickly retrieved.

(E) Signage must be provided that indicates the location of the AED.

(F) A policy must be developed for the use of the AED, including the need to contact 911 as soon as possible after identifying the incident. This policy should be made available to pool staff and must be posted with the AED.

(4) EMERGENCY PLANS. Every general-use public pool must develop emergency plans including but not limited to:

- (a) Injuries, swimmers in trouble, drownings;
- (b) Equipment breakdowns;
- (c) Chemical release;
- (d) Severe Weather;
- (e) Fire; and
- (f) Threats to personnel, patrons, or the facility.

(5) LIFELINES. The lifeline separating the shallow and deep areas must be kept in good repair.

(a) Keep the lifeline in place at all times, except during an event or activity when the lifeline becomes an obstruction.

(b) Separation Areas. Keep lifelines separating slide and waterslide plunge areas from the rest of the pool in place at all times the slide or waterslide is in use.

(6) STARTING BLOCKS AND COMPETITIVE USE. Starting blocks may be used for diving only during supervised competition swimming, training, or instruction. When not in use remove or make the blocks inaccessible. Starting blocks for new or renovated pools must be installed in areas with at least five feet (1525 mm) of water depth. Existing blocks may be used according to the following conditions:

(a) Water less than three feet six inches (1070 mm): Swimmers start in the water.

(b) Water three feet six inches (1070 mm) but less than four feet (1220 mm) deep: Swimmers start from the deck or in the water, diving blocks are not allowed; For diving entries from the deck, the deck may be no more than six inches (150 mm) above the water surface.

(c) Water four feet (1220 mm) but less than five feet (1525 mm) deep: Diving entries may be from elevations up to 18 inches (450 mm) above the water surface;

(d) Water five feet or greater in depth: Diving entries may be made from up to 30 inches (750 mm) above the water surface.

(7) SECURITY. The operator must check and maintain all gates, doors, and windows into the pool area to assure proper operation in compliance with OAR 333-060-0105. Lock and secure the pool area when it is not open for use. Patrons may not have access to the pool when it is not open for use.

(a) Fire Exiting. Fire exiting from other parts of a facility through the pool is not allowed. Fire exiting may be provided through the pool area only for the pool dressing/toilet/shower facilities, pool program areas and pool equipment and storage areas as necessary.

(A) The pool operator must equip designated fire exit doors and gates with panic hardware in compliance with the **Oregon Uniform Fire Code (2007)**. Design and install panic hardware to protect against access to the hardware from outside the pool area.

(B) Existing non-compliant pools must notify and consult with the Division or agent about non-compliant fire-exit pathways through the pool area. Each situation will be reviewed by the Division or agent, in consultation with the local fire protection agency.

(b) Maintenance Access. Keep doors or gates used for maintenance access to the pool area, or to mechanical, chemical feed and storage areas locked except when access is needed by authorized personnel.

(c) For pools with lifeguards on duty, access directly to the pool through controlled and supervised access points may be allowed, provided that the pool entry can be secured and locked when lifeguards are not on duty.

(8) INCIDENT REPORTING. If there is a fatality or an injury, requiring medical follow-up either by a personal doctor or an emergency room, it must be reported by the pool operator to the Division within 72 hours of the incident. The operator should use the form provided by the Division.

**Note:** An accident report form is provided in Appendix B  
[Publications: Publications referenced are available from the agency.]  
Stat. Auth.: ORS 448.011  
Stats. Implemented: ORS 448.005-448.110, 448.990  
Hist.: HD 2-1979, f. 1-25-79, ef. 3-1-79; Renumbered from 333-042-0215; HD 7-1986, f. & ef. 5-1-86; HD 22-1994, f. 8-22-94, cert. ef. 9-1-94; PH 10-2007, f. & cert. ef. 7-13-07

## 333-060-0215

### Signs

POOL RULES AND SIGNS. The operator is responsible for posting and enforcing the pool rules governing safety and sanitation. Pools with existing pool rule signs may wait to comply with the requirements of this rule until the signs are replaced, repaired or moved.

(1) Location and Size. Post the rules in a conspicuous place near the entrance to the pool area and the dressing room. The minimum size for the sign is 18 inches (450 mm) by 24 inches (600 mm) with lettering that is easily legible and at least 1/2 inch (12.5 mm)(36 point type) high.

(2) Content — Pools. At all pools the operator must post and enforce a sign that includes the language in this rule or equivalent language:

(a) At pools where lifeguards are not provided:

(A) "NO LIFEGUARD ON DUTY" (In letters at least 4 inches high.)

(B) "BRING A FRIEND — Do not swim alone."

(C) "CHILDREN UNDER 14 — BRING AN ADULT. Non-swimmers and children under 14 years of age need responsible adult supervision."

(b) At all pools:

(A) "PROTECT OUR WATER — Please do not use the pool if you have had diarrhea in the past two weeks, or a disease communicable by water."

(B) "SHOWER YOUR CHILD AND YOURSELF. Take a cleansing shower before entering the pool or after using the toilet."

(C) "Swimmers who are not toilet trained must wear a swim diaper."

(D) "Immuno-compromised individuals should use caution when using a public pool."

(E) "WATER AND ALCOHOL DON'T MIX. No person under the influence of alcohol may use the pool."

(F) "NO RUNNING or ROUGH PLAY."

(G) "NO GLASS OR PLASTIC THAT WILL SHATTER."

(H) "NO FOOD or DRINK in the pool."

(I) "NO DIVING ALLOWED", or "NO DIVING, except in designated diving areas."

(J) "NO ANIMALS in the pool area."

(c) Contents — Slides. The operator must post and enforce, at all slides, except children's activity slides, a sign with the language below or equivalent language:

(A) "CAUTION — One rider at a time. Wait until the landing area is clear before entering the slide."

(B) "Slide feet first in the sitting position or on the back only."

(C) "Do not attempt to stop in the slide."

(D) "Leave the plunge area immediately."

(E) "WARNING: Water depth is "\_\_\_" feet."

(F) "Non-swimmers not permitted." (If the water is over five feet (1.5 m) deep.)

(G) "WATER AND ALCOHOL DON'T MIX. No person under the influence of alcohol may use the pool."

(3) With the approval of the Division, the requirements in section (3) of this rule may be eliminated, modified or added to in connection with water recreation attraction pools, and special-use pools defined in this rule.

Stat. Auth.: ORS 448.011  
Stats. Implemented: ORS 448.005-448.100, 448.990  
Hist.: HD 2-1979, f. 1-25-79, ef. 3-1-79; Renumbered from 333-042-0215; HD 7-1986, f. & ef. 5-1-86; HD 22-1994, f. 8-22-94, cert. ef. 9-1-94; PH 10-2007, f. & cert. ef. 7-13-07

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

**Rule Caption:** Comprehensive In Home Support for Adults with Developmental Disabilities.

**Adm. Order No.:** SPD 8-2007(Temp)

**Filed with Sec. of State:** 6-27-2007

**Certified to be Effective:** 7-1-07 thru 12-28-07

**Notice Publication Date:**

**Rules Amended:** 411-330-0020, 411-330-0030

**Subject:** The Department of Human Services, Seniors and People with Disabilities Division is temporarily amending their Oregon Administrative Rules, relating to Comprehensive In Home Support Services for Adults with Developmental Disabilities, to reflect Cost of Living Adjustments awarded by the 2007-2009 Legislative Assembly.

**Rules Coordinator:** Christina Hartman—(503) 945-6398



# ADMINISTRATIVE RULES

## 411-330-0020

### Definitions

(1) "Abuse" means

(a) Abuse of an Adult. Except for those additional circumstances listed in OAR 411-330-0020(1)(b)(A-F) abuse of an adult means one or more of the following:

(A) Any death caused by other than accidental or natural means, or occurring in unusual circumstances;

(B) Any physical injury caused by other than accidental means, or that appears to be at variance with the explanation given of the injury;

(C) Willful infliction of physical pain or injury; or

(D) Sexual harassment or exploitation, including but not limited to, any sexual contact between an employee of a community facility or community program and an adult.

(E) Neglect that leads to physical harm through withholding of services necessary to maintain health and wellbeing.

(b) Abuse in contracted or purchased services. When the CDDP or a Support Services Brokerage purchases or contracts for services from a program licensed or certified as a 24-Hour residential program, an adult foster home, an employment or community inclusion program; a supported living program; or a semi-independent living program abuse also means:

(A) A failure to act or neglect that results in the imminent danger of physical injury or harm through negligent omission, treatment, or maltreatment. This includes is but not limited to the failure by a service provider or staff to provide adequate food, clothing, shelter, medical care, supervision, or through condoning or permitting abuse of an adult or child by any other person. However, no adult will be deemed neglected or abused for the sole reason that he or she voluntarily relies on treatment through prayer alone in lieu of medical treatment;

(B) Verbal mistreatment by subjecting an individual to the use of derogatory names, phrases, profanity, ridicule, harassment, coercion or intimidation of such a nature as to threaten significant physical or emotional harm or the withholding of services or supports, including implied or direct threat of termination of services;

(C) Placing restrictions on an individual's freedom of movement by restriction to an area of the residence or program or from access to ordinarily accessible areas of the residence or program, unless agreed to by the ISP team and included in an approved behavior support plan.

(D) An inappropriate, unauthorized restraint resulting in injury.

(i) A restraint is inappropriate if:

(I) It is applied without a functional assessment of the behavior justifying the need for the restraint; or

(II) It is used for behaviors not addressed in a behavior support plan; or

(III) It uses procedures outside the parameters described in a behavior support plan; or

(IV) It does not use procedures consistent with the Oregon Intervention System.

(ii) A restraint is not authorized if:

(I) There is not a written physician's order when the restraint is used as a health related protection; or

(II) It is applied without ISP team approval, identified on the ISP and is described in formal written behavior support plan.

(iii) It is not abuse if it is used as an emergency measure, if absolutely necessary to protect the individual or others from immediate injury and only used for the least amount of time necessary.

(E) Financial exploitation which may include, but is not limited to: an unauthorized rate increase; staff borrowing from or loaning money to an individual; witnessing a will in which the program or a staff is a beneficiary; adding the program's name to an individual's bank account(s) or other titles for personal property without approval of the individual or his/her legal representative and notification of the ISP team.

(F) Inappropriately expending an individual's personal funds, theft of an individual's personal funds, using an individual's personal funds for the program's or staff's own benefit, commingling an individual's funds with program and/or another individual's funds, or the program becoming guardian or conservator.

(2) "Abuse investigation and protective services" means reporting and investigation activities as required by OAR 309-040-0240 and any subsequent services or supports necessary to prevent further abuse.

(3) "Administrator" means the Assistant Director, Department of Human Services, and Administrator of Seniors and People with Disabilities or that person's designee.

(4) "Adult" means an individual 18 years or older with developmental disabilities.

(5) "Advocate" means a person other than paid staff who has been selected by the individual with developmental disabilities or by the individual's legal representative to help the individual understand and make choices in matters relating to identification of needs and choices of services especially when rights are at risk or have been violated.

(6) "Case Management" means an organized service to assist individuals to select, obtain and utilize resources and services.

(7) "Choice" means the individual's expression of preference, opportunity for, and active role in decision-making related to: the selection of assessments, services, service providers, goals and activities, and verification of satisfaction with these services. Choice may be communicated verbally, through sign language, or other communication method.

(8) "Client Process Monitoring System" or "CPMS" means the Department's computerized system for enrolling and terminating services for individuals with developmental disabilities.

(9) "Community Developmental Disability Program" or "CDDP" means an entity that is responsible for planning and delivery of services for persons with mental retardation or other developmental disabilities in a specific geographic area of the state under a contract with the Department or a local mental health authority.

(10) "Community Mental Health and Developmental Disability Program" or "CMHDDP" means an entity that operates or contracts for all services for persons with mental or emotional disturbances, drug abuse problems, mental retardation or other developmental disabilities, and alcoholism and alcohol abuse problems under the County Financial Assistance Contract with the Department of Human Services.

(11) "Comprehensive Services" means a package of developmental disability services and supports, that includes one of the following living arrangements regulated by the Department:

(a) 24-hour program, a foster home, a supported living program; or

(b) In-home supports costing more than \$21,119 per year plus any legislatively-approved cost-of-living increments for each biennium thereafter provided to an individual in his/her family home in combination with any associated employment or community inclusion program. Such services do not include Support Services for adults enrolled in Support Services Brokerages or for children enrolled in Child and Family Support Services or Children's Intensive In-Home Services.

(12) "Department" means Department of Human Services, Seniors and People with Disabilities, an organizational unit within the Department that focuses on the planning of services, policy development and regulation of programs for persons that have developmental disabilities.

(13) "Developmental Disability for adults" means a disability attributable to mental retardation, autism, cerebral palsy, epilepsy, or other neurological handicapping condition that requires training or support similar to that required by individuals with mental retardation, and the disability:

(a) Originates before the individual attains the age of 22 years, except that in the case of mental retardation the condition must be manifested before the age of 18; and

(b) Has continued, or can be expected to continue, indefinitely; and

(c) Constitutes a substantial handicap to the ability of the individual to function in society; or

(d) Results in significant sub-average general intellectual functioning with concurrent deficits in adaptive behavior that are manifested during the developmental period. Individuals of borderline intelligence may be considered to have mental retardation if there is also serious impairment of adaptive behavior. Definitions and classifications must be consistent with the "Manual of Terminology and Classification in Mental Retardation" by the American Association on Mental Deficiency, 1977 Revision. Mental retardation is synonymous with mental deficiency.

(14) "Employer-related supports" means activities that assist individuals and, when applicable, their legal representatives or family members, with directing and supervising provision of services described in the In-Home Support Plan. Supports to the employer include, but are not limited to: education about employer responsibilities; orientation to basic wage and hour issues; use of common employer-related tools such as job descriptions; and fiscal intermediary services.

(15) "Entry" means admission to a Department-funded developmental disability service provider.

(16) "Exit" means termination from a Department-funded developmental disability service provider. Exit does not mean transfer within a service provider's program within a county.

(17) "Family," for determining individual eligibility for In-Home Support services as a resident in the family home, for identifying persons who may apply, plan, and arrange for individual supports, and for determining who may receive family training, means a unit of two or more per-

## ADMINISTRATIVE RULES

sons that includes at least one person with developmental disabilities where the primary caregiver(s) is(are):

(a) Related to the individual with developmental disabilities by blood, marriage, or legal adoption; or

(b) In a domestic relationship where partners share:

(A) A permanent residence;

(B) Joint responsibility for the household in general (e.g. child-rearing, maintenance of the residence, basic living expenses); and

(C) Joint responsibility for supporting a member of the household with disabilities related to one of the partners by blood, marriage, or legal adoption.

(18) "Fiscal Intermediary" means a person or agency that receives and distributes In-Home support funds on behalf of an individual according to an In-Home Support plan. The fiscal intermediary responsibilities may include activities and records related to payroll and payment of employer-related taxes and fees as an agent of individuals, or their legal guardians, who employ persons to provide care, supervision, or training in the home or community. In this capacity, the fiscal intermediary does not recruit, hire, supervise, evaluate, dismiss or otherwise discipline employees.

(19) "General business provider" means an organization or entity selected by an individual or the individual's legal representative, and paid with In-Home Support Services funds that:

(a) Is primarily in business to provide the service to the general public and is chosen by the individual; and

(b) Provides services for the individual through employees, contractors or volunteers.

(20) "Grievance" means a formal complaint by an individual or individual's legal representative about services or employees of a CDDP.

(21) "Immediate family," for the purposes of determining whether IHS funds may be used to pay a family member to provide services, means the spouse of an adult.

(22) "Incident report" means a written report of any injury, accident, act of physical aggression, or unusual incident involving an individual.

(23) "Independence" is defined in ORS 427.005 and means the extent to which persons with mental retardation or developmental disabilities with or without staff assistance exert control and choice over their own lives.

(24) "Independent Provider" means a person selected by an individual or the individual's legal representative and paid with In-Home Support Service funds who personally provides services to the individual.

(25) "Individual" means an adult with developmental disabilities for whom services are planned, provided and authorized by a qualified services coordinator.

(26) "In-Home Support" or "IHS" means support that is:

(a) Required for an individual to live in the individual's home or the family home;

(b) Designed, selected, and managed by the individual or the individual's legal representative; and

(c) Provided in accordance with an In-Home Support plan.

(27) "In-Home Support Plan" or "IHS Plan" means the written details of the supports, activities, costs and resources required for an individual to achieve personal goals, or for a family to achieve outcomes related to supporting an individual in the home. The IHS Plan is developed by the CDDP and individual, the individual's legal representative, (if applicable) or family to articulate decisions and agreements made during a person-centered process of planning and information gathering. If meetings are required for other parties to review or agree to the plan, these meetings are conducted in a manner, setting, and time consistent with individual and family needs and preferences. The IHS Plan is the individual's Plan of Care for Medicaid purposes.

(28) "Integration" is defined in ORS 427.005 and means the use by persons with mental retardation or other developmental disabilities of the same community resources that are used by and available to other persons in the community and participation in the same community activities in which persons without a disability participate, together with regular contact with persons without a disability. It further means that persons with developmental disabilities live in homes, which are in proximity to community resources and foster contact with persons in their community.

(29) "Legal Representative" means an attorney at law who has been retained by or for the adult, or a person, or agency who is authorized by the court to make decisions about services for the individual.

(30) "Local Mental Health Authority" or "LMHA" means the county court or board of county commissioners of one or more counties that operate a community mental health and developmental disability program, or in the case of a Native American reservation, the tribal council, or if the county declines to operate or contract for all or part of a community mental

health and developmental disability program, the board of directors of a public or private corporation.

(31) "Mandatory Reporter" means any public or private official who, while acting in an official capacity, comes in contact with and has reasonable cause to believe that an individual with disabilities has suffered abuse, or that any person with whom the official comes in contact while acting in an official capacity, has abused the individual with disabilities. Pursuant to ORS 430.765(2) psychiatrists, psychologists, clergy and attorneys are not mandatory reporters with regard to information received through communications that are privileged under ORS 40.225 to 40.295.

(32) "Nurse" means a person who holds a valid, current license as a Registered Nurse (RN) or Licensed Practical Nurse (LPN) from the Oregon Board of Nursing.

(33) "Nursing Care Plan" means a plan of care developed by a Registered Nurse (RN) that describes the medical, nursing, psychosocial, and other needs of the individual and how those needs will be met. It includes which tasks will be taught, assigned and/or delegated to the qualified provider or family.

(34) "Oregon Intervention System" or "OIS" means an approach, which emphasizes a philosophy of individualized, non-aversive behavior support while constantly emphasizing dignity and respect for each individual.

(35) "Person-Centered Planning" means a process of gathering and organizing information that helps an individual:

(a) Determine and describe choices about personal goals and lifestyle preferences; and

(b) Design strategies and networks of support to achieve goals and a preferred lifestyle at home and in the community using individual strengths, relationships, and resources. Person centered planning is designed to build on and strengthen naturally occurring opportunities and relationships. A CDDP representative will gather information consistent with individual needs and preferences through conducting interviews with the individual; observation of the individual in various settings; and/or communication through a simple interview or formal group network process with persons selected by, or clearly significant to, the individual.

(36) "Positive Behavioral Theory and Practice" means a proactive approach to individual behavior and behavior interventions that:

(a) Emphasizes the development of functional alternative behavior and positive behavior intervention;

(b) Uses the least intervention possible;

(c) Ensures that abusive or demeaning interventions are never used; and

(d) Evaluates the effectiveness of behavior interventions based on objective data. Behavior intervention is not undertaken unless the behavior:

(A) Represents a risk to health and safety of the individual or others;

(B) Is likely to continue to become more serious over time;

(C) Interferes with community participation;

(D) Results in damage to property; or

(E) Interferes with learning, socializing, or vocation.

(37) "Productivity" is defined in ORS 427.005 and means engagement in income-producing work by a person with mental retardation or other developmental disabilities which is measured through improvements in income level, employment status or job advancement, or engagement by a person with mental retardation or other developmental disabilities in work contributing to a household or community.

(38) "Provider" means a person, organization or business who is selected by an individual or the individual's legal representative and paid with In-Home Support funds to provide support according to the individual's In-Home Support Plan.

(39) "Provider Organization" means an entity selected by an individual, the individual with the assistance of the individual's designee, or the individual's legal representative, and paid with In-Home Support Service funds that:

(a) Is primarily in business to provide supports for individuals with developmental disabilities;

(b) Provides supports for the individual through employees, contractors, or volunteers; and

(c) Receives compensation to recruit, supervise, and pay the persons who actually provide support for the individual.

(40) "Services coordinator" means an employee of the community developmental disability program or other agency which contracts with the County or Department, who is selected to plan, procure, coordinate, monitor individual support plan services and to act as a proponent for persons with developmental disabilities. For purposes of this rule the term case manager is synonymous with services coordinator.

# ADMINISTRATIVE RULES

Hist.: SPD 21-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 8-2007(Temp), f. 6-27-07, cert. ef. 7-1-07 thru 12-28-07

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(41) "Social Benefit" or "Social Service" means a service solely intended to assist an individual with disabilities to function in society on a level comparable to that of an individual of similar age and income who does not have such disability. Such a benefit or service is pre-authorized by and provided according to the description and financial limits written in an individual's current In-Home Support plan and does not:

(a) Duplicate benefits and services otherwise available to citizens regardless of disability (e.g. public or parochial education for school-aged individuals, training for a specific job skill or trade that is not part of a vocational rehabilitation plan);

(b) Provide financial assistance with food, clothing, shelter and laundry needs common to individuals with or without disabilities; or

(c) Replace other governmental or community services available to an individual or family; or

(d) Exceed the actual costs of supports that must be provided for the individual to be supported at home or in the family home.

(42) "Support" means assistance individuals require — solely because of the effects of disability — to maintain or increase independence, achieve community presence and participation, and improve productivity. It includes assistance families require to care for individuals residing in the family home or in the process of returning from out-of-home placement.

(43) "Unusual incident" means those incidents involving serious illness or accidents, death of an individual, injury or illness of an individual requiring inpatient or emergency hospitalization, suicide attempts, a fire requiring the services of a fire department, or any incident requiring abuse investigation.

(44) "Variance" means a temporary exception from a regulation or provision of these rules, which may be granted by the Department, upon written application by the CDDP.

Stat. Auth.: ORS 410.070 & 409.050

Stats. Implemented: ORS 430.610 - 430.670, 427.005 - 427.007 & 417.340 - 417.348

Hist.: SPD 21-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 8-2007(Temp), f. 6-27-07, cert. ef. 7-1-07 thru 12-28-07

## 411-330-0030

### Eligibility for In-Home Support Services

(1) Non-discrimination. Individuals determined eligible according to OAR 411-330-0020(13) must not be denied In-Home Support services or otherwise discriminated against on the basis of age or of diagnostic or disability category. Access to service must also not be restricted due to race, color, creed, national origin, citizenship, age, income or duration of Oregon residence.

(2) Eligibility. The CDDP of an individual's county of residence must find the individual eligible for the CDDP's In-Home Support services when the individual has been determined eligible for developmental disability services by the CDDP and the individual is an adult living at home or in the family home whose In-Home Support services, or whose combined In-Home Support services and services regulated by OAR 411-345-0010 through 411-345-0310 Employment and Alternative to Employment Services, cost more than \$21,119 per year plus any legislatively-approved cost-of-living increments for each biennium thereafter and when part or all of the funds for these services have been designated by contract with the CDDP to support the individual because:

(a) The Department has determined the individual to be at imminent risk of civil commitment under ORS 427 and is providing diversion services according to the provisions of OAR 309-041-0300 through 309-041-0335, Standards for Diversion Services; or

(b) Funds previously used to purchase the individual's Department-regulated residential, work, or day habilitation services have been made available within the guidelines published by the Department to purchase In-Home services that cost more than \$21,119 per year plus any legislatively-approved cost-of-living increments for each biennium thereafter; or

(c) The Department has found the individual eligible for Comprehensive 300 services as defined through the settlement agreement *Staley v. Kitzhaber* (USDC CV00-0078-ST) and has made funds available to purchase In-Home services that cost more than \$21,119 per year plus any legislatively-approved cost-of-living increments for each biennium thereafter.

(3) Concurrent eligibility. Individuals must not be found eligible for In-Home Support service by more than one CDDP unless the concurrent eligibility is necessary to effect transition from one county to another with a change of residence and is part of a collaborative plan developed by both CDDPs in which services and expenditures authorized by one CDDP are not duplicated by the other CDDP.

Stat. Auth.: ORS 410.070 & 409.050

Stats. Implemented: ORS 430.610 - 430.670, 427.005 - 427.007 & 417.340 - 417.348

**Rule Caption:** Adult Foster Homes.

**Adm. Order No.:** SPD 9-2007

**Filed with Sec. of State:** 6-27-2007

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

**Notice Publication Date:** 6-1-07

**Rules Amended:** 411-050-0420, 411-050-0443, 411-050-0445

**Subject:** The Department of Human Services, Seniors and People with Disabilities Division (SPD) is permanently amending:

1. Oregon Administrative Rule (OAR) 411-050-0420 to correct a typo;

2. OAR 411-050-0443 to replace the word "dependent" with "full assistance"; and

3. OAR 411-050-0445 to specify the frequency and type of evacuation drills required in adult foster homes.

**Rules Coordinator:** Christina Hartman—(503) 945-6398

## 411-050-0420

### Renewal

(1) At least 60 days prior to the expiration of a license, the Division will mail a reminder notice and renewal application to the licensed provider. The Division may investigate any information in the renewal application and will conduct an unannounced inspection of the adult foster home prior to the license renewal.

(2) Renewal Application Requirements. The licensee, resident manager and shift caregivers, as applicable, must submit complete and accurate renewal applications prior to the expiration date to keep the license in effect until the Division takes action. The licensee's renewal application must include:

(a) The Department's license renewal application form;

(b) A \$20 non-refundable fee for each resident based on the license capacity requested;

(c) The Department's Criminal History Request form, completed for each person who will have regular contact with the residents, including the licensee(s), the resident manager, all other caregivers, and any occupants 16 years of age and over, excluding residents;

(d) A completed Financial Information sheet (form SDS 903) if the licensee's financial information has changed since the prior application; and

(e) A Health History and Physician or Nurse Practitioners' Statement must be updated every third year or sooner if there is reasonable cause for health concerns.

(3) Late Renewal Requirements (Unlicensed Adult Foster Home). The home will be treated as an unlicensed facility, subject to Civil Penalties, if the required renewal information and fee are not submitted prior to the expiration date and residents remain in the home. (See OAR 411-050-0487)

(4) The licensee will be given a copy of the Division's inspection report forms SDS 517A and 517B citing any violations and a time frame for correction, which will be no longer than 30 days from the date of inspection.

(5) The Division will require the licensee to correct violations relating to the health, safety, and welfare of residents prior to issuing the renewal license. If cited violations are not corrected within the time frame specified by the Division, the renewal license may be denied.

(6) The Division will not renew a license unless the following requirements are met.

(a) The applicant and the adult foster home are in compliance with OAR chapter 411, division 050;

(b) The Division has completed an inspection of the adult foster home;

(c) The Department has completed a criminal history check in accordance with OAR chapter 410, division 007, Criminal History Check Rules; and

(d) The Division has checked the record of sanctions available from its files, including the list of nursing assistants who have been found responsible for abuse and whose names have been added to the registry pursuant to ORS 441.678.

(7) In seeking a renewal of a license when an adult foster home has been licensed for less than 24 months, the burden of proof will be upon the licensee to establish compliance with ORS 443.705 to 443.825, and OAR chapter 411, division 050 and chapter 410, division 007.

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(8) In proceedings for renewal of a license when an adult foster home has been licensed for 24 or more continuous months, the burden of proof will be upon the Division to establish noncompliance with ORS 443.705 to 443.825, and OAR chapter 411, division 050.

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

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 443.735

Hist.: SSD 14-1985, f. 12-31-85, ef. 1-1-86; SSD 11-1988, f. 10-18-88, cert. ef. 11-1-88; SSD 3-1992, f. 5-26-92, cert. ef. 6-1-92; SSD 3-1992, f. 5-26-92, cert. ef. 6-1-92; SSD 3-1996, f. 3-29-96, cert. ef. 4-1-96; SDSD 4-2001, f. & cert. ef. 3-1-01; SPD 31-2006, f. 12-27-06, cert. ef. 1-1-07; SPD 9-2007, f. 6-27-07, cert. ef. 7-1-07

## 411-050-0443

### Classification of Adult Foster Homes

(1) A Class 1, Class 2, or Class 3 adult foster home license will be issued by the Division based upon the qualifications of the applicant, resident manager and shift caregivers, as applicable, and compliance with the requirements of OAR chapter 411, division 050.

(a) After receipt of the completed application materials, including the nonrefundable fee, the Division must investigate the information submitted including any pertinent information received from outside sources.

(b) An applicant may not be issued a license and may not be granted an upgraded license classification if the Division finds unsatisfactory references or a history of noncompliance within the last 24 months.

(c) A Class 1 license may be issued if the applicant and resident manager, as applicable, complete the training requirements outlined in OAR 411-050-0440;

(d) A Class 2 license may be issued if the applicant and resident manager, as applicable, complete the requirements outlined in OAR 411-050-0440. In addition, each must have the equivalent of two years' full time experience in providing direct care to adults who are elderly or physically disabled;

(e) A Class 3 license may be issued if the applicant, resident manager and shift caregivers, as applicable, complete the training requirements outlined in OAR 411-050-0440 and have a current license as a health care professional in the state of Oregon or possess the following qualifications:

(A) Have the equivalent of three years' full time experience providing direct care to adults who are elderly or physically disabled and require full assistance in four or more of their activities of daily living (ADLs).

(B) Have references satisfactory to the Division. The applicant(s) must submit current contact information from at least two licensed health care professionals who have direct knowledge of the individual's ability and past experience as a caregiver.

(2) A licensee may be approved to care for ventilator-dependent residents. This approval will be granted by the Seniors and People with Disabilities' Central Office if the licensee, resident manager and shift caregivers, as applicable, meet the criteria for a Class 3 home according to subsection (1)(e) of this rule, and comply with the additional requirements for adult foster homes serving ventilator-dependent residents. (See OAR 411-050-0491)

(3) Licensees may only admit or continue to care for residents whose impairment levels are within the classification level of the licensed home.

(a) A licensee with a Class 1 license may only admit residents who need assistance in no more than four activities of daily living (ADLs).

(b) A licensee with a Class 2 license may provide care for residents who require assistance in all activities of daily living, but require full assistance in no more than three activities of daily living.

(c) A licensee with a Class 3 license may provide care for residents who require full assistance in four or more activities of daily living.

(4) A licensee may request in writing an exception if:

(a) A new resident wishes to be admitted whose impairment level exceeds the license classification level; or

(b) A current resident becomes more impaired, exceeding the license classification level; or

(c) There is more than one resident in the home who requires bed-care or full assistance with activities of daily living (ADLs).

(5) The Division may grant an exception which allows the resident to be admitted or remain in the adult foster home. The Division will respond in writing within 30 days' receipt of the written request. The licensee must prove the following criteria are met by clear and convincing evidence that:

(a) It is the choice of the resident to reside in the home;

(b) The licensee is able to give appropriate care and service to the resident in addition to meeting the care and service needs of the other residents;

(c) Additional staff is hired to meet the additional care requirements of all residents in the home as necessary;

(d) Outside resources are available and obtained to meet the resident's care needs;

(e) The exception will not jeopardize the care, health, safety or welfare of the residents;

(f) The licensee can demonstrate how all occupants will be able to evacuate in three minutes or less if the exception is granted.

(6) A licensee may submit to the Division a written request for a change in license classification. The Division's determination will be made within 60 days of receipt of the licensee's written request.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 443.775

Hist.: SSD 11-1988, f. 10-18-88, cert. ef. 11-1-88; SSD 3-1992, f. 5-26-92, cert. ef. 6-1-92; SSD 3-1992, f. 5-26-92, cert. ef. 6-1-92; SSD 3-1996, f. 3-29-96, cert. ef. 4-1-96; SDSD 4-2001, f. & cert. ef. 3-1-01; SPD 31-2006, f. 12-27-06, cert. ef. 1-1-07; SPD 9-2007, f. 6-27-07, cert. ef. 7-1-07

## 411-050-0445

### Facility Standards

In order to qualify for or maintain a license, an adult foster home must comply with the following provisions:

(1) General Conditions:

(a) Each adult foster home must meet all applicable local business license, zoning, building and housing codes, and state and local fire and safety regulations for a single family residence.

(b) Interior and Exterior Premises. The building and furnishings must be clean and in good repair. The interior and exterior premises must be well maintained and accessible according to the individual needs of the residents. There must be no accumulation of garbage, debris, rubbish or offensive odors. Walls, ceilings, and floors must be of such character to permit washing, cleaning, or painting, as appropriate.

(c) Adequate lighting, based on the needs of the individual, must be provided in each room, stairway, and exit way; incandescent light bulbs and fluorescent tubes must be protected with appropriate covers.

(d) Temperature. The heating system must be in working order. Areas of the home used by residents must be maintained at a comfortable temperature. Minimum temperatures during the day will be no less than 68 degrees, no higher than 85 degrees, and no less than 60 degrees during sleeping hours. Variations from the requirements of this rule must be based on resident care needs or preferences and must be addressed in their individual care plan.

(A) During times of extreme summer heat, the licensee must make reasonable effort to keep the residents comfortable using ventilation, fans, or air conditioning. Precautions must be taken to prevent resident exposure to stale, non-circulating air.

(B) If the facility is air-conditioned, the system must be functional and the filters must be cleaned or changed as needed to ensure proper maintenance.

(C) If the licensee is unable to maintain a comfortable temperature for residents during times of extreme summer heat, air conditioning or another cooling system may be required.

(e) Common Use Areas. Common use areas for the residents must be accessible to all residents. There must be at least 150 square feet of common living space and sufficient furniture in the home to accommodate the recreational and socialization needs of all the occupants at one time. Common space must not be located in an unfinished basement or garage unless such space was constructed for that purpose or has otherwise been legalized under permit. There may be additional space required if wheelchairs are to be accommodated. An additional 40 square feet of common living space will be required for each day care person, room and board occupant, or relative receiving care for remuneration who exceeds the limit of five.

(f) Safety Barriers. Swimming pools, hot tubs, spas, saunas and stairways, as appropriate, must also be equipped with safety barriers and devices designed to prevent injury.

(g) Video Monitors. Use of video monitors detracts from a home-like environment and licensees must not use them in any area of the home that would violate a resident's privacy unless requested by the resident.

(2) Sanitation:

(a) Non-Municipal Water Source. A public water supply must be utilized if available. If a non-municipal water source is used, the licenser, a sanitarian, or a technician from a certified water-testing laboratory must collect a sample annually. The water sample must be tested at the licensee's expense for coliform bacteria and action taken to ensure potability. Test records must be retained for three years.

(b) Septic tanks or other non-municipal sewage disposal system must be in good working order.

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(c) Garbage and refuse must be suitably stored in readily cleanable, rodent-proof, covered containers, pending weekly removal.

(d) Ventilation. All doors and windows that are used for ventilation must have screens in good condition.

(3) Bathrooms. Bathrooms must:

(a) Provide individual privacy and have a finished interior, with a door which opens to a hall or common-use room; a mirror; have a window that opens or other means of ventilation; and a window covering for privacy. No person must have to walk through another person's bedroom to get to a bathroom;

(b) Be clean and free of objectionable odors (See also Commodes and Incontinence Garments, 411-050-0444(3)(a));

(c) Have bathtubs, showers, toilets and sinks in good repair. A sink must be located near each toilet, and a toilet and sink must be available for the resident's use on each floor with resident rooms. There must be at least one toilet, one sink, and one bathtub or shower for each six household occupants (including residents, day care persons, room and board occupants, licensee and licensee's family);

(d) Have hot and cold water at each bathtub, shower, and sink in sufficient supply to meet the needs of the residents;

(e) Have nonporous surfaces for shower enclosures; glass shower doors, if applicable, must be tempered safety glass, otherwise, shower curtains must be clean and in good condition and non-slip floor surfaces must be provided in bathtubs and showers;

(f) Have grab bars for each toilet, bathtubs, and shower to be used by resident's for safety, and have barrier-free access to toilet and bathing facilities; and

(g) Have adequate supplies of toilet paper and soap supplied by the licensee. Residents must be provided with individual towels and washcloths, which, are laundered in hot water at least weekly or more often if necessary. Residents must have appropriate racks or hooks for drying bath linens. If individual hand towels are not provided, roller-dispensed hand towels or paper towels in dispenser must be provided for residents' use.

(4) Bedrooms:

(a) Bedrooms for all household occupants must have been constructed as a bedroom when the home was built, or remodeled under permit; be finished with walls or partitions of standard construction which go from floor to ceiling; have a door which opens directly to a hallway or common use room without passage through another bedroom or common bathroom; be adequately ventilated, heated and lighted with at least one window that opens which meets fire safety regulations (see subsection (5)(e) of this rule); be at least 70 square feet of usable floor space for one resident or 120 square feet for two residents excluding any area where a sloped ceiling does not allow a person to stand upright; and have no more than two persons per room.

(b) Licensees, resident managers, other caregivers or family members must not sleep in areas designated as living areas, nor share bedrooms with residents.

(c) There must be an individual bed at least 36 inches wide for each resident consisting of a mattress and springs, or equivalent, in good condition. Cots, rollaways, bunks, trundles, daybeds with restricted access, couches, and folding beds may not be used for residents. Each bed must have clean bedding in good condition consisting of a bedspread, mattress pad, two sheets, a pillow, a pillowcase, and blankets adequate for the weather. Waterproof mattress covers will be used for incontinent residents. Day care persons may use a cot or rollaway bed if bedroom space is available which meets the requirements of subsection (4)(a) of this rule. Resident beds may not be used by day care persons.

(d) Each resident's bedroom must have sufficient separate, private dresser and closet space for his or her clothing and personal effects including hygiene and grooming supplies. Residents must be allowed to keep and use reasonable amounts of personal belongings and have private, secure storage space. Drapes or shades for windows must be in good condition and allow privacy for residents.

(e) Residents who are non-ambulatory, have impaired mobility, or are cognitively impaired must have bedrooms with a safe, second exit to the ground. Residents with bedrooms above or below the ground floor must demonstrate their capability for self-preservation.

(f) Resident bedrooms must be in close enough proximity to the licensee or caregiver in charge to alert him or her to nighttime needs or emergencies, or the bedrooms must be equipped with a call bell or intercom. Intercoms must not violate the resident's right to privacy and must have the capability of being turned off by the resident or at the resident's request.

(5) Safety:

(a) Buildings must meet all applicable state and local building, mechanical, and housing codes for fire and life safety. The home may be inspected for fire safety by the State Fire Marshal's Office at the request of the licensing authority or Division staff using the standards in these rules, as appropriate.

(b) Heat Sources. Heating in accordance with manufacturer's specifications and electrical equipment, including wood stoves and pellet stoves, must be installed in accordance with all applicable fire and life safety codes. Such equipment, including fireplaces, must be in good repair, used properly and be well maintained according to the recommended maintenance schedule of the manufacturer or a qualified inspector.

(A) Licensees who do not have a permit verifying proper installation of an existing woodstove or pellet stove must have it inspected by a qualified inspector, Certified Oregon Chimney Sweep Association member, or Oregon Hearth Products Association member and follow their recommended maintenance schedule.

(B) The installation of a non-combustible, heat-resistant safety barrier may be required to be installed 36 inches around woodstoves to prevent residents with ambulation or confusion problems from coming in contact with the stove.

(C) Unvented, portable oil, gas or kerosene heaters are prohibited. Sealed electric transfer heaters or electric space heaters with tip-over, shut-off capability may be used when approved by the authority having jurisdiction.

(c) Extension cord wiring and multi-plug adaptors must not be used in place of permanent wiring.

(d) Hardware for all exit doors and interior doors must have simple hardware that cannot be locked against exit and must have an obvious method of operation. Hasps, sliding bolts, hooks and eyes, and double key deadbolts are not permitted. Homes with one or more residents who have impaired judgment and are known to wander away from their place of residence must have an activated alarm system to alert a caregiver of an unsupervised exit by a resident.

(e) Bedrooms must have at least one window or exterior door that will readily open from the inside without special tools and which provides a clear opening of not less than 821 square inches (5.7 sq. ft.), with the least dimensions not less than 22 inches in height or 20 inches in width. Sill height must not be more than 44 inches from the floor level or there must be approved steps or other aids to the window exit that can be used by residents. Windows with a clear opening of not less than 5.0 square feet or 720 square inches with sill heights of 48 inches may be accepted when approved by the State Fire Marshal or designee.

(f) Construction. Interior and exterior doorways used by residents must be wide enough to accommodate wheelchairs and walkers if used by residents. Interior and exterior stairways must be unobstructed, equipped with handrails and appropriate to the condition of the residents. (See also OAR 411-050-0445(5)(r))

(A) Buildings will be of sound construction with wall and ceiling flame spread rates at least substantially comparable to wood lath and plaster or better. The maximum flame spread of finished materials must not exceed Class III (76-200) and smoke density must not be greater than 450. If more than 10 percent of combined wall and ceiling areas in a sleeping room or exit way is composed of readily combustible material such as acoustical tile or wood paneling, such material must be treated with an approved flame retardant coating. Exception: Buildings supplied with an approved automatic sprinkler system.

(i) Manufactured Homes. Manufactured homes (formerly mobile homes) units must have been built since 1976 and designed for use as a home rather than a travel trailer. The units must have a manufacturer's label permanently affixed on the unit itself which states it meets the requirements of the Department of Housing and Urban Development (HUD). The required label will read as follows:

"As evidenced by this label No. ABC000001, the manufacturer certifies to the best of the manufacturer's knowledge and belief that this mobile home has been inspected in accordance with the requirements of the Department of Housing and Urban Development and is constructed in conformance with the Federal Mobile Home Construction and Safety Standards in effect on the date of manufacture. See date plate."

(ii) If such a label is not evident and the licensee believes the unit meets the required specifications, the licensee must take the necessary steps to secure and provide verification of compliance from the manufacturer.

(iii) Mobile homes built since 1976 meet the flame spread rate requirements and do not have to have paneling treated with a flame retardant coating.

(B) Structural Changes — The licensee will notify the Division in writing at least 15 days prior to any remodeling, renovations, or structural changes in the facility that require a building permit. Such activity must

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comply with building and housing codes and fire and safety regulations applicable to a single-family residence. The licensee must forward to the Division within 30 days of completion copies of all required permits and inspections, an evacuation plan and a revised floor plan. (See subsections (m) and (p) of this rule)

(g) Fire Extinguishers. At least one fire extinguisher with a minimum classification of 2A-10BC must be in a visible and readily accessible location on each floor, including basements, and be checked at least once a year by a qualified person who is well versed in fire extinguisher maintenance. All recharging and hydrostatic testing must be completed by a qualified agency properly trained and equipped for this purpose.

(h) Smoke Alarms. Smoke alarms must be installed in accordance with the manufacturer's instructions in each bedroom; in hallways or access areas that adjoin bedrooms; the family room or main living area where residents congregate; any interior designated smoking area; and in basements. In addition, in multi-level homes, smoke alarms must be installed at the top of stairways. Ceiling placement of smoke alarms is recommended. Alarms must be equipped with a device that warns of low battery when battery operated or with battery back-up if hard wired. Bedrooms used by hearing-impaired occupants who cannot hear the sound of a regular smoke alarm must be equipped with an additional smoke alarm that has visual or vibratory capacity.

(i) All smoke alarms must contain a sounding device or be interconnected to other alarms to provide, when actuated, an alarm that is audible in all sleeping rooms. The alarms must be loud enough to wake occupants when all bedroom doors are closed. Intercoms and room monitors must not be used to amplify alarms.

(j) The licensee must maintain smoke alarms and fire extinguishers in functional condition. If there are more than two violations in maintaining battery operated alarms in working condition, the Division may require the licensee to hard wire the alarms into the electrical system.

(k) Combustibles and Firearms. Flammables, combustible liquids and other combustible materials must be safely and properly stored in their original, properly labeled containers or safety containers and secured in areas to prevent tampering by residents or vandals. Firearms must be stored, unloaded, in a locked cabinet. The firearms cabinet must be located in an area of the home that is not accessible to residents. Ammunition must be secured in a locked area separate from the firearms.

(l) Hazardous Materials. Cleaning supplies, medical sharps containers, poisons, insecticides and other hazardous materials must be properly stored in their original, properly labeled containers in a safe area that is not accessible to residents, food preparation and food storage areas, dining areas, and medications.

(m) Evacuation Plan. An emergency evacuation plan must be developed, and revised as necessary to reflect the current condition of the residents in the home. The plan must be rehearsed with all occupants.

(n) Orientation to Emergency Procedures. Within 24 hours of arrival, any new resident or caregiver must be shown how to respond to a smoke alarm, shown how to participate in an emergency evacuation drill, and receive an orientation to basic fire safety. New caregivers will also be oriented in how to conduct an evacuation.

(o) Evacuation Drill. Evacuation drills will be held at least once every 90 days, with at least one per year conducted while the residents are in bed. Records of drills must be maintained according to OAR 411-050-0444(6)(f). Licensees and all other caregivers must be able to demonstrate the ability to evacuate all occupants from the facility to the closest point of safety, which is exterior to and away from the structure, and has access to a public sidewalk or street within three minutes or less. If there are problems in demonstrating this evacuation time, conditions may be applied to the license which include, but are not limited to, reduced capacity of residents, additional staffing, or increased fire protection. Continued problems will be grounds for revocation or non-renewal of the license.

(p) Floor Plan. The licensee must develop a current and accurate floor plan that indicates:

- (A) The size of rooms;
- (B) Which rooms are to be resident bedrooms and which are to be caregiver bedrooms;
- (C) The location of all the exits on each level of the home, including emergency exits such as windows;
- (D) The location of wheelchair ramp(s), if applicable;
- (E) Where the fire extinguishers and smoke alarms are located; and
- (F) The planned evacuation routes.

(q) Providers must not place residents who are unable to walk without assistance or not capable of self-preservation in a bedroom on a floor without a second ground level exit.

(r) Stairs must have a riser height of between 6 to 8 inches and tread width of between 8 to 10 1/2 inches. Lifts or elevators are not an acceptable substitute for resident's capability to ambulate stairs (See also OAR 411-050-0445(5)(f)).

(s) Exit Ways. All exit ways must be barrier free and the corridors and hallways must be a minimum of 32 inches wide or as approved by the authority having jurisdiction. Interior doorways used by residents must be wide enough to accommodate wheelchairs and walkers if used by residents. Any bedroom window or door identified as an exit must be free of obstacles that would interfere with evacuation.

(t) Ramps. There must be at least one wheelchair ramp from a minimum of one exterior door if non-ambulatory persons are in residence. Wheelchair ramps must comply with the Americans with Disabilities Act (ADA), have non-skid surfaces, handrails, and have a maximum slope of one (1) inch rise in each 12 inches of distance. The maximum rise for any run will be 30 inches. Licensees may need to bring existing ramps into revised compliance if necessary to meet the needs of new residents or current residents with increased care needs.

(u) Emergency Exits. There must be a second safe means of exit from all sleeping rooms. Providers whose sleeping rooms are above the first floor may be required to demonstrate an evacuation drill from that room, using the secondary exit, at the time of licensure, renewal, or inspection.

(v) Adult foster homes located more than five miles distance from the nearest fire station or those of unusual construction characteristics may be required to have a complete fire alarm system meeting the requirements of the National Fire Prevention Association (NFPA) 72 with approved automatic reporting to the local jurisdiction providing fire protection.

(w) There must be at least one plug-in, rechargeable flashlight in good functional condition available on each floor for emergency lighting.

(x) Smoking regulations must be adopted to allow smoking only in designated areas. Smoking is prohibited in any bedroom including that of residents, licensee resident manager, any other caregiver, occupant or visitor; any room where oxygen is used and anywhere flammable materials are stored. Ashtrays of noncombustible material and safe design must be provided in areas where smoking is permitted.

(y) Providers whose homes are located in areas where there is a danger of natural disasters which require rapid evacuation such as forest fires, flash floods, or tsunami waves must be aware of community resources for evacuation assistance.

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

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 443.738

Hist.: SSD 14-1985, f. 12-31-85 ef. 1-1-86; SSD 11-1988, f. 10-18-88, cert. ef. 11-1-88, Sections (8) thru (10) renumbered to 411-050-0447; SSD 3-1992, f. 5-26-92, cert. ef. 6-1-92; SSD 3-1992, f. 5-26-92, cert. ef. 6-1-92; SSD 3-1996, f. 3-29-96, cert. ef. 4-1-96; SDSD 2-1998(Temp), f. & cert. ef. 2-6-98 thru 8-1-98; SDSD 6-1998, f. 7-31-98, cert. ef. 8-1-98; SDSD 4-2001, f. & cert. ef. 3-1-01; SPD 31-2006, f. 12-27-06, cert. ef. 1-1-07; SPD 9-2007, f. 6-27-07, cert. ef. 7-1-07

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**Rule Caption:** Child Foster Homes.

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

**Rules Coordinator:** Christina Hartman—(503) 945-6398

## 411-346-0100

### Purpose

These rules prescribe the standards and procedures for the provision of care and services for children with developmental disabilities in child foster homes certified by the Department of Human Services, Senior and People with Disabilities Division, as a condition for certification and payment.

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

Stats. Implemented: ORS 443.830 & 443.835

Hist.: MHD 15-2000(Temp), f. & cert. ef. 11-30-00 thru 5-28-01; MHD 3-2001, f. 5-25-01, cert. ef. 5-28-01; Renumbered from 309-046-0100, SPD 34-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 10-2007, f. 6-27-07, cert. ef. 7-5-07

# ADMINISTRATIVE RULES

## 411-346-0110

### Definitions

(1) "30 Day Emergency Certificate" means a foster care home certificate issued for 30 days.

(2) "Abuse" means:

(a) Abuse of a child as defined in OAR 411-320-0020(2)(a)(A-G); and

(b) Abuse of an adult as defined in OAR 411-320-0020(2)(b)(A-E) and (2)(c)(A-F) when an individual over the age of 18 resides in a certified child foster home.

(3) "Administrator" means the Assistant Director of the Department of Human Services, Seniors and People with Disabilities Division, or that person's designee.

(4) "Alternate Caregiver" means any person over the age of 18 having contact with the child.

(5) "Aversive Stimuli" means the use of any natural or chemical product to alter a child's behavior such as the use of hot sauce or soap in the mouth, and spraying ammonia or lemon water in the face of a child. Psychotropic medications are not considered aversive stimuli.

(6) "Alternative Educational Plan (AEP)" means any school plan that does not occur within the physical school setting.

(7) "Appeal" means the process that the foster provider may use to petition the suspension, denial, non-renewal or revocation of their certificate or application under ORS chapter 183.

(8) "Applicant(s)" means a person who wants to become a child foster provider and is applying for a child foster home certificate or is renewing a child foster home certificate and lives at the residence where a child(ren) in care will live.

(9) "Behavior Supports" means a positive training plan used by the foster provider and alternate caregivers to help children develop the self control and self direction necessary to assume responsibilities, make daily living decisions, and learn to conduct themselves in a manner that is socially acceptable.

(10) "Case Plan" means the goal-oriented, time-limited, individualized plan of action for a child and the child's family developed by the child's family and the Department of Human Services, Children, Adults and Families Division for promotion of the child's safety, permanency, and well being.

(11) "Case Worker" means an employee of the Department of Human Services, Children, Adults and Families Division.

(12) "Certificate" means a document, issued by the Department of Human Services, Seniors and People with Disabilities Division, that notes approval to operate a child foster home, for a period not to exceed one year.

(13) "Certifier" or "Certifying Agency" means the Department of Human Services, Seniors and People with Disabilities Division or Community Developmental Disability Program who is authorized to gather required documentation for the issuance of a child foster home certificate.

(14) "Chemical Restraint" means the use of a psychotropic drug or other drugs to control or modify behavior in place of a meaningful support or treatment plan.

(15) "Child" means:

(a) An individual under the age of 18 who has a provisional eligibility determination of developmental disability; or

(b) A young adult age 18 through 21 who is remaining in the same foster home for the purpose of completing their Individualized Education Plan, based on their Individual Support Plan team recommendation and an approved certification variance.

(16) "Child Foster Home (CFH)" means a home certified by the Department of Human Services, Seniors and People with Disabilities Division that is maintained and lived in by the person named on the foster home certificate.

(17) "Child Foster Home Contract" means an agreement between a provider and the Department of Human Services that describes the responsibility of the foster care provider and the Department of Human Services.

(18) "Child Placing Agency" means the Department of Human Services, Community Developmental Disability Program, or the Oregon Youth Authority.

(19) "Commercial Basis" means providing temporary care for individuals not identified as members of the household, and receiving compensation for the care provided.

(20) "Community Developmental Disability Program (CDDP)" means an entity that is responsible for planning and delivery of services for persons with mental retardation or other developmental disabilities in a spe-

cific geographic area of the state under a contract with the Department of Human Services or a local mental health authority.

(21) "Denial" means the refusal of the certifying agency to issue a certificate of approval to operate a foster home for children because the agency has determined that the home or the applicant is not in compliance with one or more of these rules.

(22) "Developmental Disability" is always provisional and means:

(a) For children five years and younger.

(A) The condition or impairment must be expected to last indefinitely and must not be otherwise primarily attributed to mental illness, substance abuse, an emotional disorder, Attention Deficit and Hyperactivity Disorder (ADHD), a learning disability, or sensory impairment; and

(B) There are standardized tests demonstrating adaptive impairment (more than two standard deviations below the norm) in at least two of the following areas of functioning:

(i) Self care;

(ii) Receptive and expressive language;

(iii) Learning;

(iv) Mobility; and

(v) Self-direction; or

(C) There is a statement by a licensed medical practitioner that the child has a condition or syndrome that will likely cause significant adaptive impairment in at least two of the areas listed in section (22)(a)(B) of this rule.

(b) For children six years and older.

(A) There is a diagnosis of mental retardation; or

(B) There is a diagnosis of developmental disability; and

(C) There is a significant adaptive impairment (more than two standard deviations below the norm) in at least two of the following areas:

(i) Self-care;

(ii) Receptive and expressive language;

(iii) Learning;

(iv) Mobility; and

(v) Self-direction; and

(D) The condition or impairment must be expected to last indefinitely and must not be otherwise primarily attributed to mental illness, substance abuse, an emotional disorder, Attention Deficit and Hyperactivity Disorder (ADHD), a learning disability, or sensory impairment; and be expected to last indefinitely; and

(E) The individual is expected to indefinitely need multiple, specialized supports.

(23) "Department-Approved Intervention Methods" means the method or intervention used for behavior management approved by the Department of Human Services. The Department-approved intervention method is the Oregon Intervention System.

(24) "DHS-CW" means the child welfare program area within the Department of Human Services, Children, Adults and Families Division.

(25) "DHS" means the Department of Human Services.

(26) "Discipline" for the purpose of these rules, discipline is synonymous with behavior supports.

(27) "Domestic Animals" means any various animals domesticated so as to live and breed in a tame condition. Examples of domestic animals are dogs, cats, and domesticated farm stock.

(28) "Direct Nursing Services" means the provision of individual-specific advice, plans or interventions, based on nursing process as outlined by the Oregon State Board of Nursing, by a nurse at the home or facility. Direct nursing service differs from administrative nursing services. Administrative nursing services include non-individual-specific services, such as quality assurance reviews, authoring health related agency policies and procedures, or providing general training for the foster provider or alternate caregivers.

(29) "Educational Surrogate" means an individual who acts in place of a parent in safeguarding a child's rights in the special education decision-making process:

(a) When the parent cannot be identified or located after reasonable efforts;

(b) When there is reasonable cause to believe that the child has a disability and is a ward of the state; or

(c) At the request of a parent or adult student.

(30) "Exception" means the process that the Department of Human Services uses to determine that the applicant possesses the qualifications to be a foster provider despite a record of criminal conviction or arrests in accordance with OAR chapter 410, division 007 (Criminal History Check Rules).

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(31) "Foster Care" means 24-hour substitute care in a certified foster home for children placed away from their parents or guardians.

(32) "Foster Provider" means the certified care provider who resides at the address listed on the foster home certificate. For the purpose of these rules, "foster provider" is synonymous with child foster parent or relative caregiver and is considered a private agency for purposes of mandatory reporting of abuse.

(33) "Founded Reports" means the Department of Human Services, Children, Adults and Families Division or Law Enforcement Authority (LEA) determination, based on the evidence, that there is reasonable cause to believe that conduct in violation of the child abuse statutes or rules has occurred and such conduct is attributable to the person(s) alleged to have engaged in the conduct.

(34) "Guardian" means a parent for individuals less than 18 years of age, or a person or agency appointed by a court, who is authorized by the court to make decisions about services for the foster child.

(35) "Health Care Provider" means a person or health care facility licensed, certified or otherwise authorized or permitted by law of this state to administer health care in the ordinary course of business or practice of a profession.

(36) "Home Inspection" means an on-site, physical review of the applicant's home to assure the applicant meets all health and safety requirements within these rules.

(37) "Home Study" is the assessment process used for the purpose of determining an applicant's abilities to care for children in need of foster care placement.

(38) "Incident Report" means a written report of any injury, accident, acts of physical aggression, or unusual incident involving the foster child.

(39) "Individualized Education Plan (IEP)" means a written plan of instructional goals and objectives in conference with the teacher, parent or guardian, student, and a representative of the school district.

(40) "Individual Support Plan (ISP)" means the written details of the supports, activities and resources required to meet the health, safety, financial and personal goals of the foster child. The ISP is the individual's Plan of Care for Medicaid purposes.

(41) "Individual Support Plan Team (ISP team)" means a team composed of:

- (a) The child in foster care, when appropriate;
- (b) The foster provider;
- (c) The guardian;
- (d) Relatives of the child;
- (e) The Community Developmental Disability Program Services Coordinator; and

(f) Any other approved persons who are well liked by the child and approved by the child and the child's guardian to serve on the team.

(42) "Mandatory Reporter" means any individual who is required by Oregon statute and rule to report suspected abuse or neglect of an adult or child to the proper authorities.

(43) "Mechanical Restraint" means any mechanical device material, object or equipment that is attached or adjacent to an individual's body that the individual cannot easily remove or easily negotiate around and restricts freedom of movement or access to the individual's body.

(44) "Member of the Household" means any adults and children living in the home, including any foster provider, employees or volunteers assisting in the care provided to children placed in the home, and excluding the foster children placed in the home.

(45) "Misuse of Funds" includes, but is not limited to providers or their staff:

- (a) Borrowing from or loaning money to a child;
- (b) Witnessing a will in which the provider or a staff is a beneficiary;
- (c) Adding the provider's name to an individual's bank account(s) or other titles for personal property without approval of the individual, when of age to give legal consent, or the individual's legal representative and authorization of the Individual Support Plan team;
- (d) Inappropriately expending or theft of an individual's personal funds;
- (e) Using an individual's personal funds for the provider's or staff's own benefit; or
- (f) Commingling an individual's funds with provider or another individual's funds.

(46) "Monitoring" means the observation by the Department of Human Services, Seniors and People with Disabilities Division, or designee, of a certified child foster home to determine continuing compliance with certification rules.

(47) "Nurse" means a person who holds a valid, current license as a registered nurse (RN) or licensed practical nurse (LPN) from the Oregon Board of Nursing.

(48) "Nursing Care Plan" means a plan of care developed by a Registered Nurse (RN) that describes the medical, nursing, psychosocial, and other needs of the individual and how those needs will be met. The nursing care plan includes which tasks will be taught or delegated to the foster provider and alternate caregivers.

(49) "Occupant" means any person having official residence in a certified child foster home.

(50) "Oregon Intervention System (OIS)" means a system of providing training to people who work with designated individuals to intervene physically or non-physically to keep individuals from harming self or others. The system is based on a proactive approach that includes methods of effective evasion, deflection and escape from holding.

(51) "Oregon Youth Authority (OYA)" means an agency that has been given commitment and supervision responsibilities over those youth offenders, by order of the juvenile court under ORS 137.124 or other statute, until the time that a lawful release authority authorizes release or terminates the commitment or placement.

(52) "Permanent Foster Care Placement Agreement" means a long term contractual placement agreement between the foster parent and the Department of Human Services, Children, Adults and Families Division, approved by the juvenile court that specifies the responsibilities and authority of the foster parent and the commitment by the permanent foster parent to raise a child until the age of majority.

(53) "Physical Restraint" means any manual physical holding of or contact with an individual that restricts the individual's freedom of movement.

(54) "Physical Intervention" means the use of any physical action or any response to maintain the health and safety of an individual or others during a potentially dangerous situation or event.

(55) "Protected Health Information" means any oral or written health information that identifies the child and relates to the child's past, present or future physical or mental health condition, health care treatment or payment for health care treatment.

(56) "Psychotropic Medication" means a medication whose prescribed intent is to affect or alter thought processes, mood, or behavior. This includes, but is not limited to, anti-psychotic, antidepressant, anxiolytic (anti-anxiety), and behavior medications. Because a medication may have many different effects, its classification depends upon its stated, intended effect when prescribed.

(57) "Respite Care" means short-term services for a period of up to 14 consecutive days. Respite care may include both day and overnight care.

(58) "Revocation" means the action taken by the certifying agency to rescind a child foster home certificate of approval after determining that the child foster home is not in compliance with one or more of these rules.

(59) "Service Coordinator" means an employee of the Department of Human Services, a Community Developmental Disability Program, or agency that contracts with the Community Developmental Disability Program or the Department of Human Services who is selected to plan, procure, coordinate, and monitor individual support services and acts as a proponent for individuals with developmental disabilities.

(60) "Significant Medical Needs" means, but is not limited to, total assistance required for all activities of daily living such as access to food or fluids, daily hygiene, which is not attributable to the child's chronological age, and frequent medical interventions required by the care plan for health and safety of the child.

(61) "SPD" means the Department of Human Services, Seniors and People with Disabilities Division.

(62) "Specialized Diet" means that the amount, type of ingredients or selection of food or drink items is limited, restricted, or otherwise regulated under a physician's order. Examples include, but are not limited to, low calorie, high fiber, diabetic, low salt, lactose free, low fat diets.

(63) "Suspension of Certificate" means a temporary withdrawal of the approval to operate a child foster home after the certifying agency determines that the child foster home is not in compliance with one or more of these rules.

(64) "These Rules" means the Oregon Administrative Rules in chapter 411, division 346.

(65) "Unauthorized Absence" means any length of time when a child is absent from the foster home, without prior approval as specified on the Individual Support Plan.

(66) "Unusual Incident" means those incidents involving serious illness or accidents, death of an individual, injury or illness of an individual



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requiring inpatient or emergency hospitalization, suicide attempts, a fire requiring the services of a fire department, or any incident requiring an abuse investigation.

(67) "Unsupervised Contact" means the time the foster child is cared for, supported or monitored, by an alternate caregiver, without the direct supervision or presence of the certified foster provider.

(68) "Variance" means a temporary exemption from a regulation or provision of these rules that may be granted by the Department of Human Services, Seniors and People with Disabilities Division, upon written application by the Community Developmental Disability Program.

(69) "Volunteer" means any individual assisting in a child foster home without pay to support the care provided to children placed in the child foster home.

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

Stats. Implemented: ORS 443.830 & 443.835

Hist.: MHD 15-2000(Temp), f. & cert. ef. 11-30-00 thru 5-28-01; MHD 3-2001, f. 5-25-01, cert. ef. 5-28-01; Renumbered from 309-046-0110, SPD 34-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 10-2007, f. 6-27-07, cert. ef. 7-5-07

## 411-346-0120

### Certification Required

(1) Any home that meets the definition of a child foster home must be certified by one of the following agencies:

- (a) SPD;
- (b) DHS-CW; or
- (c) The OYA.

(2) Children will only be placed in a certified child foster home.

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

Stats. Implemented: ORS 443.830 & 443.835

Hist.: MHD 15-2000(Temp), f. & cert. ef. 11-30-00 thru 5-28-01; MHD 3-2001, f. 5-25-01, cert. ef. 5-28-01; Renumbered from 309-046-0120, SPD 34-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 10-2007, f. 6-27-07, cert. ef. 7-5-07

## 411-346-0130

### Indian Child Welfare Act

The Indian Child Welfare Act (ICWA) gives federally recognized Indian tribes the authority to select homes for children protected by the ICWA. Tribes and Alaskan Native Regional Corporations may license, approve or specify a foster home for children protected by the ICWA. The tribe is authorized to decide which of the following three preferences to use, or whether to request that SPD or DHS-CW certify the home. When the tribe requests SPD to certify the home, SPD will use these rules for certification. Indian children placed in relative homes, whether licensed, certified or selected by the tribe are eligible for foster care payments when DHS-CW has legal custody. Preference will be given for placement with:

- (1) A member of the Indian child's extended family;
- (2) A foster home licensed, approved, or specified by the Indian child's tribe; or
- (3) An Indian foster home licensed or approved by an authorized non-Indian licensing authority.

Stat. Auth.: ORS 443.830, 430.215, 409.050 & 410.070

Stats. Implemented: ORS 443.830 & 443.835

Hist.: MHD 15-2000(Temp), f. & cert. ef. 11-30-00 thru 5-28-01; MHD 3-2001, f. 5-25-01, cert. ef. 5-28-01; Renumbered from 309-046-0130, SPD 34-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 10-2007, f. 6-27-07, cert. ef. 7-5-07

## 411-346-0140

### Selection

(1) SPD or the CDDP will recruit foster providers who have the abilities and commitment to carry out the responsibilities set forth in these rules that can meet SPD's specific need for homes. SPD will determine which applicants will be certified. The CDDP staff will determine which home is best for a particular child.

(2) The foster provider must be a responsible, stable, emotionally mature adult who exercises sound judgment and has the capacity to meet the mental, physical and emotional needs of children placed in foster care.

(3) The foster provider must demonstrate the following traits:

- (a) Capacity to give and receive affection;
- (b) Kindness;
- (c) Flexibility;
- (d) A sense of humor; and
- (e) The ability to deal with frustration and conflict.

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

Stats. Implemented: ORS 443.830 & 443.835

Hist.: MHD 15-2000(Temp), f. & cert. ef. 11-30-00 thru 5-28-01; MHD 3-2001, f. 5-25-01, cert. ef. 5-28-01; Renumbered from 309-046-0140, SPD 34-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 10-2007, f. 6-27-07, cert. ef. 7-5-07

## 411-346-0150

### General Requirements for Certification

(1) The applicant or foster provider must participate in certification and certification renewal studies, and in the ongoing monitoring of their homes.

(2) The applicant or foster provider must give the information required by SPD to verify compliance with all applicable rules, including change of address and change of number of persons in the household such as relatives, employees or volunteers.

(3) The applicant seeking certification from SPD must complete the SPD application forms. When two or more adults living in the home share foster provider responsibilities to any degree, they must be listed on the application as applicant and co-applicant.

(4) The applicant must disclose each state or territory they have lived in the last five years and for a longer period if requested by the certifier. The disclosure must include the address, city, state and zip code of previous residences.

(5) Information provided by the applicants must include:

(a) Names and addresses of any agencies in the United States where any occupant of the home has been licensed or certified to provide care to children or adults and the status of such license or certification. This can include, but is not limited to, licenses or certificates for residential care, nurse, nurse's aide, and foster care;

(b) Proposed number, gender, age range, disability and support needs of children to be served in foster care;

(c) School reports for any child of school age living in the home at the time of initial application. School reports for any child of school age living in the home within the last year may also be required;

(d) Names and addresses of at least four persons, three of whom are unrelated, who have known each applicant for two years or more and who can attest to their character and ability to care for children. SPD may contact schools, employers, adult children and other sources as references;

(e) Reports of all criminal charges, arrests or convictions, the dates of offenses, and the resolution of those charges for all employees or volunteers and persons living in the home. If the applicant's minor children will be living in the home, the applicants must also list reports of all criminal or juvenile delinquency charges, arrests or convictions, the dates of offenses, and the resolution of those charges;

(f) Founded reports of child abuse and neglect, with dates, locations and resolutions of those reports for all persons living in the home, as well as all applicant or provider employees, independent contractors and volunteers;

(g) Demonstration, upon initial certification, of successful completion of 15 hours of pre-service training.

(h) Demonstration, upon initial certification, of income sufficient to meet the needs and to ensure the stability and financial security of the family, independent of the foster care payment;

(i) All child support obligations in any state, whether the obligor is current with payments or in arrears, and whether any applicant's or foster provider's wages are being attached or garnished for any reason;

(j) A physician's statement, on a form provided by SPD, that each applicant is physically and mentally capable of providing care;

(k) A floor plan of the house showing the location of:

(A) Rooms, indicating the bedrooms for the foster child, caregiver, and other occupants of the home;

(B) Windows;

(C) Exit doors;

(D) Smoke detectors and fire extinguishers; and

(E) Wheel chair ramps, if applicable; and

(1) A diagram of the house and property showing safety devices for fire places, wood stoves, water features, outside structures and fencing.

(6) Falsification or omission of any of the information for certification may be grounds for denial or revocation of the child foster home certification.

(7) Applicants must be at least 21 years of age. Applicants who are "Indian," as defined in the Indian Child Welfare Act, may be 18 years of age or older, if an Indian child to be placed is in the legal custody of DHS-CW.

(8) Applicants, providers, alternate caregivers, providers' employees or volunteers, other occupants in the home who are 18 years or older, and other adults having regular contact in the home with the foster children must consent to a criminal history check by DHS, in accordance with OAR chapter 410, division 007 (Criminal History Check Rules). SPD may require a criminal history on members of the household under 18 if there is reason to believe that a member may pose a risk to children placed in the

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home. All persons subject to a criminal history check are required to complete an Oregon criminal history check and a national criminal history check, as defined in OAR 410-007, including the use of fingerprint cards.

(9) The applicant or foster provider may request to withdraw their application any time during the certification process by notifying the certifier in writing. Written documentation by the certifier of verbal notice can substitute for written notification.

(10) SPD will not issue or renew a certificate if an applicant or member of the household:

(a) Has, after completing the DHS criminal history check required by SPD, a fitness determination of "denied."

(b) Has, at any time, been convicted of a felony in Oregon or any jurisdiction that involves:

(A) Child abuse or neglect;

(B) Spousal abuse;

(C) Criminal activity against children, including child pornography;

or

(D) Violence specifically including rape, sexual assault, or homicide.

(c) Has, within the past five years from the date the DHS criminal history check was signed been convicted of a felony in Oregon or any jurisdiction that involves:

(A) Physical assault or battery (other than against a spouse or child);

or

(B) Any drug-related offense.

(d) Has been found to have abused or neglected a child or adult as defined in ORS 418.005, 418.015, 418.748, and 419B.005 or as listed in OAR 411-320-0020(2)(b)(A-E) and (2)(c)(A-F).

(e) Has, within the past five years from the date the child foster home application was signed, been found to have abused or neglected a child or adult in the United States as defined by that jurisdiction or any other jurisdiction.

(11) SPD will not issue or renew a certificate for a minimum of five years if the applicant is found to have a license or certificate to provide care to children or adults, suspended, revoked or not renewed by other than voluntary request. This will be grounds for suspension and revocation of the certificate.

(12) SPD may not issue or renew a certificate based on an evaluation of any negative references, school reports, physician's statement, or previous licensing or certification reports from other agencies or states.

(13) A DHS employee may be a foster provider, or an employee of an agency that contracts with DHS as a foster provider, if the employee's position with DHS does not influence referral, regulation or funding of such activities. Prior to engaging in such activity, the employee must obtain written approval from their Administrator. The written approval must be on file with their Administrator and in the SPD certification file.

(14) An application is incomplete and void unless all supporting materials are submitted to SPD within 90 days from the date of the application.

(15) An application will not be considered complete until all required information is received and verified by SPD. Within 60 days upon receipt of the completed application, a decision will be made by SPD to approve or deny certification.

(16) SPD will determine compliance with these rules based on receipt of the completed application material, an investigation of information submitted, an inspection of the home, a completed home study, and a personal interview with the provider. A certificate is valid for one year unless revoked or suspended earlier.

(17) SPD may attach conditions to the certificate that limit, restrict, or specify other criteria for operation of the child foster home.

(18) A condition may be attached to the certificate that limits the provider to the care of a specific individual. No other referrals will be made to a provider with this limitation.

(19) A child foster home certificate is not transferable or applicable to any location or persons other than those specified on the certificate.

(20) The foster provider who cares for children funded by DHS must enter into a contract with DHS and follow the DHS rules governing reimbursement for services and refunds.

(21) The foster provider cannot be the parent or legal guardian of any children placed in their home for foster care services funded by DHS.

(22) If the applicant or foster provider intends to provide care for an individual with significant medical needs the provider must have the following:

(a) An equivalent of one year of full-time experience in providing direct care to individuals;

(b) Health care professional qualifications.

(A) Such as a registered nurse (RN) or licensed practical nurse (LPN); or

(B) Has the equivalent of two additional years full-time experience providing care and support to individual(s) who have a medical condition that is serious and could be life-threatening;

(c) Copies of all current health related license or certificates and provide those documents to the certifying agent;

(d) Current certification in First Aid and Cardiopulmonary Resuscitation (CPR). The CPR training must be done by a recognized training agency and the CPR certificate must be appropriate to the ages of the children served in the foster home;

(e) Current satisfactory references from at least two medical professionals, such as a physician and registered nurse, who have direct knowledge of the applicant's ability and past experiences as a caregiver. The medical professional references serve as two of the four references in section (5)(d) of this rule; and

(f) Positive written recommendation from SPD's Medically Fragile Children's Unit (MFCU) if the provider or applicant has provided services through the program or if the provider or applicant has historically received services through the program for a child in their family home or foster home.

(23) A foster provider must not accept an individual with significant medical needs unless an initial care plan addressing the health and safety supports is in place at the time of placement.

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

Stats. Implemented: ORS 443.830 & 443.835

Hist.: MHD 15-2000(Temp), f. & cert. ef. 11-30-00 thru 5-28-01; MHD 3-2001, f. 5-25-01, cert. ef. 5-28-01; Renumbered from 309-046-0150, SPD 34-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 10-2007, f. 6-27-07, cert. ef. 7-5-07

## 411-346-0160

### Renewal of Certificate

(1) At least 90 days prior to the expiration of a certificate, SPD will send a reminder notice and application for renewal to the currently certified provider. Submittal of a renewal application prior to the expiration date will keep the certificate in effect until SPD takes action. If the renewal application is not submitted prior to the expiration date, the CFH will be treated as an uncertified home.

(2) The certification renewal process includes the renewal application, and the same supporting documentation as required for a new certification. With the discretion of the certifier or SPD, a financial statement, physician statement, and floor plan may not be required.

(3) Copies of the service coordinator's monitoring check list or recommendations from the service coordinators who have had children in the home within the last year may be requested at time of certification renewal.

(4) School reports may not be required if SPD or the CDDP can reasonably assume this information has not changed or is not necessary.

(5) SPD or the CDDP may investigate any information in the renewal application and will conduct a home inspection.

(6) The provider will be given a copy of the inspection form documenting any deficiencies and a time frame to correct deficiencies, but no longer than 60 days from the date of inspection. If documented deficiencies are not corrected within the time frame specified, the renewal application will be denied.

(7) Applicants, providers, providers' substitute caregivers, employees, volunteers and any other occupants in the home 18 years of age and older must submit to an Oregon criminal history check and must continue to meet all certification standards as outlined in these rules.

(8) Each foster provider must provide documentation of a minimum of ten hours of SPD approved training per year prior to annual renewal of the certificate. A mutually agreed upon training plan may be part of the certification process.

(9) When serving children with significant medical needs, the foster provider must have a minimum of six of the ten hours of annual training requirements in specific medical training beyond First Aid and CPR. The CPR training must be done by a recognized training agency and the CPR certificate must be appropriate to the ages of the children served in the foster home.

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

Stats. Implemented: ORS 443.830 & 443.835

Hist.: MHD 15-2000(Temp), f. & cert. ef. 11-30-00 thru 5-28-01; MHD 3-2001, f. 5-25-01, cert. ef. 5-28-01; Renumbered from 309-046-0160, SPD 34-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 10-2007, f. 6-27-07, cert. ef. 7-5-07

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## 411-346-0165

### Emergency Certification

(1) An emergency certificate may be issued by SPD for up to 30 days, provided the following conditions are met:

(a) An Oregon criminal history check (CHC) indicates no immediate need for fingerprinting for all persons living in the home;

(b) A DHS-CW background check identifies no founded allegations of abuse or neglect committed by persons living in the home;

(c) Applicant has no previous revocations or suspensions of any license or certificate by any issuing agency for a foster home, group home or any other care or support services;

(d) A review of support enforcement obligations and public assistance cases identifies no substantial financial concerns;

(e) An application and two references are submitted;

(f) An abbreviated home study is done; and

(g) A satisfactory home inspection and a Health and Safety Checklist are completed.

(2) When a child with significant medical needs will be living in the foster home, the following additional requirements must be met before an emergency certificate can be issued:

(a) Current satisfactory references from at least two medical professionals, such as a physician and registered nurse, who have direct knowledge of the applicant's ability and past experiences as a caregiver; and

(b) A positive written recommendation from SPD's Medical Fragile Children's Unit (MFCU) if the provider or applicant has provided services through the program or has historically received services through the program for a child in their family home or foster home; and

(c) Current certification in First Aid and CPR. The CPR training must be done by a recognized training agency and the CPR certificate must be appropriate to the ages of the children served in the foster home; and

(d) Copies of all current medical related licenses or certificates must be provided to the certifying agent and SPD; and

(e) Six hours of medical training beyond CPR and First Aid training as appropriate to the ages of the children served in the foster home; OR

(f) Licensed as a registered nurse, licensed practical nurse, emergency medical technician, nurse practitioner, or physician's assistant.

(3) Emergency certificates may be issued if the renewal process is incomplete at the time of annual renewal.

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

Stats. Implemented: ORS 443.830 & 443.835

Hist.: SPD 34-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 10-2007, f. 6-27-07, cert. ef. 7-5-07

## 411-346-0170

### Personal Qualifications of the Applicant and Foster Provider

(1) The applicant and foster provider must:

(a) Be responsible, stable, emotionally mature adults who exercise sound judgment;

(b) Have the interest, motivation, and ability to nurture, support and meet the mental, physical, developmental and emotional needs of children placed in the home;

(c) Be willing to receive training, and have the ability to learn and use effective child-rearing practices, to enable children placed in their home to grow, develop, and build positive personal relationships and self esteem;

(d) Demonstrate that they have the knowledge and understanding of positive non-punitive discipline and ways of helping children build positive personal relationships, self-control and self esteem;

(e) Respect the child's relationship with his or her parents and siblings and be willing to work in partnership with family members, agencies and schools involved with the child to attain the goals as listed in the IEP, ISP and case plan;

(f) Respect the child's privacy in accordance with the child's age;

(g) Have supportive ties with others who might support, comfort and advise them. Supportive ties include but are not limited to:

(A) Family;

(B) Friends;

(C) Neighborhood contacts;

(D) Churches; or

(E) Community groups;

(h) Demonstrate that they have lifestyles and personal habits free from abuse or misuse of alcohol or drugs;

(i) Be at least 21 years of age, unless otherwise specified through ICWA and placement of Indian children requirements; and

(j) Be able to realistically evaluate which children they can accept, work with, and integrate into their family.

(2) HEALTH QUALIFICATIONS.

(a) The applicant and foster provider must provide SPD with the health history of each member of the household, including physical and mental health services and treatment received. Within one working day, the foster provider must inform SPD if any member of the household has or develops a serious communicable disease or other serious health condition that could affect the provider's ability to care for the child, or could affect the health and safety of the child.

(b) The applicant, foster provider and other adults in the household caring for foster children must be physically and mentally able to perform the duties of a foster provider as prescribed in these rules.

(c) The applicant, foster provider and others in the household must be free from abuse or misuse of alcohol or drugs. In the case of alcoholism or substance abuse, the applicant, foster provider or others in the household must demonstrate that they have been substance-free and sober for at least two years prior to making application for certification.

(d) When requested by SPD either during the application process or while certified, the applicant or foster provider must, at their expense and from a source acceptable to SPD, supply psychological, medical or physical, sex-offender, drug and alcohol, and psychiatric reports and evaluations to SPD.

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

Stats. Implemented: ORS 443.830 & 443.835

Hist.: MHD 15-2000(Temp), f. & cert. ef. 11-30-00 thru 5-28-01; MHD 3-2001, f. 5-25-01, cert. ef. 5-28-01; Renumbered from 309-046-0170, SPD 34-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 10-2007, f. 6-27-07, cert. ef. 7-5-07

## 411-346-0180

### Professional Responsibilities of the Foster Provider

(1) TRAINING AND DEVELOPMENT.

(a) The foster provider must complete a minimum of 15 hours of pre-service training prior to certification, and ten hours annually for certification renewal. SPD or CDDP staff may require additional hours of training based on the needs of the children served in the home.

(b) The foster provider must participate in training provided or approved by SPD or the CDDP. Such training will include educational opportunities designed to enhance the foster provider's awareness, understanding and skills to meet the special needs of children placed in their home.

(c) The foster provider must complete mandatory reporting training prior to initial certification and annually thereafter.

(d) Mandatory reporter training must be appropriate to the ages of the individuals living in the child foster home.

(2) RELATIONSHIP WITH THE CHILD PLACING AGENCY. The foster provider must:

(a) Take part in planning, preparation, pre-placement activities and visitation for the children placed in their home;

(b) Participate as team members in developing and implementing the ISP when initiated by the CDDP Service Coordinator for the children placed in their home;

(c) In advance or within one working day, notify the certifier of changes likely to affect the life and circumstances of the foster family or the safety in the home including, but not limited to the following:

(A) Foster family illness;

(B) Divorce, legal separation or loss of a household member;

(C) Significant change in financial circumstances;

(D) New household members or placement of a foster child by another agency, including respite care;

(E) Arrests or criminal involvement;

(F) The addition of firearms;

(G) Swimming pools; or

(H) Pets.

(d) Immediately notify the child's CDDP Service Coordinator and guardian of injury, illness, accidents, or any unusual incidents or circumstances that may have a serious effect on the health, safety, physical or emotional well-being of the foster child;

(e) Notify the legal guardian and CDDP staff of any unauthorized absence of a foster child within 12 hours, or other mutually agreed upon time, as determined by the ISP Team;

(f) Sign and abide by the responsibilities described in the Child Foster Home Contract or Agreement;

(g) Allow the certifying and placing agency reasonable access to their home and to the children placed in their care. This includes access by family members when placement is voluntary. For the purpose of these rules, reasonable access means with prior notice, unless there is cause for not giving such notice;

(h) Allow SPD or CDDP staff access to:

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(A) Investigate reports of abuse, violations of a regulation or provision of these rules;

(B) Inspect or examine the home, the foster children's records and accounts, and the physical premises, including the buildings, grounds, equipment, and any vehicles; and

(C) Interview the child, adult or alternate caregivers.

(i) Participate in interviews conducted by SPD or CDDP staff; and

(j) Authorize substitute caregivers to permit entrance by SPD or CDDP staff for the purpose of inspection and investigation.

(3) ACCEPTING CHILDREN FOR CARE.

(a) Effective July 1, 2007, except as described in section (3)(c) of this rule, a certified provider must not exceed the following maximum number of children in the home:

(A) A total of four children when one certified adult lives in the home; or

(B) A total of seven children when two certified adults live in the home.

(b) All homes are limited to two children under the age of three.

(c) Any providers certified prior to July 1, 2007 with a capacity greater than the numbers listed in section (3)(a) of this rule must meet the standard through attrition as children move out of the foster home.

(d) Any child foster home provider contracted by a proctor agency to provide proctor care services will be limited to serving a total of two children.

(e) At the time of referral, the foster provider will be given available information about the child, including behavior, skill level, medical status and other relevant information. The foster provider is obligated to decline the referral of any child based on the referral information, parameters of their certification, or if they feel their skill level will not safely or effectively support the child.

(f) A foster provider may provide respite care in the provider's home for a child upon approval by the CDDP or SPD.

(g) A foster provider must obtain approval from the Child Foster Home Certifier prior to accepting a child for placement.

(h) A child who turns 18 may continue to reside in their current certified child foster home when it has been determined by the ISP team it is in the best interest of the child to remain in the same home. When it has been determined by the ISP team a child who is turning 18 will remain in their current certified child foster home the foster provider must:

(A) Submit a variance request to SPD in accordance with OAR 411-346-0210; and

(B) Submit to SPD and the CDDP, a copy of the ISP addendum signed by the ISP team noting it is in the best interest of the foster child to remain in the current certified foster home.

(i) Any variance to sections (3)(a), through (3)(h) of this rule will take into consideration the maximum safe physical capacity of the home including:

(A) Sleeping arrangements;

(B) The ratio of adult to child;

(C) The level of supervision available;

(D) The skill level of the foster provider;

(E) Individual plans for egress during fire;

(F) The needs of the other children in placement; and

(G) The desirability of keeping siblings placed together.

(j) The foster provider must not care for unrelated adults on a commercial basis in their own home or accept children for day care in their own home while currently certified as a foster provider.

(k) The foster provider may exit a foster child by giving 30 days written notice to the designated CDDP staff, except where undue delay will jeopardize the health, safety or well-being of the child or others.

(l) The foster provider must notify SPD prior to a voluntary closure of a child foster home, and give the foster child(ren)'s guardian and the CDDP 30 days written notice, except in circumstances where undue delay might jeopardize the health, safety or well-being of the foster child(ren), or foster provider.

(4) RELATIONSHIP WITH THE CHILD'S FAMILY. In accordance with the child's ISP and the guardian, the foster provider must:

(a) Support the child's relationship with the child's family members, including siblings;

(b) Assist the CDDP staff, and the guardian in planning visits with the child and the child's family members; and

(c) Provide the child reasonable opportunities to communicate with their family members.

(5) CONFIDENTIALITY.

(a) The foster provider and the provider's family must treat personal information about a child or a child's family in a confidential manner. Confidential information is to be disclosed on a need to know basis to law enforcement, CDDP staff, DHS-CW child protective services staff, DHS-CW case workers, and medical professionals who are treating or providing services to the child. The information shared must be limited to the health, safety and service needs of the child.

(b) In addition to the requirements in section (5)(a) of this rule, the foster provider and the provider's family must comply with the provisions of ORS 192.518 to 192.523 and therefore may use or disclose a child's protected health information only:

(A) To law enforcement, CDDP staff, DHS-CW staff;

(B) As authorized by the child's personal representative or guardian appointed under ORS 125.305, 419B.370, 419C.481 or 419C.555;

(C) For purposes of obtaining health care treatment for the child;

(D) For purposes of obtaining payment for health care treatment; or

(E) As permitted or required by state or federal law or by order of a court.

(c) The foster provider must keep all written records for each foster child in a manner that ensures their confidentiality.

(6) MANDATORY REPORTING.

(a) The foster provider and their employees and volunteers are mandatory reports of suspected abuse or neglect of any child under ORS 419B.005. Upon reasonable cause to believe that abuse or neglect has occurred, all adult members of the household and any foster provider, employees, independent contractors or volunteers must report pertinent information to DHS-CW or law enforcement.

(b) When the certified child foster provider, their employees, independent contractors or volunteers are providing services to an individual 18 years or older and has reason to believe abuse or neglect as defined in OAR 411-320-0002(2)(b) and (2)(c) has occurred, they must report the pertinent information to the CDDP or law enforcement in accordance with ORS 430.737.

(c) Any restraint or intervention that results in an injury to the child, as defined in ORS 419B.005, must be reported by the foster provider. Same day verbal notification is required. The foster provider must notify DHS-CW and the child's CDDP Service Coordinator.

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

Stats. Implemented: ORS 443.830 & 443.835

Hist.: MHD 15-2000(Temp), f. & cert. ef. 11-30-00 thru 5-28-01; MHD 3-2001, f. 5-25-01, cert. ef. 5-28-01; Renumbered from 309-046-0180, SPD 34-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 10-2007, f. 6-27-07, cert. ef. 7-5-07

## 411-346-0190

### Standards and Practices for Care and Services

(1) The foster provider must:

(a) Provide structure and daily activities designed to promote the physical, social, intellectual, cultural, spiritual and emotional development of the foster children in their home.

(b) Provide playthings and activities in the foster home, including games, recreational and educational materials, and books appropriate to the chronological age, culture, and developmental level of the foster children.

(c) In accordance with the ISP and, if applicable, as defined in the DHS-CW case plan, encourage the children to participate in community activities with family, friends, and on their own when appropriate.

(d) Promote the foster children's independence and self-sufficiency by encouraging and assisting the children to develop new skills and perform age-appropriate tasks.

(e) In accordance with the ISP and, if applicable, as defined in the DHS-CW case plan ask children placed in the provider's care to participate in household chores appropriate to the children's age and ability and commensurate with those expected of their own children.

(f) Provide the children with reasonable access to a telephone and to writing materials.

(g) In accordance with the ISP and, if applicable, as defined in the DHS-CW case plan, permit and encourage the children to have visits with family and friends.

(h) Allow regular contacts and private visits or phone calls with the children's CDDP Service Coordinator and, if applicable, the DHS-CW case worker.

(i) Not allow foster children to baby-sit in the foster home or elsewhere without permission of the CDDP Service Coordinator and the guardian.

(2) RELIGIOUS, ETHNIC, AND CULTURAL HERITAGE.

(a) The foster provider must recognize, encourage, and support the religious beliefs, ethnic heritage, cultural identity and language of a child and his or her family.

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(b) In accordance with the ISP and guardian preferences, the foster provider must participate with the ISP team to arrange transportation and appropriate supervision during religious services or ethnic events for a child whose beliefs and practices are different from those of the provider.

(c) The foster provider must not require a child to participate in religious activities or ethnic events contrary to the child's beliefs.

(3) EDUCATION. The foster provider:

(a) Must enroll each child of school age in public school, within five school days of the placement, and arrange for transportation.

(b) Must comply with any alternative educational plan described in the foster child's IEP.

(c) Must be actively involved in the child's school program and must participate in the development of the child's IEP. The Foster provider may apply to be the child's educational surrogate, if requested by the parent or guardian.

(d) Must consult with school personnel when there are issues with the child in school, and report to the guardian and CDDP Service Coordinator any serious situations that may require DHS involvement.

(e) Must support the child in his or her school or educational placement.

(f) Must assure the child regularly attends school or educational placement and monitor the child or young adult's educational progress.

(g) May sign consent to the following school related activities:

(A) School field trips within the state of Oregon;

(B) Routine social events;

(C) Sporting events;

(D) Cultural events; and

(E) School pictures for personal use only, unless prohibited by the court or legal guardian.

(4) ALTERNATE CAREGIVERS.

(a) The foster provider must arrange for safe and responsible alternate care.

(b) The foster provider must have a child care plan approved by SPD, the CDDP, or DHS-CW, as appropriate, if the foster provider is employed outside of the home. When a child is cared for by a child care provider or childcare center, the provider or center must be certified as required by the State Child Care Division (ORS 657A.280), or be a certified foster provider.

(c) The foster provider must have a respite plan approved by the CDDP or SPD when using alternate caregivers.

(d) The foster provider must assure the alternate caregivers, consultants and volunteers are:

(A) 18 years of age or older;

(B) Capable of assuming foster care responsibilities;

(C) Present in the home;

(D) Physically and mentally able to perform the duties of the foster provider as prescribed in these rules;

(E) Cleared by a DHS criminal history check including a DHS-CW background check (IIS);

(F) Able to communicate with the child, individuals, agencies providing care to the child, CDDP Service Coordinator and appropriate others;

(G) Trained on fire safety and emergency procedures;

(H) Trained on the child's ISP, Behavior Support Plan and any related protocols and able to provide the care needed for each child;

(I) Trained on the required documentation for health, safety and behavioral needs of the child;

(J) A licensed driver and with vehicle insurance in compliance with the Oregon DMV laws, when transporting children by motorized vehicle; and

(K) Not be a person who requires care in a foster care or group home.

(e) When the foster provider uses an alternate caregiver and the child will be staying at the alternate caregiver's home, the foster provider must assure the alternate caregiver's home meets the necessary health, safety and environmental needs of the child.

(f) When the foster provider arranges for social activities of the child for less than 24 hours, including an overnight arrangement, the foster provider must assure that the person will be responsible and capable of assuming child care responsibilities, and be present at all times. The foster provider still maintains primary responsibility for the child.

(5) FOOD AND NUTRITION.

(a) The foster provider must offer three nutritious meals daily at times consistent with those in the community. Daily meals must include food from the four basic food groups, including fresh fruits and vegetables in season, unless otherwise specified in writing by a physician or physician assistant. There must be no more than a 14-hour span between the evening

meal and breakfast, unless snacks and liquids are served as supplements. Consideration will be given to cultural and ethnic background in food preparation.

(b) The foster provider must implement special diets only as prescribed in writing by the child's physician or physician assistant.

(c) The foster provider must prepare and serve meals in the foster home where the child lives. Payment for meals eaten away from the foster home (e.g. restaurants) for the convenience of the foster provider is the responsibility of the foster provider.

(d) A child who must be bottle-fed and cannot hold the bottle must be held during bottle-feeding.

(6) CLOTHING AND PERSONAL BELONGINGS.

(a) The foster provider must provide each child with his or her own clean, well-fitting, seasonal clothing appropriate to age, gender, culture, individual needs, and comparable to the community standards.

(b) School-age children should participate in choosing their own clothing whenever possible.

(c) The foster provider must allow children to bring and acquire appropriate personal belongings.

(d) The foster provider must send all personal clothing and belongings with the child when the child leaves the foster home.

(7) BEHAVIOR SUPPORT AND DISCIPLINE PRACTICES.

(a) The foster provider must teach and discipline children with respect, kindness, and understanding, using positive behavior management techniques. Unacceptable practices include, but are not limited to:

(A) Physical force, spanking or threat of physical force inflicted in any manner upon the child;

(B) Verbal abuse, including derogatory remarks about the child or his or her family that undermine a child's self-respect;

(C) Denial of food, clothing or shelter;

(D) Denial of visits or contacts with family members, except when otherwise indicated in the ISP or, if applicable, the DHS-CW case plan;

(E) Assignment of extremely strenuous exercise or work;

(F) Threatened or unauthorized use of physical interventions;

(G) Threatened or unauthorized use of mechanical restraints;

(H) Punishment for bed-wetting or punishment related to toilet training;

(I) Delegating or permitting punishment of a child by another child;

(J) Threat of removal from the foster home as a punishment;

(K) Use of shower or aversive stimuli as punishment; and

(L) Group discipline for misbehavior of one child.

(b) The foster provider must set clear expectations, limits, and consequences of behavior in a non-punitive manner.

(c) If time-out separation from others is used to manage behavior, it must be included on the child's ISP and the foster provider must provide it in an unlocked, lighted, well-ventilated room of at least 50 square feet. The ISP must include whether the child needs to be within hearing distance or within sight of an adult during the time-out. The time limit must take into consideration the child's chronological age, emotional condition and developmental level. Time-out is to be used for short duration and frequency as approved by ISP team.

(d) No foster child or other child in a foster home will be subjected to physical abuse, sexual abuse, sexual exploitation, neglect, emotional abuse, mental injury or threats of harm as defined in ORS 419B.005 and OAR 411-320-0020. Sexual abuse and sexual exploitation includes all sexual acts defined in ORS chapters 163 and 167.

(e) Behavior Support Plan (BSP). For children who have demonstrated a serious threat to self, others or property and for whom it has been decided a BSP is needed, the BSP must be developed with the approval of the ISP team.

(f) Physical Restraint or Intervention. A physical restraint or intervention must be used only for health and safety reasons and under the following conditions:

(A) As part of the child's ISP team approved BSP.

(i) When physical restraint or intervention will be employed as part of the BSP the foster provider and alternate caregivers must complete OIS training prior to the implementation of the BSP.

(ii) The use of any modified OIS physical restraint or intervention must have approval from the OIS Steering Committee in writing prior to their implementation. Documentation of the approval must be maintained in the child's records.

(B) As in a health-related protection prescribed by a physician, or qualified health care provider, but only if absolutely necessary during the conduct of a specific medical or surgical procedure, or only if absolutely necessary for protection during the time that a medical condition exists.

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(C) As an emergency measure, if absolutely necessary to protect the child or others from immediate injury and only until the child is no longer an immediate threat to self or others.

(g) Mechanical Restraint.

(A) The foster provider must not use mechanical restraints on children in care other than car seat belts or normally acceptable infant safety products unless ordered by a physician, or health care provider and with an agreement of the ISP team.

(B) The foster provider must maintain the original order in the child's records, and forward a copy to the CDDP Service Coordinator and guardian.

(h) Documentation and notification of use of restraint or intervention. The foster provider must document the use of all physical interventions or mechanical restraints in an incident report. A copy of the incident report must be provided to the CDDP Service Coordinator and guardian.

(A) If an approved restraint is used the foster provider must send a copy of the incident report within five working days.

(B) If an emergency or non ISP team approved restraint is used, the foster provider must send a copy of the incident report within 24 hours. The foster provider must make verbal notification to the CDDP Service Coordinator and guardian no later than the next working day.

(C) The original incident report must be on file with the foster provider in the child's records.

(D) The incident report must include:

(i) The name of the child to whom the restraint was applied;

(ii) The date, location, type and duration of entire incident and restraint;

(iii) The name of the provider and witnesses or persons involved in applying the restraint;

(iv) The name and position of the person notified regarding the use of the restraint; and

(v) A description of the incident, including precipitating factors, preventive techniques applied, description of the environment, description of any physical injury resulting from the incident, and follow-up recommendations.

(8) MEDICAL AND DENTAL CARE. The foster provider must:

(a) Provide care and services, as appropriate to the child's chronological age, developmental level and condition of the child, and as identified in the ISP.

(b) Assure that physician or qualified health care provider orders and those of other licensed medical professionals are implemented as written.

(c) Inform the child's physicians or qualified health care providers of current medications and changes in health status and if the child refuses care, treatments or medications.

(d) Inform the guardian and CDDP Service Coordinator of any changes in the child's health status except as otherwise indicated in the DHS-CW Permanent Foster Care Placement Agreement and as agreed upon in the child's ISP.

(e) Obtain the necessary medical, dental, therapies and other treatments of care, including but not limited to:

(A) Making appointments;

(B) Arranging for or providing transportation to appointments; and

(C) Obtaining emergency medical care.

(f) Have prior consent from the guardian for medical treatment that is not routine, including surgery and anesthesia except in cases where a DHS-CW Permanent Foster Care Placement Agreement exists.

(9) MEDICATIONS AND PHYSICIAN OR QUALIFIED HEALTH CARE PROVIDER ORDERS.

(a) There must be authorization by a physician or qualified health care provider in the child's file prior to the usage of or implementation of any of the following:

(A) All prescription medications;

(B) Non prescription medications except over the counter topicals;

(C) Treatments other than basic first aid;

(D) Therapies and use of mechanical restraint as a health and safety related protection;

(E) Modified or special diets;

(F) Prescribed adaptive equipment; and

(G) Aids to physical functioning.

(b) The foster provider must have:

(A) A copy of an authorization in the format of a written order signed by a physician or a qualified health care provider; or

(B) Documentation of a telephone order by a physician or qualified health care provider with changes clearly documented on the medication administration record (MAR), including the name of the individual giving

the order, the date and time, and the name of the person receiving the telephone order; or

(C) A current pharmacist prescription or manufacturer's label as specified by the physician's order on file with the pharmacy.

(c) A provider or alternate caregiver must carry out orders as prescribed by a physician or a qualified health care provider. Changes must not be made without a physician or a qualified health care provider's authorization.

(d) Each child's medication, including refrigerated medication, must be clearly labeled with the pharmacist's label, or in the manufacturer's originally labeled container, and kept in a locked location, or stored in a manner that prevents access by children.

(e) Unused, outdated or recalled medications must not be kept in the foster home and must be disposed of in a manner that will prevent illegal diversion into the possession of people other than for whom it was prescribed.

(f) The foster provider must keep a medication administration record (MAR) for each child. The MAR must be kept for all medications administered by the foster provider or alternate caregiver to that child, including over the counter medications and medications ordered by physicians or qualified health care providers and administered as needed (PRN) for the child.

(g) The MAR must include:

(A) The name of the individual;

(B) A transcription of the written physician's or licensed health practitioner's order, including the brand or generic name of the medication, prescribed dosage, frequency and method of administration;

(C) A transcription of the printed instructions from the package for topical medications and treatments without a physician's order;

(D) Times and dates of administration or self-administration of the medication;

(E) Signature of the person administering the medication or the person monitoring the self-administration of the medication;

(F) Method of administration;

(G) An explanation of why a PRN (i.e., as needed) medication was administered;

(H) Documented effectiveness of any PRN (i.e., as needed) medication administration;

(I) An explanation of any medication administration irregularity; and

(J) Any known allergy or adverse drug reactions and procedures that maintain and protect the physical health of the children placed in the foster home.

(h) Treatments, medication, therapies and special diets must be documented on the MAR when not used or applied according to the order

(i) Self-administration of medication. For any child who is self-administering medication, the foster provider must:

(A) Have documentation that a training program was initiated with approval of the child's ISP team or that training for the child was unnecessary;

(B) Have a training program that provides for retraining when there is a change in dosage, medication and time of delivery;

(C) Provide for an annual review, at a minimum, as part of the ISP process, upon completion of the training program;

(D) Assure that the child is able to handle his or her own medication regime;

(E) Keep medications stored in a locked area inaccessible to others; and

(F) Maintain written documentation of all training in the child's medical record.

(j) Any medication that is used with the intent to alter behavior of a child with a developmental disability must be documented on the ISP.

(k) Balancing test. When a psychotropic medication is first prescribed and annually thereafter, the foster provider must obtain a signed balancing test from the prescribing health care provider using the SPD Balancing Test Form. Foster providers must present the physician or health care provider with a full and clear description of the behavior and symptoms to be addressed, as well as any side effects observed.

(l) PRN (i.e., as needed) prescribed psychotropic medication are prohibited.

(m) Within one working day of any new prescription for psychotropic medication, the foster provider must notify the CDDP Service Coordinator, and if applicable the DHS-CW caseworker. This notification from the foster provider to the CDDP Service Coordinator must contain:

(A) The name of the prescribing physician, or qualified health care provider;

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- (B) The name of the medication;
  - (C) The dosage administration schedule prescribed; and
  - (D) The reason the medication was prescribed.
- (10) DIRECT NURSING SERVICES.

(a) When direct nursing services are provided to a child the foster provider must:

(A) Coordinate with the nurse and the ISP team to ensure that the services being provided are sufficient to meet the individual's health needs; and

(B) Implement the nursing care plan, or appropriate portions therein, as agreed upon by the ISP team and the registered nurse.

(b) When nursing tasks are delegated, they must be delegated by a licensed Registered Nurse and in accordance with OAR 851-047-0000 through 851-047-0040 (Standards for Registered Nurse Delegation and Assignment of Nursing Care Tasks to Unlicensed Persons).

(11) CHILD RECORDS.

(a) General Information or Summary Record. The provider must maintain a record for each child in the home. The record must include:

(A) The child's name, date of entry into the foster home, date of birth, gender, religious preference, and guardianship status;

(B) The names, addresses, and telephone numbers of the child's guardian, family, advocate, or other significant person;

(C) The name, address, and telephone number of the child's preferred primary health provider, designated back up health care provider and clinic, dentist, preferred hospital, medical card number and any private insurance information, and Oregon Health Plan choice;

(D) The name, address, and telephone number of the child's school program; and

(E) The name, address, and telephone number of the CDDP Service Coordinator and representatives of other agencies providing services to the child.

(b) Medical and behavioral information must include:

(A) History of physical, emotional and medical problems, illnesses or mental health status that may be pertinent to current care;

(B) Current orders for all medications, treatments, therapies, use of restraint or intervention, special diets, adaptive equipment and any known food or medication allergies;

(C) Completed MAR from previous months;

(D) Pertinent medical and behavioral information such as hospitalizations, accidents, immunization records including Hepatitis B status and previous TB tests, and incidents or injuries affecting the health, safety or emotional well-being of the child; and

(E) Documentation or other notations of guardian consent for medical treatment that is not routine, including surgery and anesthesia.

(c) Individual Support Plan (ISP). Within 60 days of placement, the child's ISP must be prepared by the ISP team and, at a minimum, updated annually.

(A) The foster provider must participate with the ISP team in the development and implementation of the ISP to address each child's behavior, medical, social, financial, safety and other support needs.

(B) Prior to or upon entry to or exit from the foster home, the foster provider must participate in the development and implementation of a transition plan for the foster child.

(i) The transition plan must include a summary of the services necessary to facilitate the adjustment of the child to the foster home or after care plan; and

(ii) Identify the supports necessary to ensure health, safety, and any assessments and consultations needed for ISP development.

(d) Financial records.

(A) The foster provider must maintain a separate financial record for each child. The financial record must include:

(i) The date, amount and source of all income received on behalf of the child;

(ii) The room and board fee that is paid to the provider at the beginning of each month;

(iii) The date, amounts and purpose of funds disbursed on behalf of the child; and

(iv) The signature of the person making the entry.

(B) Any single item over \$25 purchased with the child's personal funds, unless otherwise indicated in the child's ISP, must be documented including receipts, in the child's financial record.

(C) The child's ISP team may address how the child's personal spending money will be managed.

(D) If the child has a separate commercial bank account, records from that account must be maintained with the financial record.

(E) The child's personal funds must be maintained in a safe manner and separate from other members of the household funds.

(F) Misuse of personal spending may be cause for suspension, revocation or denial of renewal of the child foster home certificate.

(e) Personal Property Record.

(A) The foster provider must maintain a written record of each child's property that has significant personal value to the child, parent or guardian or as determined by the ISP team.

(B) Personal property records are not required for children who have a court approved Permanent Foster Care Placement Agreement, unless requested by the child's guardian.

(C) The personal property record must include:

(i) The description and identifying number, if any;

(ii) The date when the child brought in the personal property or made a new purchase;

(iii) The date and reason for the removal from the record; and

(iv) The signature of the person making the entry.

(f) Educational Records. The foster provider must maintain the following educational records when available:

(A) The child's report cards;

(B) Any reports received from the teacher or the school;

(C) Any evaluations received as a result of educational testing or assessment; and

(D) Disciplinary reports regarding the child or young adult.

(g) Child records must be available to representatives of SPD and DHS-CW conducting inspections or investigations, as well as to the child, if appropriate, and the guardian, or other legally authorized persons.

(h) Child records must be kept for a period of three years. If a child moves or the foster home closes, copies of pertinent information must be transferred to the child's new home.

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

Stats. Implemented: ORS 443.830 & 443.835

Hist.: MHD 15-2000(Temp), f. & cert. ef. 11-30-00 thru 5-28-01; MHD 3-2001, f. 5-25-01, cert. ef. 5-28-01; Renumbered from 309-046-0190, SPD 34-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 10-2007, f. 6-27-07, cert. ef. 7-5-07

## 411-346-0200

### Environmental Standards

(1) GENERAL CONDITIONS.

(a) The buildings and furnishings must be clean and in good repair and grounds must be maintained.

(b) Walls, ceilings, windows and floors must be of such character to permit frequent washing, cleaning, or painting.

(c) There must be no accumulation of garbage, debris, or rubbish.

(d) The home must have a safe, properly installed, maintained, and operational heating system. Areas of the home used by a foster child must be maintained at normal comfort range during the day and during sleeping hours. During times of extreme summer heat, the provider must make reasonable effort to make the child comfortable using available ventilation, fans or air-conditioning.

(2) EXTERIOR ENVIRONMENT.

(a) The premises must be free from objects, materials and conditions that constitute a danger to the occupants.

(b) Swimming pools, wading pools, ponds, hot tubs, and trampolines must be maintained to assure safety, kept in clean condition, equipped with sufficient safety barriers or devices to prevent injury, and used by foster children only under direct supervision by the provider or approved alternate caregiver.

(c) The home must have a safe outdoor play area on the property or within reasonable walking distance.

(3) INTERIOR ENVIRONMENT.

(a) Kitchen.

(A) Equipment necessary for the safe preparation, storage, serving and cleanup of meals must be available and kept in working and sanitary condition.

(B) Meals must be prepared in a safe and sanitary manner that minimizes the possibility of food poisoning or food-borne illness.

(C) If the washer and dryer are located in the kitchen or dining room area, soiled linens and clothing must be stored in containers in an area separate from food, and food storage prior to laundering.

(b) Dining Area. The home must have a dining area so those children in placement can eat together with the foster family.

(c) Living or Family Room. The home must have sufficient living or family room space that is furnished and accessible to all members of the family including the foster child.

(d) Bedrooms. Bedrooms used by children in care must:

## ADMINISTRATIVE RULES

(A) Have adequate space for the age, size and specific needs of each child;

(B) Be finished and attached to the house, and have walls or partitions of standard construction that go from floor to ceiling, and a door that opens directly to a hallway or common use room without passage through another bedroom or common bathroom;

(C) Have windows that open and provide sufficient natural light and ventilation, with window coverings provided that take into consideration the safety, care needs and privacy of the child;

(D) Have no more than four children to a bedroom;

(E) Have safe and age appropriate furnishings provided for each child including:

(i) A bed or crib with a frame unless otherwise documented by an ISP team decision, a clean comfortable mattress, and a water proof mattress cover, if the child is incontinent;

(ii) A private dresser or similar storage area for personal belongings that is readily accessible to the child;

(iii) A closet or similar storage area for clothing that is readily accessible to the child; and

(iv) An adequate supply of clean bed linens, blankets and pillows.

(F) Be on the ground level for children who are non-ambulatory or have impaired mobility;

(G) Provide flexibility in the decoration for the personal tastes and expressions of the children placed in the provider's home;

(H) Be in close enough proximity to the provider to alert the provider to nighttime needs or emergencies, or be equipped with a working monitor;

(I) Have doors that do not lock; and

(J) Have no three-tier bunk beds in bedrooms occupied by foster children.

(e) A child of the foster provider must not be required to sleep in a room also used for another purpose in order to accommodate a foster child.

(f) The foster provider must not permit the following sleeping arrangements for children placed in their home:

(A) Children of different sexes in the same room when either child is over the age of five years of age; and

(B) Children over the age of 12 months sharing a room with an adult.

(g) Bathrooms.

(A) Must have tubs or showers, toilets and sinks operable and in good repair with hot and cold water.

(B) A sink must be located near each toilet.

(C) There must be at least one toilet, one sink, and one tub or shower for each six household occupants, including the provider and family.

(D) Must have hot and cold water in sufficient supply to meet the needs of the child for personal hygiene. Hot water temperature sources for bathing and cleaning areas that are accessible by the foster child must not exceed 120 degrees F.

(E) Must have grab bars and non-slip floor surfaces for toilets, tubs, or showers for the child's safety as necessary for the child's care needs.

(F) Must have barrier-free access to toilet and bathing facilities with appropriate fixtures for children who utilize a wheel chair or other mechanical equipment for ambulation. Barrier free must be appropriate for the non-ambulatory child's needs for maintaining good personal hygiene.

(G) The foster provider must provide each child with the appropriate personal hygiene and grooming items that meet each child's specific needs and minimize the spread of communicable disease.

(H) Window coverings in bathrooms must take into consideration the safety, care needs, and privacy of the child.

(4) GENERAL SAFETY.

(a) The foster provider must protect the child from safety hazards;

(b) Stairways must be equipped with handrails.

(c) A functioning light must be provided in each room and stairway.

(d) In homes with foster children age three or under, or children with impaired mobility, the stairways must be protected with a gate or door.

(e) Hot water heaters must be equipped with a safety release valve and an overflow pipe that directs water to the floor or to another approved location.

(f) Adequate safeguards must be taken to protect children who may be at risk for injury from electrical outlets, extension cords, and heat-producing devices.

(g) The foster home must have a working landline telephone and it must be operable when there is a power outage for emergency or general communication to all in the home. The home must have emergency phone numbers readily accessible and in close proximity to the phone.

(h) The foster provider must store all medications, poisonous chemicals, and cleaning materials in a way that prevents access by children.

(i) The foster provider must restrict children's access to potentially dangerous animals. Only domestic animals must be kept as pets. Pets must be properly cared for and supervised.

(j) Sanitation for household pets and other domestic animals must be adequate to prevent health hazards. Proof of rabies or other vaccinations as required by local ordinances, must be available to SPD upon request;

(k) The foster provider must take appropriate measures to keep the house and premises free of rodents and insects.

(l) The foster provider and members of the household must store any ammunition and firearms, unloaded, in separate locked places. Trigger locks alone are not approved as the sole source of locking firearms. The foster provider must notify the certifier within one working day whenever a firearm is brought to the premises.

(m) Loaded firearms must not be carried in any vehicle used while transporting a child in foster care unless a law enforcement officer is transporting the child.

(n) Ammunition must be kept in a locked container while transporting the child.

(o) Law enforcement officers are exempt from sections (4)(l)-(4)(n) of this rule only when they are complying with their law enforcement agency's firearm safety procedures.

(p) The foster provider must have first aid supplies in the home in a designated place easily accessible to adults.

(q) There must be emergency access to any room that has a lock.

(r) An operable flashlight, at least one per floor, must be readily available in case of emergency.

(s) House or mailbox numbers must be clearly visible and easy to read for easy identification by emergency vehicles.

(t) Use of video monitors must only be used as indicated in the ISP or Behavior Support Plan.

(5) FIRE SAFETY.

(a) Smoke detectors must be installed in accordance with manufacturer's instructions, equipped with a device that warns of low battery, and maintained to function properly.

(A) Smoke detectors must be installed in each bedroom, adjacent hallways leading to the bedrooms, common living areas, basements, and at the top of every stairway in multi-story homes.

(B) Ceiling placement of smoke detectors is recommended. If wall-mounted, the smoke detectors must be between 6" and 12" from the ceiling and not within 12" of a corner.

(b) At least one fire extinguisher, minimally rated 2:A:10:B:C, must be visible and readily accessible on each floor, including basements. A qualified professional who is well versed in fire extinguisher maintenance must inspect every fire extinguisher at least once per year. All recharging and hydrostatic testing must be completed by a qualified entity properly trained and equipped for this purpose.

(c) Use of space heaters must be limited to only electric space heaters equipped with tip-over protection. Space heaters must be plugged directly into the wall. No extension cords must be used with such heaters. No free-standing kerosene, propane or liquid fuel space heaters must be used in the foster home.

(d) An emergency evacuation plan must be developed, posted and rehearsed at least once every 90 days with at least one drill practice per year occurring during sleeping hours. Alternate caregivers and other staff must be familiar with the emergency evacuation plan, and new children placed in care must be familiar with the emergency evacuation plan within 24 hours. Fire drill records must be retained for one year.

(A) Fire drill evacuation rehearsal must document the date, time for full evacuation, location of proposed fire, and names of all persons participating in the evacuation rehearsal.

(B) The foster provider must be able to demonstrate the ability to evacuate all children from the home within three minutes.

(e) Foster homes must have two unrestricted exits in case of fire. A sliding door or window that can be used to evacuate children can be considered a usable exit.

(A) Barred windows or doors used for possible exit in case of fire must be fitted with operable quick release mechanisms.

(B) Main, second, and third floor or basement bedrooms must have a secondary exit that allows safe and direct exit to the ground.

(f) Every bedroom used by children in care must have at least one operable window, of a size that allows safe rescue, with safe and direct exit to the ground, or a door for secondary means of escape or rescue.

(g) All external and indoor doors must have simple hardware with an obvious method of operation that allows for safe evacuation from the home. Homes with one or more individuals that are known to leave their place of



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residence without permission must have a functional and activated alarm system to alert the caregiver.

(h) Fireplaces and wood stoves must include barriers to keep children away from exposed heat sources.

(i) Solid or other fuel-burning appliances, stoves or fireplaces must be installed according to manufacturer's specifications and under permit, where applicable. All applicants applying for a new child foster home certificate after July 1, 2007 must have at least one carbon monoxide sensor installed in the home in accordance with manufacturer's instructions if the home has solid or other fuel-burning appliances, stoves or fireplaces. All foster providers certified prior to July 1, 2007 and moving to a new location that uses solid or other fuel-burning appliances, stoves or fireplaces, must install a carbon monoxide sensor in the home in accordance with manufacturer's instructions prior to being certified at the new location.

(j) Chimneys must be inspected at the time of initial certification and if necessary the chimney must be cleaned. Chimneys must be inspected annually, unless the fireplace and or solid fuel-burning appliance was not used through the year of certification and will not be used in the future.

(k) A signed statement by the foster provider and certifier assuring that the fireplace and or solid fuel-burning appliance will not be in use must be submitted to SPD with the renewal application if a chimney inspection will not be completed.

(l) Flammable and combustible materials must be stored away from any heat source.

## (6) SANITATION AND HEALTH.

(a) A public water supply must be utilized if available. If a non-municipal water source is used, it must be tested for coliform bacteria by a certified agent yearly, and records must be retained for two years. Corrective action must be taken to ensure potability.

(b) All plumbing must be kept in good working order. If a septic tank or other non-municipal sewage disposal system is used, it must be in good working order.

(c) The foster provider must use only pasteurized liquid or powdered milk for consumption by children in care.

(d) Garbage and refuse must be suitably stored in readily cleanable, rodent proof, covered containers, and removed weekly.

## (e) Smoking:

(A) The foster provider must not provide tobacco products in any form to children under the age of 18 placed in their home.

(B) Foster children must not be exposed to second hand smoke in the foster home or when being transported.

## (7) TRANSPORTATION SAFETY.

(a) The foster provider must ensure that safe transportation is available for children to access schools, recreation, churches, scheduled medical care, community facilities and urgent care.

(b) If there is not a licensed driver and vehicle at all times there must be a plan for urgent and routine transportation.

(c) The foster provider must maintain all vehicles used to transport children in a safe operating condition and must ensure that a first aid kit is in each vehicle.

(d) All motor vehicles owned by the foster provider and used for transporting children must be insured to include liability.

(e) Only licensed adult drivers must transport children in care in motor vehicles that are insured to include liability.

(f) When transporting children in foster care, the driver must ensure that all children in foster care use seat belts or appropriate safety seats. Car seats or seat belts must be used for transporting all children in accordance with the Department of Transportation under ORS 815.055.

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

Stats. Implemented: ORS 443.830 & 443.835

Hist.: MHD 15-2000(Temp), f. & cert. ef. 11-30-00 thru 5-28-01; MHD 3-2001, f. 5-25-01, cert. ef. 5-28-01; Renumbered from 309-046-0210, SPD 34-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 10-2007, f. 6-27-07, cert. ef. 7-5-07

## 411-346-0210

### Variance

(1) SPD may grant a variance to these rules based upon demonstration by the foster provider that an alternative method or different approach provides equal or greater program effectiveness and does not adversely impact the welfare, health, safety or rights of the child.

(2) The foster provider requesting a variance must submit, to the CDDP, a SPD variance request form that contains the following:

(a) The section of the rule from which the variance is sought;

(b) The reason for the proposed variance;

(c) The alternative practice, service, method, concept or procedure proposed; and

(d) If the variance applies to an individual's services, evidence that the variance is consistent with a currently approved ISP.

(3) The CDDP will forward the signed variance request form to SPD, within 30 days of receipt of the request, indicating their position on the proposed variance.

(4) The Administrator, or designee, may approve or deny the request for a variance.

(5) SPD will notify the foster provider and the CDDP of the decision. SPD will send this notice, within 30 calendar days of receipt of the request, with a copy to other relevant DHS programs or offices.

(6) Any grievance of a denial for a variance request must be made in writing within 30 days to the Administrator with a copy sent to the CDDP. The Administrator's, or designee's, decision will be final.

(7) SPD will determine the duration of the variance.

(8) Granting a variance does not set a precedent that must be followed by the child-placing agency when evaluating subsequent requests for variances.

(9) The foster provider may implement a variance only after written approval from the Department.

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

Stats. Implemented: ORS 443.830 & 443.835

Hist.: MHD 15-2000(Temp), f. & cert. ef. 11-30-00 thru 5-28-01; MHD 3-2001, f. 5-25-01, cert. ef. 5-28-01; Renumbered from 309-046-0210, SPD 34-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 10-2007, f. 6-27-07, cert. ef. 7-5-07; SPD 10-2007, f. 6-27-07, cert. ef. 7-5-07

## 411-346-0220

### Inactive Referral Status; Denial, Suspension, Revocation, Refusal to Renew

(1) INACTIVE REFERRAL STATUS. SPD may require that a foster provider go on inactive referral status. Inactive referral status is a period, not to exceed 12 months or beyond the duration of the foster provider's current certificate, when during that time no agency will refer additional children to the home and the provider will not accept additional children. The foster provider may request to be placed on inactive referral status. The certifier may recommend that SPD initiate inactive referral status.

(a) SPD may place a foster provider on inactive referral status for reasons including, but not limited to the following:

(A) SPD or DHS-CW is currently assessing an allegation of abuse in the home.

(B) The special needs of the children currently in the home require so much of the foster provider's care and attention that additional children should not be placed in the home.

(C) The foster provider has failed to meet individualized training requirements or SPD has asked the foster provider to obtain additional training to enhance his or her skill in caring for the children placed in the home.

(D) The family or members of the household are experiencing significant family or life stress or changes in physical or mental health conditions that may be impairing their ability to provide care. Examples include, but are not limited to:

(i) Separation or divorce and relationship conflicts;

(ii) Marriage;

(iii) Death;

(iv) Birth of a child;

(v) Adoption;

(vi) Employment difficulties;

(vii) Relocation;

(viii) Law violation; or

(ix) Significant changes in the care needs of their own family members (children or adults).

(b) SPD will notify the foster provider immediately upon placing them on inactive referral.

(c) Within 30 days of initiating inactive referral status, SPD will send a letter to the foster provider that confirms the inactive status, states the reason for the status, and the length of inactive referral status.

(d) When the foster provider initiates inactive referral status, the inactive status ends at the request of the foster provider and when SPD has determined the conditions that warranted the inactive referral status have been resolved.

(A) There must be no conditions in the home that compromise the safety of the children already placed in the home.

(B) If applicable, a mutually agreed upon plan must be developed to address the issues prior to resuming active status.

(C) The foster provider must be in compliance with all certification rules, including training requirements, prior to a return to active status.

(2) DENIAL, SUSPENSION, REVOCATION, REFUSAL TO RENEW.

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(a) SPD will deny, suspend, revoke or refuse to renew a child foster care certificate where it finds there has been substantial failure to comply with these rules.

(b) Failure to disclose requested information on the application or providing falsified, incomplete or incorrect information on the application will constitute grounds for denial or revocation of the certificate.

(c) SPD will deny, suspend, revoke or refuse to renew a certificate if the foster provider fails to submit a plan of correction, implement a plan of correction, or comply with a final order of SPD.

(d) Failure to comply with OAR 411-346-0200(5) (Environmental Standards) may constitute grounds for denial, revocation, or refusal to renew.

(e) SPD may suspend the child foster home certificate where imminent danger to health or safety of individuals exists.

(f) Suspension will result in the removal of children placed in the foster home and no placements will be made during the period of suspension.

(g) The applicant or foster provider whose certificate has been denied or revoked may not reapply for certification for five years after the date of denial or revocation.

(h) SPD will provide the applicant or the foster provider a written notice of denial, suspension or revocation that states the reason for such action.

(i) Such revocation, suspension or denial will be done in accordance with the rules of SPD and ORS chapter 183 that governs contested cases.

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

Stats. Implemented: ORS 443.830 & 443.835

Hist.: MHD 15-2000(Temp), f. & cert. ef. 11-30-00 thru 5-28-01; MHD 3-2001, f. 5-25-01, cert. ef. 5-28-01; Renumbered from 309-046-0220, SPD 34-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 10-2007, f. 6-27-07, cert. ef. 7-5-07

## 411-346-0230

### Appeals

(1) Upon written notice of denial, suspension, revocation or non-renewal of a certificate from SPD, an applicant or foster provider may request an informal conference to appeal the decision. An informal conference is a requirement before a contested hearing. The written request must be submitted to the Assistant Administrator, or designee, of SPD.

(2) The written request must be submitted within ten days of the denial, suspension, revocation or non-renewal notification date and must specifically state the reasons for the appeal. The applicant or foster provider must submit documentation and explain the basis for the appeal at the informal conference. Following the informal conference, SPD will notify the applicant or foster provider of its decision by mail.

(3) No judicial review is available following a decision from an informal conference and appeals process with SPD. If an applicant or foster provider is not satisfied with the decision rendered by SPD during the informal conference, the applicant or foster provider may request a contested case hearing pursuant to ORS 183.413-183.470. The applicant or foster provider must notify SPD in writing of the request for a contested case hearing within ten days of the decision of the informal conference. The request for the contested case hearing must specifically state the reason for requesting the hearing.

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

Stats. Implemented: ORS 443.830 & 443.835

Hist.: MHD 3-2001, f. 5-25-01, cert. ef. 5-28-01; Renumbered from 309-046-0240, SPD 34-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 10-2007, f. 6-27-07, cert. ef. 7-5-07

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**Department of Justice**  
**Chapter 137**

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

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

**Filed with Sec. of State:** 7-2-2007

**Certified to be Effective:** 7-2-07

**Notice Publication Date:** 6-1-07

**Rules Amended:** 137-055-1020, 137-055-1160, 137-055-3240

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

**Rules Coordinator:** Carol Riches—(503) 986-6240

## 137-055-1020

### Child Support Program Definitions

The following definitions apply to OAR 137-055-1040 through 137-055-7190, inclusive:

(1) Unless otherwise stated, administrator means either the Administrator of the Division of Child Support of the Department of Justice or a district attorney, or the administrators or a district attorneys authorized representative.

(2) "Assignee" means the Department of Human Services (DHS), the Division of Child Support, Oregon Youth Authority (OYA) or equivalent agencies in any other state or Tribe to which support rights for a person are assigned.

(3) "Assignment" or Assigned means all or a portion of support payments owed to a person will be retained by an assignee if such person or beneficiary of such person is receiving assistance in the form of Temporary Assistance for Needy Families (TANF) cash assistance, foster care, or OYA services. Support payments will be distributed per OAR 137-055-6022. There is also an assignment of rights to medical support for reimbursement of health care costs for any person who has been granted medical assistance.

(4) "Beneficiary" means any child, spouse or former spouse for whom an obligor has been ordered (or has agreed) to pay support, under a court order, an administrative order, or a voluntary agreement.

(5) Child Support Award means a money award or administrative order that requires the payment of child support. Prior to January 5, 2004, this was referred to as a money judgment.

(6) Child Support Program or CSP is the program authorized under title IV-D of the Social Security Act to provide child support enforcement services required by federal and state law. The CSP director in Oregon is the Administrator of the Division of Child Support. The CSP includes the Division of Child Support and those district attorneys that contract to provide services described in ORS 25.080.

(7) "Class Order" means a support order for multiple children that does not specify an amount of support per child and requires the payment of the entire amount until the last child attains majority or until the order is prospectively modified.

(8) "Court Order" means any judgment or order of the court requiring an obligor to provide child or spousal and/or health care coverage, for specified beneficiaries.

(9) "Courtordered Amount", or "COA", means the periodic payment amount, usually monthly, ordered by administrative process or by a court for support. The COA can be either the amount for each beneficiary on a support case, or the total amount for all beneficiaries in a single support case.

(10) "Department of Human Services, or DHS, is the state's health and human services agency. DHS is responsible for public assistance programs such as: Temporary Assistance for Needy Families (TANF), Food Stamps, child-protective services, foster care and adoption programs, the Oregon Health Plan and Medicaid.

(11) "District Attorney", or "DA", means the district attorney for an Oregon county. In most Oregon counties, the DA is responsible for providing support enforcement services, when requested, on all support cases where no support is assigned to the state.

(12) Division of Child Support, or DCS, is the Division of Oregon's Department of Justice that is responsible for:

(a) Establishing paternity, obtaining judgments for arrears, and for establishing and enforcing support obligations, on behalf of all children who:

(A) Are receiving or have formerly received TANF cash assistance, foster care, or OYA services, or who have support assigned to the State of Oregon;

(B) Are receiving TANF, or who have support assigned to another state, in cases where an obligor or alleged father resides or works in Oregon; or

(C) Are under the enforcement jurisdiction of an Oregon county that has contracted its support enforcement responsibilities to DCS, in lieu of having the county District Attorney perform these responsibilities.

(b) Accounting and distribution of child support payments as the state disbursement unit.

(13) "Guidelines" refers to the guidelines, the formula, and related provisions established by DCS, in Oregon Administrative Rules 137-050-0320 through 137-050-0490, for determining child support award amounts in Oregon.

(14) "Income Withholding" means a judicial or administrative process under which an obligor's employer, trustee, or other provider of

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income is ordered to withhold a specified percentage, or a specified amount, from each and every paycheck or benefit payment of an obligor, for the purpose of paying current and/or pastdue support. Income withholding is distinguished from garnishment as follows: income withholding will occur continuously under a single order and is not subject to claim of exemption; a garnishment occurs for only a limited duration under a single writ and is subject to certain exemptions provided by law.

(15) IV-A refers to Title IV-A of the Social Security Act which is the specific provision that gives grants to states and Tribes for aid and services to needy families with dependent children (see TANF). Applicants for assistance from IV-A programs are automatically referred to their state IV-D agency in order to identify and locate the non-custodial parent, establish paternity and/or a child support order, and/or obtain child support payments.

(16) IV-D refers to Title IV-D of the Social Security Act which requires each state to create a program to locate non-custodial parents, establish paternity, establish and enforce child support obligations, and collect and distribute support payments. Recipients of IV-A (TANF), IV-E (foster care) and Oregon Youth Authority (OYA) assistance are referred to their state's IV-D child support program. States must also accept applications from families who do not receive assistance, if requested, to assist in collection of child support. Title IV-D also established the Federal Office of Child Support Enforcement.

(17) IV-E refers to Title IV-E of the Social Security Act which established a Federal-State program known as Foster Care that provides financial support to a person, family, or institution that is raising a child or children that is not their own. The funding for IV-E Foster Care programs is primarily from Federal sources.

(18) Judgment Lien means the effect of a judgment on real property for the county in which the judgment is entered, or such other county where the lien is recorded, and includes any support arrearage lien attaching to real property.

(19) Judgment Remedy means the ability of a judgment creditor to enforce a judgment, including enforcement through a judgment lien.

(20) Legal proceeding means any action related to the support order that requires service of documents on the parties. For the purposes of OAR 137-055-1140, 137-055-1160 and 137-055-1180, legal proceeding means a proceeding initiated by the administrator.

(21) Money Award means a judgment or portion of a judgment that requires the payment of money. A money award will always refer to a sum certain and will not require a payment in installments.

(22) Oregon Youth Authority, or OYA, is the State of Oregon agency responsible for the supervision, management, and administration of state parole and probation services, community out-of-home placements, and youth correction facilities for youth offenders, and other functions related to state programs for youth corrections.

(23) Party means an obligor, obligee, a child attending school under ORS 107.108 and OAR 137-055-5110, and includes any person who has been joined to the proceeding.

(24) "Support" means cash payments, health care coverage, or other benefits that a person has been ordered by a court or by administrative process, or has voluntarily agreed, to provide for the benefit and maintenance of another person.

(25) Support Arrearage Lien means a lien that attaches to real property when an installment becomes due under the terms of a support award and is not paid.

(26) Support Award means a money award or administrative order that requires the payment of child or spousal support.

(27) Support Order means a judgment or order, whether temporary, final or subject to modification, which reflects an obligation to contribute to the support of a child, a spouse or a former spouse, and requires an obligor to provide monetary support, health care, arrears or reimbursement. A Support Order may include related costs and fees, interest, income withholding, attorney fees and other relief.

(28) TANF means Temporary Assistance for Needy Families, a public assistance program which provides case management and cash assistance to low-income families with minor children. It is designed to promote personal responsibility and accountability for parents. The goal of the program is to reduce the number of families living in poverty through employment services and community resources. Title IV-A of the Social Security Act is the specific provision that gives grants to states and Tribes for aid and services to needy families with dependent children.

(29) Tiered order means an order which includes an amount of support to be paid if an adult child becomes a child attending school under ORS 107.108 and OAR 137-055-5110.

(30) Title XIX, popularly known as Medicaid, refers to Title XIX of the Social Security Act which mandates health care coverage by states for TANF recipients and certain other means-tested categories of persons. Within broad national guidelines which the federal government provides, each state: establishes its own eligibility standards; determines the type, amount, duration, and scope of services; sets the rate of payment for services; and administers its own program.

Stat. Auth.: ORS 18.005, 180.345  
Stats. Implemented: ORS 25.080

Hist.: AFS 10-1990, f. 3-14-90, cert. ef. 4-1-90; AFS 14-1990, f. & cert. ef. 6-7-90; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0001; AFS 28-2001, f. 12-28-01, cert. ef. 1-1-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-1020; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-1020; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; DOJ 1-2006, f & cert. ef. 1-3-06; DOJ 5-2006, f. 6-29-06, cert. ef. 7-3-06; DOJ 1-2007, f. & cert. ef. 1-2-07; DOJ 5-2007, f. & cert. ef. 7-2-07

## 137-055-1160

### Confidentiality — Finding of Risk and Order for Nondisclosure of Information

(1) For the purposes of this rule in addition to the definitions found in OAR 137-055-1020, the following definitions apply:

(a) Claim of risk for nondisclosure of information means a claim by a party to a paternity or support case made to the administrator, an administrative law judge or the court that there is reason to not contain or disclose the information specified in ORS 25.020(8)(a) or OAR 137-055-1140(6)(a) because the health, safety or liberty of a party or child would unreasonably be put at risk by disclosure of such information;

(b) Finding of risk and order for nondisclosure of information means a finding and order by the administrator, an administrative law judge or the court, which may be made ex parte, that there is reason to not contain or disclose the information specified in ORS 25.020(8)(a) or OAR 137-055-1140(6)(a) because the health, safety or liberty of a party or child would unreasonably be put at risk by disclosure of such information.

(2) A claim of risk for nondisclosure of information may be made to the administrator by a party at any time that a child support case is open. Forms for making a claim of risk for nondisclosure of information will be available from all child support offices and be made available to other community resources. At the initiation of any legal process that would result in a judgment or administrative order establishing paternity or including a provision concerning support, the administrator will provide parties an opportunity to make a claim of risk for nondisclosure of information.

(3)(a) When a party makes a written and signed claim of risk for nondisclosure of information pursuant to section (2) of this rule, the administrator will make a finding of risk and order for nondisclosure of information unless the party does not provide an address of record pursuant to section (5) of this rule;

(b) When a party is accepted into the Address Confidentiality Program (ACP), the administrator will make a finding of risk and order for nondisclosure of information. The party's address of record will be the ACP substitute address designated by the Attorney General pursuant to OAR 137-079-0150.

(4) An administrative law judge will make a finding of risk and order for nondisclosure of information when a party makes a claim of risk for nondisclosure of information in a hearing unless the party does not provide an address of record pursuant to section (5) of this rule.

(5) A party who makes a claim of risk for nondisclosure of information under subsection (3)(a) or section (4) must provide an address of record that is releasable to the other party(ies) in legal proceedings. The claim of risk for nondisclosure of information form provided to the party by the administrator must have a place in which to list an address of record. If a requesting party does not provide an address of record, a finding of risk and order for nondisclosure of information will not be made.

(6) When an order for nondisclosure of information has been made, the administrator must ensure that all pleadings, returns of service, orders or any other documents that would be sent to the parties or would be available as public information in a court file does not contain or must have deleted any of the identifying information specified in ORS 25.020(8)(a) or OAR 137-055-1140(6)(a). Any document sent to the court that contains any of the information specified in ORS 25.020(8)(a) or OAR 137-055-1140(6)(a) must be in a sealed envelope with a cover sheet informing the court of the confidential nature of the contents.

(7) A finding of risk and order for nondisclosure of information entered pursuant to this rule will be documented on the child support case file and will remain in force until such time as the ACP participant or party who requested a claim of risk retracts the claim or requests dismissal in writing.

# ADMINISTRATIVE RULES

(8) A party who requested a claim of risk may retract the claim on a form provided by the administrator. When a signed retraction form is received by the administrator, the administrator will enter, or will ask the court to enter, a finding and order terminating the order for nondisclosure of information.

(9) Any information previously protected under an order for nondisclosure of information will be subject to disclosure when the order for nondisclosure of information is terminated. The retraction form provided by the administrator will advise the requestor that previously protected information may be released to the other party(ies).

(10) In cases where the administrator is not involved in the preparation of the support order or judgment establishing paternity, or when child support services under ORS 25.080 are not being provided, any claim of risk for nondisclosure of information pursuant to ORS 25.020 must be made to the court.

(11) Notwithstanding section (5) of this rule, where the court has made a finding of risk and order for nondisclosure of information and the case is receiving or subsequently receives child support services pursuant to ORS 25.080, the administrator will implement the courts finding pursuant to this rule. In such a case, if the party fails to provide an address of record within 30 days of a written request from the administrator, the administrator will use, in order of preference, the partys mailing, contact or residence address as the address of record. The written request from the administrator must advise the party that if no address of record is provided within 30 days, the administrator will use the partys mailing, contact or residence address as the address of record, and the new address of record may be released to the other party(ies).

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

Stat. Auth.: ORS 25.020 & 180.345

Stats. Implemented: ORS 25.020, 192.820 – 192-858

Hist.: AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 19-1998, f. 10-5-98, cert. ef. 10-7-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0291; SSP 4-2003, f. 2-25-03, cert. ef. 3-1-03; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-1160; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-1160; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; DOJ 12-2004, f. & cert. ef. 10-1-04; DOJ 8-2005(Temp), f. & cert. ef. 9-1-05 thru 2-17-06; DOJ 1-2006, f. & cert. ef. 1-3-06; DOJ 1-2007, f. & cert. ef. 1-2-07; DOJ 5-2007, f. & cert. ef. 7-2-07

## 137-055-3240

### Establishment of Arrears on Oregon Order Support Cases

(1) The administrator will establish arrears on support cases when the following conditions have been met:

(a) There has been an application for support enforcement services from a party in the case or there has been a mandatory referral for support enforcement services by an order of the court or because TANF cash assistance, Medicaid, foster care or Oregon Youth Authority services have been provided to the family;

(b) There is an Oregon support order or an order from another state has been registered in Oregon;

(c) The administrator has determined that there is a need to establish the arrears balance on the case because:

(A) The administrator has no record or an incomplete accounting case record;

(B) An establishment of income withholding has been requested by an obligor or obligee pursuant to ORS 25.381; or

(C) There is a reason which necessitates that the arrears on the case record be reestablished; and

(D) There has been a request for arrears establishment by a party.

(2) A party requesting establishment or reestablishment of arrears must furnish an accounting that shows the payment history in as much detail as is necessary to demonstrate the periods and amounts of any arrears.

(3) Where arrears had earlier been established, through a process which afforded notice and an opportunity to contest to the parties, the arrears from that period will not be reestablished except that if interest had not been included in the establishment, interest may be added for that period.

(4) The enforcing agency may establish or reestablish arrears by either:

(a) Use of the judicial process authorized under ORS 25.167; or

(b) Use of the administrative process authorized under ORS 416.429.

(5) Upon completion of the arrears establishment process in subsection (4)(a) or subsection (4)(b) of this rule, the case record will be adjusted to reflect the new arrears amount.

(6) Notwithstanding any other provision of this rule, when applicable arrears will be established pursuant to ORS 25.015.

(7) Arrears for a child attending school as defined in OAR 137-055-5110, will be as set forth in OAR 137-055-5120.

Stat. Auth.: ORS 180.345

Stats. Implemented: ORS 25.015, 25.167, 25.381, 416.429

Hist.: AFS 5-1996, f. 2-21-96, cert. ef. 3-1-96; AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0047; AFS 2-2001, f. 1-31-01, cert. ef. 2-1-01; AFS 15-2002, f. 10-30-02, ef. 11-1-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-3240; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-3240; DOJ 8-2005(Temp), f. & cert. ef. 9-1-05 thru 2-17-06; DOJ 1-2006, f. & cert. ef. 1-3-06; DOJ 5-2007, f. & cert. ef. 7-2-07

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

**Rule Caption:** Implement rules for Oregon's Fire Safer Cigarette program.

**Adm. Order No.:** OSFM 2-2007(Temp)

**Filed with Sec. of State:** 7-2-2007

**Certified to be Effective:** 7-2-07 thru 12-28-07

**Notice Publication Date:**

**Rules Adopted:** 837-035-0000, 837-035-0020, 837-035-0040, 837-035-0060, 837-035-0080, 837-035-0100, 837-035-0120, 837-035-0140, 837-035-0160, 837-035-0180, 837-035-0200, 837-035-0220, 837-035-0240, 837-035-0260, 837-035-0280, 837-035-0300, 837-035-0320, 837-035-0340

**Subject:** The purpose of these rules is to implement standards for Oregon's Fire Safer Cigarette program.

**Rules Coordinator:** Pat Carroll—(503) 373-1540 ext 276

### 837-035-0000

#### Purpose and Scope

(1) The purpose of these rules is to implement the standards, policies and procedures for *fire standard compliant (reduced ignition propensity)* cigarettes.

(2) The scope of these rules applies to the implementation of the statutes of 2007 House Bill 2163, relating to *fire standard compliant (reduced ignition propensity)* cigarettes.

Stat. Auth.: Ch. 34, 2007 OL

Stats. Implemented: Ch. 34, 2007 OL

Hist.: OSFM 2-2007(Temp), f. & cert. ef. 7-2-07 thru 12-28-07

### 837-035-0020

#### Effective Dates

OAR 837-035-0000 through 837-035-0340 are effective upon date of filing.

Stat. Auth.: Ch. 34, 2007 OL

Stats. Implemented: Ch. 34, 2007 OL

Hist.: OSFM 2-2007(Temp), f. & cert. ef. 7-2-07 thru 12-28-07

### 837-035-0040

#### Definitions

For the purpose of these rules, the following definitions apply to OAR 837-035-0000 through 837-035-0340:

(1) "Authorized Representative of the State Fire Marshal" means an employee of the State Fire Marshal, as well as Assistants to the State Fire Marshal as defined in ORS 476.060.

(2) "Cigarette" means a roll for smoking:

(a) That is made wholly of tobacco, or of tobacco and any other substance, regardless of size, shape or flavoring or adulteration by or mixing with other ingredients, the wrapper of which is made of paper or other non tobacco materials; and

(b) That, because of its appearance, the type of tobacco used in the filler or its *packaging* and labeling, is likely to be offered to or purchased by consumers as a *cigarette*.

(3) "Distribute" means to do any of the following:

(a) *Sell cigarettes* or deliver *cigarettes* for sale by another person to consumers;

(b) Receive or retain more than 199 *cigarettes* at a place of business where the person receiving or retaining the cigarettes customarily *sells cigarettes* or offers *cigarettes* for sale to consumers;

(c) Place *cigarettes* in vending machines;

(d) *Sell* or accept orders for *cigarettes* to be transported from a point outside this state to a consumer within this state;

(e) Buy *cigarettes* directly from a *manufacturer* or *wholesale dealer* for resale in this state;

(f) Give *cigarettes* as a sample, prize, gift or other promotion.

(4) "Fire standard compliant" (FSC) *cigarette* means a *cigarette* that has been tested and meets the fire safety performance standard described in 2007 House Bill 2163.

# ADMINISTRATIVE RULES

(5) "Manufacturer" means:

(a) Any entity that produces, or causes the production of, *cigarettes* for sale in this state;

(b) An importer or first purchaser of *cigarettes* that intends to resell within this state *cigarettes* that were produced for sale outside this state; or

(c) A successor to an entity, importer or first purchaser described in paragraph (a) or (b) of this subsection.

(6) "Packaging" means, but is not limited to, *cigarette* soft packs, boxes, cartons and cases.

(7) "Quality control and assurance program" means laboratory procedures implemented to ensure that operator bias, systematic and nonsystematic methodological errors and equipment-related problems do not affect the results of testing.

(8) "Reduced ignition propensity" means meeting the fire safety performance standard described in 2007 House Bill 2163, when tested as described in 2007 House Bill 2163.

(9) "Reduced ignition propensity cigarette" means a *cigarette* that has been tested as described in 2007 House Bill 2163, and meets the fire safety performance standard described in 2007 House Bill 2163.

(10) "Repeatability" means the range of values within which the repeat results of ignition propensity testing by a single laboratory will fall 95 percent of the time.

(11) "Retail dealer" means a person, other than a *manufacturer* or *wholesale dealer* that engages in distributing *cigarettes*.

(12) "Sell" means to transfer, or agree to transfer, title or possession for a monetary or non-monetary consideration.

(13) "Transporter" means any person importing or transporting into this state, or transporting in this state, *cigarettes* obtained from a source located outside this state, or from any person not licensed as a distributor under ORS 323.005 to 323.482. It does not include a licensed distributor, a common carrier to whom is issued a certificate or permit by the United States Surface Transportation Board to carry commodities in interstate commerce, or to a carrier of federal tax-free *cigarettes* in bond, or any person transporting no more than 199 *cigarettes* at any one time.

(14) "Variety" means a type of *cigarette* marketed by the *manufacturer* as being distinct from other types of *cigarettes* on the basis of brand name, length, filter, wrapping, flavoring or other characteristics.

(15) "Wholesale dealer" means a person that *distributes cigarettes* to:

(a) A retail dealer or other person for resale; or

(b) A person that owns, operates or maintains *cigarette* vending machines on premises owned or operated by another person.

Stat. Auth.: Ch. 34, 2007 OL

Stats. Implemented: Ch. 34, 2007 OL

Hist.: OSFM 2-2007(Temp), f. & cert. ef. 7-2-07 thru 12-28-07

## 837-035-0060

### General

(1) All *cigarettes* sold or offered for sale in Oregon on or after January 1, 2008, must be *fire standard compliant (reduced ignition propensity)* as required by 2007 House Bill 2163.

(2) Initial written certification attesting the *cigarette variety* has been subjected to ignition propensity testing under 2007 House Bill 2163 and meets the fire safety performance standard under 2007 House Bill 2163, must be provided to the Oregon State Fire Marshal (OSFM) prior to selling *cigarettes*, unless the *cigarettes* were included on certification submitted to the State of New York before April 17, 2007. Refer to OAR 837-035-0080 for certification requirements.

(3) Re-certification of *cigarettes* is required after three years. Refer to OAR 837-035-0100 for re-certification requirements.

(4) In addition to the above listed requirements, *cigarette manufacturers*, wholesaler dealers and retailers who sell *cigarettes* in Oregon must also comply with:

(a) 2007 House Bill 2163;

(b) OAR 837-035-0000 through 837-035-0340;

(c) All applicable federal, state and local laws, rules and regulations pertaining to *cigarettes*.

Stat. Auth.: Ch. 34, 2007 OL

Stats. Implemented: Ch. 34, 2007 OL

Hist.: OSFM 2-2007(Temp), f. & cert. ef. 7-2-07 thru 12-28-07

## 837-035-0080

### Certification Requirements

(1) *Cigarette manufacturers* must submit written certification to the OSFM attesting the *cigarette variety* has been subjected to ignition propensity testing under 2007 House Bill 2163, and meets the fire safety performance standard under 2007 House Bill 2163 as proof that *cigarette varieties* have *reduced ignition propensity*, if the *cigarette varieties* were not includ-

ed on a certification submitted to the State of New York before April 17, 2007.

(2) Certifications are valid for three years from the date of receipt by the OSFM.

(3) Written certifications must fulfill the requirements of 2007 House Bill 2163, for each *cigarette variety*. In particular, certifications must contain the following information for each *variety* of *cigarette* listed:

(a) The brand name shown on the *cigarette* packaging;

(b) The style, such as light or ultralight;

(c) The length in millimeters;

(d) The circumference in millimeters;

(e) The flavor, such as menthol or chocolate, if applicable;

(f) Whether the *cigarette* is filtered or nonfiltered;

(g) A *packaging* description, such as soft pack or box;

(h) A description of the *packaging* marking approved by the OSFM under 2007 House Bill 2163;

(i) The name, address and telephone number of the laboratory conducting the ignition propensity testing, if other than the laboratory of the *manufacturer*;

(j) The date of the ignition propensity testing.

Stat. Auth.: Ch. 34, 2007 OL

Stats. Implemented: Ch. 34, 2007 OL

Hist.: OSFM 2-2007(Temp), f. & cert. ef. 7-2-07 thru 12-28-07

## 837-035-0100

### Recertification Requirements

(1) *Manufacturers* must provide written re-certification to the OSFM by either April 17, 2010, (if the OSFM accepted the *cigarette variety* as *fire standard compliant (reduced ignition propensity)* because the *variety* was certified to the State of New York before April 17, 2007) or three years after the certification was received by the OSFM, and each three year period afterward.

(2) The re-certification must fulfill the requirements of 2007 House Bill 2163, for each *cigarette variety*.

Stat. Auth.: Ch. 34, 2007 OL

Stats. Implemented: Ch. 34, 2007 OL

Hist.: OSFM 2-2007(Temp), f. & cert. ef. 7-2-07 thru 12-28-07

## 837-035-0120

### Test Method

(1) *Cigarette varieties* must be tested using the American Society for Testing & Materials (ASTM) International specification E2187-04, Standard Test Method for Measuring the Ignition Strength of *Cigarettes* or another test method approved by the OSFM consistent with 2007 House Bill 2163.

(2) The laboratory conducting ignition propensity testing must have a *quality control and assurance program*. The program must ensure the testing *repeatability* value for all test trials used to certify a *cigarette variety*. The repeatability value of ignition propensity testing may not be greater than 0.19.

(3) Ignition propensity testing used in a *manufacturer* certification submitted to the OSFM must be conducted in a laboratory accredited under:

(a) The International Organization for Standardization/International Electrotechnical Commission ISO/IEC 17025 Standard of International Organization for Standardization, or

(b) A standard recognized by the OSFM consistent with 2007 House Bill 2163.

(4) Refer to 2007 House Bill 2163 for all testing and quality control requirements.

(5) A *cigarette manufacturer* may propose a test method and performance standard if OSFM determines that a *variety* of *cigarettes* cannot be tested as described in OAR 837-035-0120(1). Upon approval by the OSFM, the *manufacturer* may use the test method and performance standard to certify the *cigarette*.

Stat. Auth.: Ch. 34, 2007 OL

Stats. Implemented: Ch. 34, 2007 OL

Hist.: OSFM 2-2007(Temp), f. & cert. ef. 7-2-07 thru 12-28-07

## 837-035-0140

### Performance Standard

(1) As required by 2007 House Bill 2163, no more than 25 percent of the *cigarettes* tested in a complete test trial conducted in accordance with an ignition propensity testing method described in 2007 House Bill 2163, may exhibit full length burns.

(2) Each *cigarette* listed in a certification using lowered permeability bands in the *cigarette* paper to achieve compliance must have (for *cigarettes* on which the bands are not positioned by design):

# ADMINISTRATIVE RULES

(a) At least two nominally identical bands on the paper surrounding the tobacco column; and

(b) At least one complete band must be located at least 15 millimeters from the lighting end of the *cigarette*.

(3) For *cigarettes* on which the bands are positioned by design, there must be:

(a) At least two bands fully located at least 15 millimeters from the lighting end and 10 millimeters from the filter end of the tobacco column; or

(b) 10 millimeters from the labeled end of the tobacco column for a non-filtered *cigarette*.

Stat. Auth.: Ch. 34, 2007 OL

Stats. Implemented: Ch. 34, 2007 OL

Hist.: OSFM 2-2007(Temp), f. & cert. ef. 7-2-07 thru 12-28-07

## 837-035-0160

### Packaging Marking

(1) *Manufacturers* must mark all *packaging* for *cigarettes* to indicate that *cigarettes* sold in this state are *fire standard compliant* (reduced ignition propensity). A *manufacturer* must submit to the State Fire Marshal a proposal for marking *cigarette packaging*. Proposed *packaging* marking must be in eight-point font or larger and consist of one of the following:

(a) Modification of the universal product code to indicate a visible mark printed at or around the universal product code. The mark may consist of alphanumeric or symbolic characters permanently printed, stamped, engraved or embossed in conjunction with the universal product code;

(b) A visible combination of alphanumeric or symbolic characters permanently stamped, engraved or embossed upon the *packaging* or cellophane wrapping;

(c) Printed, stamped, engraved or embossed test indicating the *cigarettes* meet the fire safety performance standard established in 2007 House Bill 2163.

(2) The OSFM will approve or disapprove the proposal for *packaging* marking, and *packaging* marking proposals not approved or denied by the OSFM within 10 days of receipt are deemed approved. In determining whether to approve or disapprove a proposal for *packaging* marking, the OSFM must:

(a) Give preference to *packaging* marking that is consistent with the *packaging* marking in use and approved for that *cigarette variety* in the State of New York; and

(b) Approve *packaging* marking with the letters "FSC" (signifying *fire standard compliant*).

(3) Violations of this section are subject to a civil penalty as referenced in OAR 837-035-0320.

Stat. Auth.: Ch. 34, 2007 OL

Stats. Implemented: Ch. 34, 2007 OL

Hist.: OSFM 2-2007(Temp), f. & cert. ef. 7-2-07 thru 12-28-07

## 837-035-0180

### Modification of Packaging Markings

(1) Any proposed modifications to *packaging* markings must be submitted to the OSFM for approval before use.

(2) Violations of this section are subject to a civil penalty as referenced in OAR 837-035-0320.

Stat. Auth.: Ch. 34, 2007 OL

Stats. Implemented: Ch. 34, 2007 OL

Hist.: OSFM 2-2007(Temp), f. & cert. ef. 7-2-07 thru 12-28-07

## 837-035-0200

### Manufacturer Requirements

(1) In addition to the requirements of this division, effective July 1, 2007, *manufacturers* may sell only *cigarettes* that are *fire standard compliant* (reduced ignition propensity) to Oregon wholesaler and retailer dealers.

(2) *Manufacturers* of any *cigarette varieties* not on a certification submitted to the State of New York before April 17, 2007, must submit written certification to the OSFM and their *wholesale dealers* ensuring their *cigarettes* are *fire standard compliant* (reduced ignition propensity).

(3) If a *manufacturer* makes any changes to a *cigarette* that are likely to alter the *cigarette's* compliance with the fire safety performance standard described in 2007 House Bill 2163, the *manufacturer* must retest to ensure the *cigarette* still is *fire standard compliant* (reduced ignition propensity) before distributing.

(4) *Manufacturers* must retain copies of all test data for at least three years, and provide test data to the OSFM or Attorney General upon request.

(5) *Manufacturers* must submit proposals for *packaging* marking to the OSFM for approval. Refer to OAR 837-035-0160 for *packaging* marking requirements.

(6) *Manufacturers* must provide enough copies of the *packaging* marking illustration to *wholesale dealers* to allow them to provide one copy to each *retail dealer*.

(7) Violations of this section are subject to a civil penalty as referenced in OAR 837-035-0320.

Stat. Auth.: Ch. 34, 2007 OL

Stats. Implemented: Ch. 34, 2007 OL

Hist.: OSFM 2-2007(Temp), f. & cert. ef. 7-2-07 thru 12-28-07

## 837-035-0220

### Wholesale Dealer Requirements

(1) *Wholesale dealers* must provide one copy of the *manufacturer's cigarette packaging* marking illustration to each *retail dealer*.

(2) Effective January 1, 2008, *wholesale dealers* may sell only *fire standard compliant/reduced ignition propensity cigarettes*.

(3) *Wholesale dealers* may house non-compliant *cigarettes* in Oregon, provided they are not to be sold in Oregon.

(4) Violations of this section are subject to a civil penalty as referenced in OAR 837-035-0320.

Stat. Auth.: Ch. 34, 2007 OL

Stats. Implemented: Ch. 34, 2007 OL

Hist.: OSFM 2-2007(Temp), f. & cert. ef. 7-2-07 thru 12-28-07

## 837-035-0240

### Retail Dealer Requirements

(1) Effective January 1, 2008, *retail dealers* may sell only *fire standard compliant/reduced ignition propensity cigarettes*.

(2) Violations of this section are subject to a civil penalty as referenced in OAR 837-035-0320.

Stat. Auth.: Ch. 34, 2007 OL

Stats. Implemented: Ch. 34, 2007 OL

Hist.: OSFM 2-2007(Temp), f. & cert. ef. 7-2-07 thru 12-28-07

## 837-035-0260

### Inspections

The OSFM or an *authorized representative* may inspect Oregon *wholesale dealers, agents, and retailers for compliance with 2007 House Bill 2163*, and this division. Inspections include *packaging, certification, cigarettes, and any other documents* to determine compliance with 2007 House Bill 2163.

Stat. Auth.: Ch. 34, 2007 OL

Stats. Implemented: Ch. 34, 2007 OL

Hist.: OSFM 2-2007(Temp), f. & cert. ef. 7-2-07 thru 12-28-07

## 837-035-0280

### Cooperative Agreements

The OSFM may enter into a cooperative agreement with any state or local agency allowing the agency to act as an *authorized representative* of the OSFM for enforcement purposes of this division.

Stat. Auth.: Ch. 34, 2007 OL

Stats. Implemented: Ch. 34, 2007 OL

Hist.: OSFM 2-2007(Temp), f. & cert. ef. 7-2-07 thru 12-28-07

## 837-035-0300

### Seizure of Non-Compliant Product

(1) The OSFM, or an *authorized representative*, may seize and make subject to forfeiture any *cigarette* that:

(a) Is not *fire standard compliant/reduced ignition propensity*;

(b) Bears a *packaging* marking not approved by the OSFM.

(2) If seized *cigarettes* are determined to be non-compliant, the *manufacturer* will be given the opportunity to inspect the *cigarettes* and *packaging*.

(3) Non-compliant *cigarettes* that have been forfeited must be destroyed by the OSFM only after allowing the *manufacturer* to inspect the *cigarettes* and *packaging*.

Stat. Auth.: Ch. 34, 2007 OL

Stats. Implemented: Ch. 34, 2007 OL

Hist.: OSFM 2-2007(Temp), f. & cert. ef. 7-2-07 thru 12-28-07

## 837-035-0320

### Civil Penalties

(1) The OSFM may impose civil penalties in accordance with ORS 183.745 for any violation of 2007 House Bill 2163, or OAR 837-035-0000 through 837-035-0340. Refer to the following penalty matrix for penalties established by 2007 House Bill 2163:

(a) Distributing or offering to sell non-compliant *cigarettes* to a wholesale or *retail dealer*: \$10,000 or five times the wholesale invoice cost of the *cigarettes* involved in the violation, whichever is greater;

(b) Distributing or offering to sell not more than 1,000 non-compliant *cigarettes* to consumers: \$500;

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(c) Distributing or offering to *sell* more than 1,000 non-compliant *cigarettes* to consumers: \$1,000 or five times the retail value of the *cigarettes* involved in the violation, whichever is greater.

(2) Each day a person *distributes* or offers to *sell cigarettes* after being notified by the OSFM that the distribution or offer to *sell cigarettes* is in violation of 2007 House Bill 2163, constitutes a separate violation and subjects the person to additional civil penalties.

(3) All monies collected from civil penalties are to be deposited to the Cigarette Fire Safety Fund of the OSFM.

Stat. Auth.: Ch. 34, 2007 OL

Stats. Implemented: Ch. 34, 2007 OL

Hist.: OSFM 2-2007(Temp), f. & cert. ef. 7-2-07 thru 12-28-07

## 837-035-0340

### Procedures, Hearings and Judicial Review

(1) Hearings are conducted according to ORS 183.413 through 183.470.

(2) The Attorney General may bring action for the OSFM to:

(a) Seek injunctive relief to prevent or end a violation;

(b) Recover civil penalty;

(c) Recover attorney fees and other enforcement costs and disbursements.

Stat. Auth.: Ch. 34, 2007 OL

Stats. Implemented: Ch. 34, 2007 OL

Hist.: OSFM 2-2007(Temp), f. & cert. ef. 7-2-07 thru 12-28-07

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**Department of Transportation,  
Highway Division  
Chapter 734**

**Rule Caption:** Procedures for the establishment of speed zones on certain public roads.

**Adm. Order No.:** HWD 3-2007

**Filed with Sec. of State:** 6-25-2007

**Certified to be Effective:** 6-25-07

**Notice Publication Date:** 5-1-07

**Rules Adopted:** 734-020-0014, 734-020-0016, 734-020-0017

**Rules Amended:** 734-020-0015

**Subject:** ORS 810.180 authorizes the Department of Transportation to conduct speed zone investigations and set speeds on most public roads and allows the Department to delegate, by rule, speed zoning authority for public paved low volume or public unpaved roads. 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. 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:** Lauri Salisbury—(503) 986-3171

## 734-020-0014

### Speed Zone Definitions

Definitions: The following definitions apply to OAR 734-020-0014 through 734-020-0017.

(1) "Average daily traffic" (ADT) means the total number of vehicles during a given time period greater than one day and less than one year, divided by the number of whole days in that time period.

(2) "Crash rate" means the number of crashes per million vehicle-miles (MVM) traveled on a section of road.

(3) "Department" means the Oregon Department of Transportation.

(4) "Eighty-fifth percentile speed" means the speed at or below which 85 percent of the motorists drive on a section of road for which speeds were measured.

(5) "Engineering study" means a documented analysis and evaluation of the pertinent information and applicable engineering principles.

(6) "Gravel road" means an unpaved road which has a running surface of small rock, gravel or other approved aggregate road surfacing material and may have a dust palliative applied.

(7) "Highway" means any road, street or thoroughfare that is maintained by a public agency (i.e., city, county, state, or federal) and open to travel by the public. Highway and road are synonymous.

(8) "Interested jurisdiction" means any governing agencies, other than the Road Authority, which may have interest in the speed on a highway by virtue of being within the city limits, or having responsibility for maintaining the highway.

(9) "Low volume road" means any road, street or thoroughfare which has an average daily traffic of less than 400 vehicles, and is open to travel by the public. State highways are not considered low volume roads, regardless of ADT.

(10) "Paved road" means a regularly maintained solidified hard surfaced road typically solid bituminous (asphalt concrete), oil mat or Portland cement concrete.

(11) "Road authority" means the governing agency which has the jurisdiction to place, maintain and operate traffic control devices as defined in Oregon Revised Statute 810.010.

(12) "Rural state highway" means a section of state highway that is outside the city limits of an incorporated city.

(13) "School zone exception" means a specific section of highway where a statutory school speed limit (20 mph) is posted as specified in ORS 811.111.

(14) "Speed zone" means a specific section of highway where a designated speed is posted under ORS 810.180.

(15) "Speed Zone Review Panel" means the hearings panel created in OAR 734-020-0015.

(16) "Transition speed zone" means a speed zone(s) established to make the change in legal speeds less abrupt for drivers. As an example, instead of going directly from a 55 mph section to a 25 mph section, it may be desirable to establish one or more transition speed zones in between, such as 45 mph and 35 mph.

(17) "Unpaved road" means a road which has a surface that does not meet the definition of a paved road. The road surface may be dirt, rock, gravel, or other non-solidified material and may have a dust palliative applied.

(18) "Written order" means the official document that delineates the roadway segment(s) and designates the speed in a speed zone or speed zones established. This is commonly known as a speed zone order.

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

Stats. Implemented: ORS 810.180

Hist.: HWD 3-2007, f. & cert. ef. 6-25-07

## 734-020-0015

### Establishment of Speed Zones on Public Roads Except Public Paved Low Volume or Public Unpaved Roads

(1) Purpose: This rule is adopted for the purpose of establishing speed zones on public roads by the Department and other road authorities under ORS 810.180. This rule applies to all public roads except for the establishment of speed limits on interstate highways under OAR 734-020-0010 or where the Department may delegate its authority to establish designated speeds on low volume or unpaved roads under ORS 810.180(5)(f). The delegation of authority for low volume roads and unpaved roads is covered in OAR 734-020-0016 and 734-020-0017.

(2) Speed Zone Criteria:

(a) An engineering study must be performed to determine the recommended speed for proposed speed zoning using the following criteria:

(A) The eighty-fifth percentile speed;

(B) The crash rate for the specific section of highway being considered;

(C) The average crash rate for similar functional classification highways (if available);

(D) The difference between the crash rate for the specific section being considered and the average crash rate for similar functional classification highways; and

(E) The computed speed, which is the eighty-fifth percentile speed minus the crash rate above the average rate as determined in paragraph (D) of this subsection.

(b) The following additional factors may be considered in the engineering study:

(A) Accesses;

(B) Crash history;

(C) Enforcement;

(D) Geometric features;

(E) Pedestrian and bicycle movements;

(F) Public testimony;

(G) Traffic volumes;

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(H) Type and density of adjacent land use; and

(I) Other applicable factors.

(3) Speed Zone Recommendation. The Department is subject to the following guidelines when determining the recommended speed:

(a) The recommended speed may be varied a maximum of 10 miles per hour above or below the computed speed on city streets, county roads and state highways within city limits.

(b) The recommended speed may not be varied, except under subsection (3) (c), more than five miles per hour above or below the computed speed on rural state highways.

(c) The recommended speed may be varied a maximum of 10 miles per hour below the computed speed on rural state highways for one or more the following reasons:

(A) The crash rate for the specific section exceeds the average crash rate for similar functional classification highways;

(B) There has been more than one fatality or serious injury crash in the last three years;

(C) The specific section meets the definition of a "business district" under ORS 801.170 or a "residence district" under ORS 801.430;

(D) There are residences, businesses, or other public service facilities that front the specific section, and the section is located within an area that has been identified by the Oregon Department of Land Conservation and Development as an Unincorporated Community, and is listed in the Survey of Oregon Unincorporated Communities;

(E) The specific section has pedestrian attractions such as businesses, schools, parks or other facilities and marked pedestrian crosswalks at unsignalized intersections or mid-block; or

(F) There is limited sight distance which has contributed to crashes or near misses.

(d) Transition speed zones should be considered when the difference between two adjoining posted speeds would otherwise exceed 20 miles per hour:

(A) The recommended speed for transition speed zones may exceed 10 miles per hour above or below the computed speed as deemed appropriate by the Department; and

(B) The Department is not restricted by subsections (a) through (c) of this section when determining the recommended speed for transition speed zones.

(e) The section length used for speed zoning should be at least one-quarter of a mile in length except transition speed zones may be a minimum of one thousand feet in length.

(4) Speed Zone Procedures:

(a) The Department of Transportation is subject to the following procedures while exercising its authority for speed zoning on city streets, county roads and state highways within city limits under ORS 810.180 unless otherwise provided under ORS 810.180:

(A) The road authority and interested jurisdiction, if any, must make written request to the State Traffic Engineer for the Department to perform an engineering study with respect to establishing a designated speed on a highway under ORS 810.180. The application must state the recommended designated speed for the highway or section of highway by the road authority and interested jurisdiction, if any;

(B) The Department must determine the recommended speed by performing or causing to be performed an engineering study;

(C) The Department, when requested by the road authority and interested jurisdiction, if any, may allow the requestors to perform or cause to be performed an engineering study of the roadway section under its own jurisdiction and remit a copy of the investigation to the Department for review. Refer to the Department for acceptable methodologies and procedures for an engineering study of speed zones;

(D) The Department must allow the road authority and interested jurisdiction, if any, that is requesting an investigation under this section to participate with the Department in the investigation;

(E) The Department may recommend a change in the existing speed on the highway if the investigation establishes to the satisfaction of the Department that the existing designated speed is greater or less than reasonable or safe under the conditions found in the specific section in question;

(F) The Department must give written notice to the road authority and interested jurisdiction, if any, of the Department's determination concerning a designated speed;

(G) The Department must issue a Speed Zone Order if the designated speed is mutually agreeable to the road authority and interested jurisdiction, if any;

(H) When differences of opinion among the Department, road authority or interested jurisdiction occur, the standard guidelines as set forth in section (3) of this rule must be used in reaching a mutually agreeable designated speed;

(I) If mutual agreement cannot be reached, the matter must be referred to the Speed Zone Review Panel;

(J) A copy of the written speed zone order must be provided to the road authority and interested jurisdiction, if any, as appropriate, and the original retained in the Department of Transportation's records for each speed zone established; and

(K) The speed zone becomes enforceable when appropriate signs giving notice of the designated speed are posted on the portion of the highway where the designated speed is imposed.

(b) The Department of Transportation is subject to the following procedures while exercising its authority for speed zoning on rural state highways under ORS 810.180 unless otherwise provided under ORS 810.180:

(A) A Government agency or citizen must make written request for the Department to perform an engineering study with respect to speed on a highway under ORS 810.180. The request must be made to the State Traffic Engineer or Region Traffic Manager. The request must state the reason for the requested change in speed zoning;

(B) The Department may perform or cause to be performed an engineering study. If the engineering study is performed by someone other than the Department, that person should refer to the Department for accepted methodologies and procedures for an engineering study of speed zones;

(C) The Department may change the existing speed if the engineering study establishes to the satisfaction of the Department that the existing designated speed is greater or less than reasonable or safe under the conditions found in the specific section in question;

(D) The Department must give a written reply to the original requestor of the Department's determination concerning a designated speed;

(E) Written objections by the requestor may be filed with the Department to any speed established by the Department;

(F) If the recommended speed exceeds the guidelines established under subsection (3)(b) or (3)(c) of this rule, the Department may refer the matter to the Speed Zone Review Panel;

(G) The original written order must be retained in the Department of Transportation's records for each speed zone established; and

(H) The speed zone becomes enforceable when appropriate signs giving notice of the designated speed are posted on the portion of the highway where the designated speed is imposed.

(5) Speed Zone Review Panel:

(a) The Speed Zone Review Panel is created to conduct hearings for deciding contested speed zone recommendations and to serve as an advisory body to the Department. The panel must consist of the five following persons:

(A) The Chair of the Transportation Safety Committee or a representative designated by the Chair;

(B) The Superintendent of State Police or a representative designated by the superintendent;

(C) The Chief Engineer of the Department of Transportation or a representative designated by the Engineer; and

(D) Two additional members, one representative of the interests of cities and one representative of the interests of counties. The League of Oregon Cities and the Association of Oregon Counties must each appoint a member representing the interest of cities and counties respectively. City and county representatives may serve a maximum three-year term. City and county representatives may be re-appointed to serve an additional three-year term.

(b) Three Speed Zone Review Panel members attending a hearing constitute a quorum.

(c) The State Traffic Engineer will designate the Chairperson.

(d) The Department is responsible to pay from the State Highway Fund the per diem travel and other expenses of the members of the Speed Zone Review Panel for the purpose of conducting hearings on speed zone appeals.

(e) The Speed Zone Review Panel must conduct a hearing when the State Traffic Engineer determines the Department has received a sufficient number of appeals to convene the panel:

(A) The State Traffic Engineer must arrange the hearing date and present the speed zone appeals;

(B) The Department must notify the road authority, interested jurisdiction, if any, and any citizen having expressed an interest to the Department regarding the contested speed zone of the hearing in writing at



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least 30 days prior to the hearing. The 30-day hearing notification may be waived if it is mutually agreeable among the Department, road authority and any interested jurisdiction;

(C) The opportunity to present testimony in person or in writing must be included in the notice of hearing date;

(D) Written testimony received by the State Traffic Engineer at least three days prior to the hearing must be considered in the speed zone appeal review;

(E) The criteria and procedures established under ORS 810.180, OAR 734-020-0015, 734-020-0016 and 0734-020-0017 for determining speed zoning will be considered in deciding the appeals;

(F) The decision of the panel is final and any speed zone order must be issued accordingly; and

(G) The speed zone becomes enforceable when appropriate signs giving notice of the designated speed are posted on the portion of highway where the designated speed is imposed.

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

Stats. Implemented: ORS 810.180

Hist.: HC 1277, f. 3-3-72; HWY 4-1994, f. 9-19-94, cert. ef. 1-1-95; HWD 3-2007, f. & cert. ef. 6-25-07

## 734-020-0016

### Establishment of Speed Zones on Public Paved Low Volume Roads

(1) Purpose. This rule is adopted for the purpose of establishing speed zones on public paved low volume roads by the Department and other road authorities and interested jurisdictions when appropriate.

(2) Delegation of Authority.

(a) Upon the request of a road authority, the Department may delegate its authority under ORS 810.180 for public paved low volume roads if the road authority agrees to exercise the authority according to this rule. The written application must:

(A) Be made to the State Traffic Engineer requesting delegated authority to determine and establish speed zones for public paved low volume roads under their jurisdiction;

(B) Include a specific roadway or all roadways under their jurisdiction for which the road authority is requesting delegation;

(C) If there is an interested jurisdiction on any public paved low volume roads within the boundaries of the road authority, the written application from the road authority must include a statement that road authority and interested jurisdiction have agreed to the need to perform an engineering study and if appropriate, establish a designated speed according to this rule; and

(D) Specify that the road authority will perform or cause to be performed an engineering study to determine the appropriate designated speed.

(b) If the Department determines that the road authority has established a speed zone without complying with this rule, the Department may withdraw the delegation of authority and the road authority must remove existing speed zone signing and post the section of roadway at the speed that was posted preceding the engineering study.

(c) The Department may perform the engineering study at the request of the road authority following the procedures set forth in OAR 734-020-0015(4)(a).

(3) Speed Zone Criteria. A road authority granted speed zone authority under section (2) of this rule is subject to the following:

(a) Perform or cause to be performed an engineering study to determine the recommended speed for the proposed speed zone using the eighty-fifth percentile speed.

(b) The following additional factors may be considered in the engineering study:

(A) Accesses;

(B) Crash history;

(C) Enforcement;

(D) Geometric features;

(E) Pedestrian and bicycle movements;

(F) Public testimony;

(G) Traffic volumes;

(H) Type and density of adjacent land use; and

(I) Other applicable factors.

(4) Speed Zone Recommendation. The road authority is subject to the following guidelines when determining the recommended speed:

(a) The recommended speed may be varied a maximum of 10 miles per hour above or below the eighty-fifth percentile speed; and

(b) The section investigated for speed zoning should be at least one-quarter of a mile in length except transitions speed zones may be a minimum of one thousand feet in length.

(5) Speed Zone Procedures.

(a) The road authority may establish a different speed if the engineering study finds that the existing designated speed is greater or less than reasonable or safe under the conditions found in the specific section in question unless any part of subsections (b) or (c) of this section apply.

(b) If the recommended speed exceeds 10 mph above or below the eighty-fifth percentile speed, the road authority must notify the Department and the matter will be presented to the Speed Zone Review Panel.

(c) If there is an interested jurisdiction on the section of road, the following procedures must be followed:

(A) If the recommended speed is within 10 mph difference from the eighty-fifth percentile speed and it is mutually agreed to by the road authority and interested jurisdiction then the road authority may issue a written order to establish the speed zone; or

(B) When differences of opinion between the road authority and interested jurisdiction occur, the road authority must notify the Department and the matter will be presented to the Speed Zone Review Panel.

(d) The road authority and interested jurisdiction, if any, should refer to the Department for further guidance on acceptable methodologies for an engineering study of speed zones.

(e) The road authority must file with the Department a copy of the written speed zone order and engineering study.

(f) The road authority must retain the original speed zone order and engineering study.

(g) The road authority may authorize the Department to issue the speed zone order by submitting a copy of the engineering study.

(h) The road authority is responsible for installing speed zone signing.

(i) The speed zone becomes enforceable when appropriate signs giving notice of the designated speed are posted on the portion of the highway where the designated speed is imposed.

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

Stats. Implemented: ORS 810.180

Hist.: HWD 3-2007, f. & cert. ef. 6-25-07

## 734-020-0017

### Establishment of Speed Zones on Public Unpaved Roads

(1) Purpose. This rule is adopted for the purpose of establishing speed zones on unpaved roads by the Department when appropriate.

(2) Guidance. ODOT provides the following guidance to assist the road authority in determining if creation of a speed zone is appropriate:

(a) Establishing speed zones on unpaved roads is generally discouraged:

(A) The risk with establishing a specific speed zone is that a "Speed Zone" sign creates an expectation by the driver that the roadway is safe to drive at the posted speed. Since unpaved roadway conditions can change rapidly depending on weather, season, traffic volumes and amount of road maintenance, establishing the appropriate speed limit for all conditions is difficult, if not impossible; and

(B) Oregon's basic rule speed law requires drivers to adopt a reasonable and prudent speed. The driver should rely primarily on their visual observation of the roadway conditions, rather than a speed zone sign to determine the safe speed to drive a road.

(b) There are other factors that reduce the effectiveness of, or necessity for setting speeds on unpaved roads:

(A) Enforcement is minimal on unpaved roads. There would be poor compliance with speed zoning without enforcement commitment; and

(B) Risks of vehicle conflict are very low on these roads; most are used by travelers who are familiar with the roads and their condition.

(c) Given the factors in this subsection, parts (a) and (b), speed zones will only be established for unpaved roads that are gravel roads as defined in OAR 734-020-0014. Speed zones will not be established under ORS 810.180 for other unpaved roads except for speed zones established by a road authority under ORS 810.180(7), (8) or (9).

(3) Speed Zone Application Process. The road authority must do all of the following:

(a) Make written application to the State Traffic Engineer requesting authority to perform or cause to be performed an engineering study for a specific unpaved road under their jurisdiction;

(b) State the reason for the requested change in speed;

(c) Specify that the engineering study will be performed; and

(d) Submit the following documentation:

(A) Evidence of crash history;

(B) Written commitment from law enforcement that the subject roadway will be part of routine patrols;

(C) Written commitment from the road authority and interested jurisdiction, if any, that the roadway will be graded a minimum of every six months when open to normal traffic; and

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(D) If there is an interested jurisdiction on the specified unpaved road within the boundaries of the road authority, the written application must include a statement that the road authority and interested jurisdiction have agreed to the need to perform an engineering study and if appropriate, establish a designated speed according to this rule.

(4) Delegation of Authority.

(a) The Department will delegate authority to perform the engineering study if the road authority satisfactorily completes the application process as outlined in section (3) of this rule; and

(b) The road authority will proceed with the engineering study upon review and approval of the application by the Department.

(5) Speed Zone Criteria. A road authority granted authority under section (4) of this rule is subject to the following:

(a) Perform or cause to be performed an engineering study to determine the recommended speed for the proposed speed zone using the following criteria:

(A) The eighty-fifth percentile speed; and

(B) Documented history of crashes related to excessive speed in the section of unpaved road for which a speed zone is requested.

(b) The following additional factors may be considered in the recommended speed:

(A) Accesses;

(B) Crash history;

(C) Enforcement;

(D) Geometric features;

(E) Pedestrian and bicycle movements;

(F) Public testimony;

(G) Traffic volumes;

(H) Type and density of adjacent land use; and

(I) Other applicable factors

(6) Speed Zone Recommendation. The road authority is subject to the following guidelines when determining the recommended speed:

(a) The recommended speed may be varied a maximum of 10 miles per hour above or below the eighty-fifth percentile speed; and

(b) The section considered for speed zoning should be at least one-quarter of a mile in length except transition speed zones may be a minimum of one thousand feet in length.

(7) Speed Zone Procedures. The following procedures apply to consideration and approval or denial of a speed zone recommendation:

(a) The road authority must submit two copies of the completed engineering study to the Department.

(b) The road authority should refer to the Department for acceptable methodologies and procedures for an engineering study of speed zones.

(c) The Department:

(A) May change the existing speed on a highway if the engineering study establishes to the satisfaction of the Department that the existing designated speed is greater or less than reasonable or safe for the specific section in question;

(B) Must give written notice to the road authority and interested jurisdiction, if any, of the Department's determination regarding the designated speed; and

(C) May issue a speed zone order if the designated speed is mutually agreeable to the road authority and any interested jurisdiction.

(d) The Department will refer the matter to the Speed Zone Review Panel when:

(A) There are differences of opinion among the Department and the road authority or interested jurisdiction;

(B) There are differences of opinion between the road authority and interested jurisdiction; or

(C) The recommended speed exceeds 10 mph above or below the eighty-fifth percentile speed.

(e) A copy of the written speed zone order must be filed with the road authority and any interested jurisdiction, as appropriate, and the original retained in the Department's records for each speed zone established.

(f) The road authority is responsible for installing speed zone signing.

(g) The speed zone becomes enforceable when appropriate signs giving notice of the designated speed are posted on the portion of the highway where the designated speed is imposed.

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

Stats. Implemented: ORS 810.180

Hist.: HWD 3-2007, f. & cert. ef. 6-25-07

## Employment Department Chapter 471

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

**Adm. Order No.:** ED 3-2007

**Filed with Sec. of State:** 7-12-2007

**Certified to be Effective:** 7-12-07

**Notice Publication Date:** 6-1-07

**Rules Amended:** 471-030-0017

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

**Rules Coordinator:** Lynn M. Nelson—(503) 947-1724

### 471-030-0017

#### Defining and Allocating Remuneration, Holidays, and Vacations

(1) Definitions. For purposes of applying ORS 657.100 and 657.150, and as used in this rule:

(a) "Employment" means:

(A) Being in an employer-employee relationship during a period of time for which remuneration was paid or payable; or

(B) Providing a service or product for cash or cash value.

(b) "Earnings" means remuneration;

(c) Where an employer-employee relationship exists, "remuneration" means compensation resulting from the employer-employee relationship, including wages, salaries, incentive pay, sick pay, compensatory pay, bonuses, commissions, stand-by pay, and tips;

(d) Where no employer-employee relationship exists, "remuneration" means the gross amount of compensation for the product or service, less only the value of tangible components involved in producing or providing the product or service and limited to the tangible components that remain with the party receiving the service or product;

(e) "Bonus" means an extra payment given by an employer in consideration of performance, production or a share of profits;

(f) "Back pay" means payment awarded as reimbursement by an employer for loss of wages during a period for which no services were performed and no payment was intended;

(g) For purposes of ORS 657.150(7), the term "holiday" means those holidays listed in 187.010(1)(b)-(j) and (2), 187.020 and any holiday designated by the employer, union contract or otherwise;

(h) For purposes of ORS 657.150(7), the term "vacation" means a specific period of time, paid or unpaid, during which the individual is freed from work/job/employment duties and responsibilities and is free to use the time away from work for any purpose the individual chooses.

(2) For purposes of section (1) of this rule, except for agricultural labor and domestic service, remuneration shall include the value, determined pursuant to OAR 471-031-0055(3), of compensation paid in any medium other than cash.

(3) Allocating Remuneration: For purposes of ORS 657.100 and 657.150(6) remuneration or an applicable pro-rata share thereof shall be allocated as follows:

(a) In the case of services, allocated to the week in which the service was performed;

(b) In the case of products, allocated to the week in which the product was sold;

(c) In the case of bonuses, allocated equally to the weeks during which the individual worked within the period being rewarded;

(d) If the dates of sale or service are not clearly established, allocation shall be made upon a reasonable estimate provided by the claimant. If the individual cannot or will not provide a reasonable estimate, the remuneration shall be allocated equally over the period during which services were rendered or products were sold.

(4) Back pay is not reportable for or deductible from unemployment insurance benefits.

Stat. Auth.: ORS 657

Stats. Implemented: ORS 657.100 & 657.150

Hist.: ED 8-2004, f. 12-17-04, cert. ef. 12-19-04; ED 3-2007, f. & cert. ef. 7-12-07

# ADMINISTRATIVE RULES

## Employment Department, Child Care Division Chapter 414

**Rule Caption:** Amending rules in 414-205, 300 and 350.

**Adm. Order No.:** CCD 2-2007

**Filed with Sec. of State:** 7-13-2007

**Certified to be Effective:** 7-13-07

**Notice Publication Date:** 6-1-07

**Rules Amended:** 414-205-0010, 414-205-0020, 414-205-0035, 414-205-0055, 414-205-0160, 414-300-0005, 414-300-0030, 414-300-0060, 414-300-0070, 414-300-0080, 414-300-0090, 414-300-0100, 414-300-0200, 414-300-0220, 414-300-0260, 414-350-0010, 414-350-0050, 414-350-0080, 414-350-0100, 414-350-0120, 414-350-0180

**Subject:** 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 it's 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; CCD 2-2007, f. & cert. ef. 7-13-07

### 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 interested in submitted 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.

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(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; CCD 2-2007, f. & cert. ef. 7-13-07

## 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 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 Department of Human Services Child Welfare (DHS) 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; CCD 2-2007, f. & cert. ef. 7-13-07

## 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; CCD 2-2007, f. & cert. ef. 7-13-07

## 414-205-0160

### Complaints

(1) The Child Care Division (CCD) will respond to complaints made on registered and illegal providers, and may cooperate with law enforcement or other agencies in response to allegations of child abuse or non-compliance.

(a) Any and all complaints may result in an on-site investigation at the family child care home;

(b) All serious complaints will result in an on-site investigation at the family child care home;

(c) Complaints alleging child abuse or neglect will be reported to the Department of Human Services Child Welfare (DHS) or local law enforcement agencies.

(2) Applicants for registration will be given a copy of CCD's complaint procedures at the time of the on-site health and safety review. The complaint procedures are also available upon request to all applicants/providers for family child care registration.

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260

Hist.: CCD 1-2000, f. 3-31-00, cert. ef. 4-2-00; CCD 2-2007, f. & cert. ef. 7-13-07

## 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;

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(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.

(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.

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(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; CCD 2-2007, f. & cert. ef. 7-13-07

## 414-300-0030

### General Requirements

(1) The operator shall display the following near the entrance, or in some other area of the center, where they may be viewed by parent(s) of children in care:

(a) The most current certification issued by CCD;

(b) Name of the director and/or the substitute director;

(c) Notice of planned field trips away from the immediate neighborhood, showing the date and place of each excursion;

(d) The current week's menu for all meals and snacks, if meals are provided by the center. Any substitution shall be recorded on the menu;

(e) A notice that the items identified in section (2) of this rule are available for review on request;

(f) Information on how to report a complaint to CCD regarding certification requirements;

(g) Notice that custodial parents have access to the center during the hours of operation and without advance notice; and

(h) Notice of center closures (vacation days, holidays, etc.).

(2) The operator shall have available for review on request:

(a) A copy of OAR 414-300-0000 through 414-300-0410, Rules for the Certification of Child Care Centers; and

(b) The most recent CCD, sanitation, and fire safety inspection reports.

(3) The operator shall report to CCD:

(a) An accident at the center resulting in the death of a child, within 48 hours after the occurrence;

(b) Injuries to a child at the center which require attention from a licensed health care professional, such as a physician, EMT or nurse, within 7 days after the occurrence;

(c) Damage to the building which affects the operator's ability to comply with these requirements, within 48 hours after the occurrence; and

(d) Any change in director prior to the director being on site. Such prior notification must include the replacement person's qualifications for the position and documentation that the person is enrolled in the Criminal History Registry. An e-mail or a phone call, followed by written documentation, or a FAX will serve as notification.

(4) Information provided to CCD on applications, in records or reports, or any other written or verbal communication, shall be current, complete, and accurate.

(5) Staff shall report suspected child abuse or neglect immediately, as required by the Child Abuse Reporting Law (ORS 419B.005 through 419B.050), to the Department of Human Services Child Welfare (DHS) or to a law enforcement agency. By statute, this requirement applies 24 hours per day.

(6) The child care center shall comply with state and federal laws related to child safety systems and seat belts in vehicles, bicycle safety, civil rights laws, and the Americans With Disabilities Act (ADA).

(7) The following information shall be in writing and made available to staff, CCD, and to parent(s) at the time of enrollment:

(a) Name, business address, and business telephone number of the person(s) who have immediate responsibility for the daily operation of the center;

(b) Guidance and discipline policy;

(c) Arrival and departure procedures;

(d) Emergency plan, as specified in OAR 414-300-0170(3);

(e) Procedures for field trips; and

(f) Information on transportation, when provided by the center;

(8) Representatives of all agencies involved in certification and custodial parents shall have immediate access to all parts of the center during hours of operation. CCD staff shall have the right to enter and inspect the center, including access to all staff, records of children enrolled in the center, and all records and reports related to the center operation regarding compliance with these rules.

(9) The center shall comply with the Health Division's administrative rules relating to:

(a) Immunization of children (OAR 333-050-0010 through 333-050-0140);

(b) Reporting communicable diseases (OAR 333-019-0000);

(c) Child care restrictable diseases (OAR 333-019-0010); and

(d) Dishwashing (OAR 333-150-0000).

(10) A center shall have written health policies and procedures approved by the Health Division or the county health department which cover, but are not limited to, the following:

(a) Storage and handling of food;

(b) Diaper changing and disposal, if applicable. The diaper changing procedure must be posted in the diaper changing area;

(c) Bathing infants, if the center cares for infants;

(d) Care of bed linen;

(e) Hand washing procedures. The hand washing procedures must be posted at hand washing sinks; and

(f) Serving formula, storage and handling of bottles, and feeding infants, if the center cares for infants.

(11) Parental request or permission to waive any of the rules for the certification of child care centers does not give the center permission to do so.

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

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260

Hist.: CSD 21-1988, f. & cert. ef. 9-29-88; CSD 5-1989, f. & cert. ef. 3-15-89; CSD 10-1990, f. & cert. ef. 4-23-90; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0620; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 4-2001, f. 7-13-01, cert. ef. 7-15-01; CCD 2-2007, f. & cert. ef. 7-13-07

## 414-300-0060

### Record Keeping

(1) The operator shall keep all records, except those specified in OAR 414-300-0060(1)(d)(F), for at least two years, and staff and children's records for two years after termination of employment or care. These records shall be available at all times to CCD:

(a) Complete and current information on each child as required in OAR 414-300-0040(4) and (6);

(b) Records of daily attendance showing:

(A) The date of employment, time of arrival and departure, and room assignment for each staff; and

(B) The date, name of each child in attendance, and time of arrival and departure. The record must show the children in attendance at any given time;

(C) The current day's attendance record shall be maintained in the child's classroom in paper format.

(c) Personnel record for each staff, which shall include:

(A) Name, address and telephone number of staff;

(B) Position in center;

(C) Written verification (such as transcripts, payroll records, time sheets, documented resumes, notes regarding telephone conversations, etc.) that the person possesses the qualifications for the position;

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(D) Verification that the staff is currently enrolled in the Criminal History Registry;

(E) Statement of the staff's duties;

(F) Record of current health-related training, such as CPR, Life Support, Life Saving, and First Aid, and current food handler certifications, as appropriate;

(G) Driving record, driver's license number and expiration date if the person is to transport children; and

(H) Documentation of dates and participation in orientation, training, and staff development activities, as required in OAR 414-300-0120.

(d) A written record of:

(A) A death of or injury to a child, as specified in OAR 414-300-0030(3);

(B) Dates and times of the practices of emergency procedures;

(C) Child abuse reports made to the Department of Human Services Child Welfare (DHS) or a law enforcement agency;

(D) Authorizations to administer medication to a child, as specified in OAR 414-300-0230(1)(a);

(E) Medications dispensed, as specified in OAR 414-300-0230(1)(d);

(F) Meals and snacks provided by the center for the previous three weeks;

(G) The program of activities for each group of children, as specified in OAR 414-300-0300; and

(H) The daily schedule for each group of children, as specified in OAR 414-300-0290.

(2) The operator shall allow custodial parent(s), upon request, to review records and reports, except for child abuse reports, maintained on their own children.

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 412-010-0626; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 4-2001, f. 7-13-01, cert. ef. 7-15-01; CCD 2-2007, f. & cert. ef. 7-13-07

## 414-300-0070

### General Requirements

(1) The operator shall establish a system of job descriptions, staff selection, and staff evaluation that ensures that staff:

(a) Have competence, sound judgment, and self-control in working with children;

(b) Are mentally, physically, and emotionally capable of performing assigned duties related to child care; and

(c) Have the required training and/or experience for the position for which they are hired.

(2) There shall be a person or persons on the staff who meet(s) the qualifications of director (OAR 414-300-0080) and head teacher (OAR 414-300-0090). A person assigned the duties of the position must meet the qualifications of the position.

(3) Notwithstanding OAR 414-300-0120(3), there shall be at least one person in the center at all times who has current certification in first aid and CPR.

(4) Any staff with evidence of a child care-restrictable disease, as defined in OAR 333-019-0010, symptom of physical illness, as defined in OAR 414-300-0220(1), or mental incapacity that poses a threat to the health or safety of children shall be relieved of his/her duties.

(5) If there is evidence which casts doubt on the physical or mental competence of a person to care for children or have access to children, CCD may require that the operator provide CCD with an evaluation, or other information, as specified by CCD.

(6) No one shall have access to child care children or be in the center during child care hours who has demonstrated behavior that may have a detrimental effect on a child. This includes any individual in the center who has or may have unsupervised access, however brief, to child care children (i.e., the owner, the operator, all child care staff, maintenance staff who work on-site during hours of operation, volunteers who may be left alone with children, etc.). This does not apply to parents of children in care when they drop off and pick up their children:

(a) The operator, all child care staff and others as described in section (6) above 18 years of age or older shall be enrolled in CCD's Criminal History Registry prior to the issuance of an initial or renewal certification;

(b) Prior to any new staff, including a director, or individual being on-site at the center during child care hours, the staff/individual shall be enrolled in the Criminal History Registry and the center shall receive verification from CCD of the enrollment. This does not apply to parents of children in care unless they are assisting in the provision of child care. Volunteers may be exempt from this rule, as specified in OAR 414-300-0070(7);

(c) When a center is notified by CCD that a staff member or other individual has been removed from the Criminal History Registry, the center shall not permit the staff member or other individual to have access to child care children;

(d) If any person listed in section (6) and section (6)(a) of this rule has been charged with, arrested for, or a warrant is out for any of the crimes which CCD has determined indicate behavior which may have a detrimental effect on a child, with final disposition not yet reached, certification will be denied or suspended until the charge, arrest, or warrant has been resolved if the person continues to operate, be employed in, or have access to children in the center;

(e) If a criminal record check shows that a warrant has been issued for any person checked, CCD will inform the originating law enforcement agency of the person's name, address, and telephone number.

(7) Volunteers must meet the following requirements:

(a) If volunteers are counted in determining the staff/child ratios, they must meet the qualifications of the position they are filling and be enrolled in the Criminal History Registry;

(b) If volunteers may have unsupervised access to children, they must be enrolled in the Criminal History Registry;

(c) If volunteers do not have unsupervised access to children at any time, including during emergencies, the center must have a written policy to this effect, the policy must be known to all center staff and volunteers, and the volunteers do not have to be enrolled in the Criminal History Registry.

(8) No person shall smoke or use smokeless tobacco in the child care area during child care hours. No person shall smoke or use smokeless tobacco in motor vehicles while child care children are passengers.

(9) Alcohol and non-prescribed controlled substances shall not be consumed or stored in the child care area during child care hours. Staff or volunteers who appear to be under the influence of alcohol or non-prescribed controlled substances shall not be in the center during child care hours.

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.060

Hist.: CSD 21-1988, f. & cert. ef. 9-29-88; CSD 10-1990, f. & cert. ef. 4-23-90; CSD 4-1991, f. & cert. ef. 3-7-91; CSD 8-1991, f. & cert. ef. 7-1-91; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0630; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 4-2001, f. 7-13-01, cert. ef. 7-15-01; CCD 2-2007, f. & cert. ef. 7-13-07

## 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 step nine in the Oregon Registry, or

(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.

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(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; CCD 2-2007, f. & cert. ef. 7-13-07

## 414-300-0090

### Head Teacher — Qualifications and Duties

(1) For each infant and toddler, preschool age, and school age program in the center, there shall be a qualified person designated as head teacher who is at least 18 years of age.

(2) The head teacher shall be accountable for:

(a) The development and implementation of the center's program of activities for that age group or groups; and

(b) Ensuring the appropriateness of program activities according to the age, interests, and developmental level of the children.

(3) A head teacher shall meet the qualification requirements of one of the options listed in Table 1 of this rule.

(4) A person may serve as head teacher for more than one age group as long as the qualifications for head teacher for each age group are met.

(5) Head teachers shall be in the center at least one-fourth of the hours, calculated on a weekly basis, that the center is in operation. Table 1

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

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 412-010-0633; 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 2-2007, f. & cert. ef. 7-13-07

## 414-300-0100

### Teacher

(1) For each group of children, a person shall be designated as the teacher. This person shall:

(a) Be at least 18 years of age;

(b) Be responsible for and supervise a designated group of children; and

(c) Supervise the activities of an aide assigned to his/her group.

(2) A teacher shall meet the qualification requirements of one of the options listed in Table 2 of this section. Table 2

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

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 412-010-0634; 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 2-2007, f. & cert. ef. 7-13-07

## 414-300-0200

### Kitchens

(1) Kitchens shall have facilities for dish washing, storage, and preparation of food. The kitchen shall be separate from any child caring areas.

(2) If there is no kitchen in the center and if meals or snacks are not catered, the center shall observe the requirements in OAR 414-300-0280(8).

(3) The walls, floors, and floor coverings of all rooms in which food or drink is prepared or stored, or utensils are washed or stored, shall be smooth, washable, and easily cleanable.

(4) All equipment and utensils used for food service, including plastic ware and food-contact surfaces, shall be:

(a) Easily cleanable;

(b) Durable;

(c) Nontoxic;

(d) Nonabsorbent; and

(e) Maintained in a clean and sanitary condition.

(5) All equipment used for food preparation shall be installed and maintained in a manner providing ease of cleaning beneath, between, and behind each unit.

(6) A center shall have a:

(a) Mechanical dishwasher that meets the requirements in the Health Division's administrative rules, OAR 333-150-0000; or

(b) Compartmentalized sink that meets the requirements in the Health Division's administrative rules, OAR 333-154-0000;

(c) Centers with a maximum capacity of 19 children may use a light commercial dishwasher approved by the National Sanitation Foundation.

(7) There shall be separate sinks in the kitchen designated by the environmental health specialist for hand washing, for food preparation activities, and for dishwashing activities:

(a) The sink designated for hand washing shall be equipped with soap and paper towels dispensed in a sanitary manner and posted with a hand washing sign;

(b) In centers in which there is not a sink provided for food preparation, a sink used for dishwashing may be used as long as dishwashing activities do not interfere with sanitary food preparation, and the sink is sanitized before being used for food preparation;

(c) Sinks in the kitchen shall be used exclusively for food service activities;

(d) Centers newly constructed or remodeled after July 15, 2001, shall meet the requirements for hand washing sinks established by State Building Code, as defined in ORS Chapter 455.

(8) Children shall not be allowed in the kitchen except for a supervised learning activity.

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 412-010-0646; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 4-2001, f. 7-13-01, cert. ef. 7-15-01; CCD 8-2003, f. 12-23-03, cert. ef. 12-28-03; CCD 2-2007, f. & cert. ef. 7-13-07

## 414-300-0220

### Illness or Injury

(1) Illness:

(a) A center shall not admit or retain in care, except with the written approval of the local health officer, a child who:

(A) Is diagnosed as having or being a carrier of a child care-restrictable disease, as defined in Health Division administrative rules, OAR 333-019-0010; or

(B) Has one of the following symptoms, or combination of symptoms, of illness:

(i) Fever over 100 degrees F taken under the arm;

(ii) Diarrhea (more than one abnormally loose, runny, watery or bloody stool);

(iii) Vomiting;

(iv) Nausea;

(v) Severe cough;

(vi) Unusual yellow color to skin or eyes;

(vii) Skin or eye lesions or rashes that are severe, weeping, or pus-filled;

(viii) Stiff neck and headache with one or more of the symptoms listed above;

(ix) Difficult breathing or abnormal wheezing; or

(x) Complaints of severe pain.

(b) A child who shows signs of illness, as defined in this rule, shall be isolated and the parent(s) notified and asked to remove the child from the center as soon as possible;

(c) If a child has mild cold symptoms that do not impair his/her functioning, the child may remain in the center and the parent(s) notified when they pick up their child;

(d) A specific place for isolating a child who becomes ill shall be provided. The isolation area:

(A) Shall be located where the child can be seen and heard by staff; and

(B) Shall be equipped with a cot, mat, or bed for each sick child.

(e) An outbreak of a child care restrictable disease, as defined in OAR 333-019-0010, or food poisoning shall be reported immediately to the local



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health department and posted for the parents of all children who attend the facility.

(2) Injuries:

(a) The operator shall have written procedures for handling injuries that shall be made known to all staff, including:

- (A) Procedure for taking a child to emergency medical care;
- (B) Routine for treatment of minor injuries; and
- (C) First aid measures for serious accidents.

(b) First aid supplies and a chart or handbook of first aid instructions shall be maintained in one identified place away from food and food-contact surfaces and be available for staff use but kept out of reach of children:

(A) The first aid supplies shall include Band-Aids, adhesive tape, sterile gauze pads, soap or sealed antiseptic towelettes or solution to be used as a wound cleaning agent, scissors, disposable plastic gloves for handling blood spills, chlorine bleach for sanitizing after a blood spill, and a sanitary temperature-taking device;

(B) Separate first aid supplies and a copy of each child's medical release form shall be taken on all field trips away from the immediate neighborhood.

(c) Injuries or accidents shall be reported to the child's parent(s) on the day of occurrence:

(A) A written report of the injury or accident shall be maintained on file;

(B) The report shall include the date, child's full name, nature of the injury, witnesses, action taken, and the signatures of reporting staff and parent(s).

(d) The injury to or death of a child shall be reported to CCD in accordance with OAR 414-300-0030(3)(a) and (b).

(3) Emergency Medical Care:

(a) The operator shall identify a licensed physician, hospital, or clinic to be used for emergency medical care;

(b) In the event of an illness or injury which requires immediate medical care, the director or the substitute director is responsible for securing such care and notifying the parent(s).

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260

Hist.: CSD 21-1988, f. & cert. ef. 9-29-88; CSD 10-1990, f. & cert. ef. 4-23-90; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0650; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 4-2001, f. 7-13-01, cert. ef. 7-15-01; CCD 2-2007, f. & cert. ef. 7-13-07

## 414-300-0260

### Cleaning, Sanitizing, and Storage of Food Service Equipment and Utensils

(1) Tableware and kitchenware (e.g., pots, pans and equipment) shall be washed, rinsed, and sanitized after each use:

(a) When mechanical cleaning and sanitizing methods are used, the requirements in the Health Division's administrative rules, OAR 333-150-0000, Food Sanitation Rules, shall be met;

(b) When manual washing, rinsing, and sanitizing of dishes and equipment is used, the requirements in the Health Division's administrative rules, OAR 333-150-0000, Food Sanitation Rules, shall be met.

(2) Food-contact surfaces of equipment shall be washed, rinsed, and sanitized after each use.

(3) All multi-use utensils and counters, shelves, tables, refrigeration equipment, sinks, drain boards, dish tables, cutting boards, appliances, and other equipment or utensils used for food preparation shall be kept clean and in good repair.

(4) After being sanitized, all tableware, equipment, and utensils shall be air dried.

(5) After being cleaned and sanitized, tableware and utensils shall be:

(a) Stored in a clean, dry place protected from insects, dust, and other contamination; and

(b) Handled in a way that protects them from contamination.

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 412-010-0662; CCD 4-2001, f. 7-13-01, cert. ef. 7-15-01; CCD 2-2007, f. & cert. ef. 7-13-07

## 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) "The Oregon Registry" means Pathways for Professional Recognition in Childhood Care and Education is a voluntary, statewide program to document and recognize the professional achievements of people who work in the childhood care and education profession.

(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.

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(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 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; CCD 2-2007, f. & cert. ef. 7-13-07

## 414-350-0050

### General Requirements

(1) The following items shall be posted in the certified family child care home where they may be viewed by parents:

- (a) The child care certification document;
- (b) Notification of a communicable disease outbreak at the home;

(c) The evacuation plan; and

(d) A notice that the following items are available for parents to review:

- (A) The guidance/discipline policy;
- (B) The current week's menus, with substitutions recorded;
- (C) The description of the general routine;
- (D) Information on how to report a complaint to CCD regarding certification requirements; and
- (E) The most recent CCD and sanitation inspection reports and, if applicable, fire life safety self evaluation (or fire marshal inspection report if completed).

(2) The provider shall ensure that a copy of these administrative rules is available in the certified family child care home to all parents and staff.

(3) Caregivers shall report suspected child abuse or neglect immediately, as required by the Child Abuse Reporting Law (ORS 419B.005 through 419B.050) to the Department of Human Services Child Welfare (DHS) or to a law enforcement agency. By statute, this requirement applies 24 hours per day.

(4) The certified family child care home shall comply with state and federal laws related to child safety systems and seat belts in vehicles, bicycle safety, civil rights laws, and the Americans With Disabilities Act (ADA).

(5) Representatives of all agencies involved in certification shall have immediate access to all parts of the home whenever the provider is conducting the child care business:

(a) CCD staff shall have the right to enter and inspect the home, including access to all caregivers, records of children enrolled in the home, and all records and reports related to the child care operation regarding compliance with these rules; and

(b) Representatives of the Department of Human Services Child Welfare (DHS) and the State Fire Marshal have the right to enter and inspect the home when an inspection has been requested by CCD.

(6) Custodial parents of all children enrolled shall have access to the home during the hours their child(ren) are in care.

(7) The provider shall develop the following information in writing and shall make it available to CCD, to staff, and to parent(s) at the time of enrollment:

- (a) Guidance and discipline policy;
- (b) Information on transportation, when provided by the provider or other caregiver; and

(c) The plan for handling emergencies and/or evacuations, including, but not limited to, fire, acute illness of a child or staff, natural disasters, power outages, and situations which do not allow reentry to the home after evacuation.

(8) The provider shall comply with the Department of Human Services' administrative rules relating to:

(a) Immunization of children (OAR 333-019-0021 through 333-019-0090);

(b) Reporting communicable diseases (OAR 333-019-0215 through 333-019-0415); and

(c) Child care restrictable diseases (OAR 333-019-0010).

(9) The provider shall report to CCD:

(a) An accident at the home resulting in the death of a child, within 48 hours after the occurrence; and

(b) Injuries to a child at the certified family child care home which require attention from a licensed health care professional, such as a physician, EMT or nurse, within 7 days after the occurrence.

(10) Documentation of meals and snacks provided by the certified family child care home shall be made available to CCD upon request, if the home does not participate in the USDA Child and Adult Care Food Program. Documentation is limited to the three weeks prior to the request.

(11) The provider is responsible for compliance with these requirements (OAR 414-350-0000 through 414-350-0400).

(12) Parental request or permission to waive any of the rules for certified family child care homes does not give the provider permission to do so.

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260, 657A.280, 657A.290, 657A.300, 657A.390 & 657A.400

Hist.: CSD 21-1988, f. & cert. ef. 9-29-88; CSD 10-1990, f. & cert. ef. 4-23-90; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0720; CSD 9-1994, f. & cert. ef. 5-23-94; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 3-2002, f. 10-14-02, cert. ef. 10-15-02; CCD 6-2005(Temp), f. 12-29-05, cert. ef. 1-1-06 thru 6-29-06; CCD 3-2006, f. & cert. ef. 6-13-06; CCD 5-2006(Temp), f. & cert. ef. 8-25-06 thru 2-21-07; CCD 6-2006, f. & cert. ef. 12-1-06; CCD 2-2007, f. & cert. ef. 7-13-07

# ADMINISTRATIVE RULES

## 414-350-0080

### Records

- (1) The provider shall keep the following records:
  - (a) Complete and current information on each child, as required in OAR 414-350-0060(3) and (4);
  - (b) Daily attendance record for each child, including dates each child attended and arrival and departure times each day;
  - (c) Daily attendance record for the provider and each caregiver, including dates worked and arrival and departure times each day;
  - (d) Medication administered, as specified in OAR 414-350-0180(8)(d);
  - (e) Emergency plan practice sessions and evacuations, as specified in OAR 414-350-0170(15);
  - (f) An injury to or death of a child, as specified in OAR 414-350-0180(7);
  - (g) Child abuse reports made to the Department of Human Services Child Welfare (DHS) or a law enforcement agency;
  - (h) The general routine, as specified in OAR 414-350-0220(2);
  - (i) Verification of the provider's and each caregiver's:
    - (A) Qualifications for the position, as specified in OAR 414-350-0100 and 414-350-0110;
    - (B) Current health-related training, such as CPR and First Aid, as specified in OAR 414-350-0100(3) and 0100(6);
    - (C) Training as required in OAR 414-350-0115;
    - (D) Current enrollment in the Criminal History Registry;
    - (E) Current food handler's certification pursuant to ORS 624.570, when required; and
    - (F) Caregiver participation in an orientation to the provider's policies and practices and these administrative rules.
- (2) A provider shall allow custodial parent(s), upon request, to review all records and reports, except for child abuse reports, maintained on their own children.
- (3) Records shall be kept for at least two years, and caregivers' and children's records for two years after termination of employment or care. These records shall be available at all times to CCD.

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260 & 657A.290

Hist.: CSD 12-1988, f. 6-29-88, cert. ef. 7-1-88; CSD 2-1989, f. & cert. ef. 1-25-89; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0726; CCD 3-2002, f. 10-14-02, cert. ef. 10-15-02; CCD 2-2007, f. & cert. ef. 7-13-07

## 414-350-0100

### The Provider

- (1) The provider shall be:
  - (a) At least 18 years of age if the facility is certified for 12 children; or at least 21 years of age if the facility is certified for more than 12 children; and
  - (b) Responsible for the operation of the certified family child care home, including those duties ordinarily considered to be administrative. These include, but are not limited to, financial management, maintaining records, maintenance of the building and grounds, meal planning and preparation, compliance with certification requirements, communication with CCD, and correcting deficiencies.
- (2) The provider shall have:
  - (a) At least one year of qualifying teaching experience, as specified in OAR 414-350-0010(25), in the care of a group of children in an ongoing group setting such as a kindergarten, preschool, child care center, certified family child care home, registered family child care home, or Head Start program; or prior to applying to be certified for up to 16 children, completed one year of successful operation as a certified family child care facility for 12 children if the qualifying teaching experience is based on registered family child care; or
  - (b) Completion of 20 credits (semester system) or 30 credits (quarter system) of training in a college or university in early childhood education or child development; or
  - (c) Documentation of attaining at least step eight in the Oregon Registry.
- (3) The provider shall provide evidence of the following training prior to being certified:
  - (a) A current certification in infant and child first aid and cardiopulmonary resuscitation;
  - (b) A current food handler certification pursuant to ORS 624.570; and
  - (c) Completion of two hours of training on child abuse and neglect issues.
- (4) Prior to a facility providing care to more than two children under 24 months of age, the provider shall have at least 30 clock hours of training specific to infant and toddler care. The provider of facilities certified on

October 15, 2002, who are providing care for more than two children under 24 months of age must have documentation of 30 hours of prior training in infant and toddler care or a plan, approved by CCD, that shows how the training will be attained.

(5) The provider/operator shall be on-site at least half of the hours of operation that are reflected on the certification. If the facility is certified for more than 12 children, the provider shall be on site at least 2/3 of the hours of operation that are reflected on the certification. The hours shall be calculated on a weekly basis, except for planned vacations and emergency absences.

(6) The provider shall have no other employment, either in or out of the home, during the hours the provider is directly caring for children.

(7) The provider, or a substitute caregiver, shall be present during all the hours the certified family child care business is conducted.

(8) A caregiver substituting for the provider shall:

- (a) Be at least 18 years old;
- (b) Have current certification in first aid and infant and child cardiopulmonary resuscitation (CPR);
- (c) Have current food handler certification pursuant to ORS 624.570, if the substitute will be preparing or serving food;
- (d) Be familiar with the provider's policies and procedures and with these requirements (OAR 414-350-0000 through 414-350-0400);
- (e) Be authorized and able to correct a deficiency that might be an immediate threat to children; and
- (f) Have on file documentation of an orientation and training in these administrative rules and the functions and duties of a provider;
- (g) Meet the qualifications in (a)-(f), have completed child abuse and neglect training, and have worked in the facility at least 60 hours when substituting for the provider in a facility certified to care for more than 12 children.

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260, 657A.280 & 657A.290

Hist.: CSD 12-1988, f. 6-29-88, cert. ef. 7-1-88; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0732; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 3-2002, f. 10-14-02, cert. ef. 10-15-02; CCD 6-2005(Temp), f. 12-29-05, cert. ef. 1-1-06 thru 6-29-06; CCD 3-2006, f. & cert. ef. 6-13-06; CCD 5-2006(Temp), f. & cert. ef. 8-25-06 thru 2-21-07; CCD 6-2006, f. & cert. ef. 12-1-06; CCD 2-2007, f. & cert. ef. 7-13-07

## 414-350-0120

### Caregiver/Child Ratios and Supervision

- (1) The number of caregivers and group size shall be determined by the number and ages of the children in attendance:
  - (a) All children in the home, including the provider's or other caregivers' own children, shall be counted in determining the caregiver/child ratio and group size;
  - (b) All children visiting the home on a regular basis will count in capacity. Children attending with a parent do not count as enrolled as long as the parent remains with and is responsible for non-enrolled children;
  - (c) The required caregiver/child ratios shall be met at all times.
- (2) Children shall at all times have the full attention of and be supervised by the required number of caregivers:
  - (a) Children shall be within sight and/or sound of a caregiver at all times;
  - (b) A caregiver shall be near enough to children to respond when needed. Children out of direct visual contact shall be monitored regularly and frequently and must be in approved activity areas;
  - (c) Children may not be on a floor level of the home unless a caregiver is on the same floor level, except as specified in OAR 414-350-0120(2)(d);
  - (d) When bathroom facilities are not on the same floor level, a written plan for adequate supervision of both bathroom and child care areas shall be developed and implemented.
- (3) The number of caregivers is determined by the age and number of the youngest child(ren) in the group. If the provider is certified to care for more than 12 children and plans to care for more than 8 infants and/or toddlers, the provider must develop a plan showing how infants and toddlers will be limited to a group size of not more than eight. The plan must be approved by CCD:
  - (a) If all children are in the same age group, the following table determines the staff/child ratio; [Table not included. See ED. NOTE.]
  - (b) If children in care include any infants and/or toddlers, the following table determines the staff/child ratio; [Table not included. See ED. NOTE.]
  - (c) If children in care include a mix of only preschool and school aged children, the following table determines the staff/child ratio; [Table not included. See ED. NOTE.]

# ADMINISTRATIVE RULES

(d) Even though staff/child ratios are specified in (a) and (b) above, a certified family child care provider may care for 10 children ages 6 weeks to school-age if:

(A) No more than 6 children are pre-school age or younger, including the provider's own children and any staff children;

(B) Of the 6, only 2 children are under 24 months of age; and

(C) Four of the children are school-age.

(4) The maximum number of children allowed in a certified family child care home at any one time is 16.

(5) If the home is certified to care for more than 12 children and the age blend is such that group separation is required:

(a) Groups may be joined for: meals, naps, outdoor play, and limited quiet activities such as a video or circle time;

(b) Provider must develop a plan that shows how the groups will be separated without requiring remodeling of the home. The plan must be approved by CCD.

(6) If the facility provides care to more than two children under 24 months of age, the provider shall meet the requirements specified in OAR 414-350-0100(4).

(7) Prior to a facility providing care to more than four children under 24 months of age, at least one caregiver other than the provider shall meet the requirements specified in OAR 414-350-0100(4). In addition, the provider shall have an extra 20 clock hours of training specific to infant and toddler care above and beyond the original requirements. If the facility is certified to care for more than 12 children, there must be someone who meets the training requirements of OAR 414-350-100(4) on site at all times that five or more children under 24 months of age are in care.

[ED. NOTE: Tables referenced are available from the agency at [www.oregon.gov/EMPLOY/CCD/Rules\\_Summary.shtml](http://www.oregon.gov/EMPLOY/CCD/Rules_Summary.shtml)]

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260 & 657A.290

Hist.: CSD 12-1988, f. 6-29-88, cert. ef. 7-1-88; CSD 7-1989, f. & cert. ef. 3-17-89; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0736; CCD 3-2002, f. 10-14-02, cert. ef. 10-15-02; CCD 6-2005(Temp), f. 12-29-05, cert. ef. 1-1-06 thru 6-29-06; CCD 3-2006, f. & cert. ef. 6-13-06; CCD 5-2006(Temp), f. & cert. ef. 8-25-06 thru 2-21-07; CCD 6-2006, f. & cert. ef. 12-1-06; CCD 2-2007, f. & cert. ef. 7-13-07

## 414-350-0180

### Illness or Injury

(1) A provider shall not admit, or retain in care, a child who:

(a) Is diagnosed as having or being a carrier of a child care-restrictable disease, as defined in Department of Human Services administrative rules, OAR 333-019-0010; or

(b) Has one of the following symptoms, or combination of symptoms, of illness:

(A) Diarrhea (more than one abnormally loose, runny, watery or bloody stool);

(B) Vomiting;

(C) Fever over 100 degrees F taken under the arm;

(D) Severe cough;

(E) Unusual yellow color to skin or eyes;

(F) Skin or eye lesions or rashes that are severe, weeping, or pus-filled;

(G) Stiff neck and headache with one or more of the symptoms listed above;

(H) Difficult breathing or abnormal wheezing; or

(I) Complaints of severe pain.

(2) A child who, after being admitted, shows signs of illness, as defined in subsection (1) of this rule, shall be isolated and the parent(s) notified and asked to remove the child from the home as soon as possible.

(3) If a child has mild cold symptoms that do not impair his/her functioning, the child may remain in the home and the parent(s) notified when they pick up the child.

(4) A specific place for isolating a child who becomes ill shall be provided. The isolation area shall be:

(a) Located where the child can be seen and heard by a caregiver; and

(b) Equipped with a cot, mat, or bed for each sick child.

(5) The provider shall identify a licensed physician, hospital, or clinic to be used for emergency medical care:

(a) The provider shall have written procedures for taking a child to emergency medical care;

(b) In the event of an illness or injury which requires immediate medical care, the provider is responsible for securing such care and notifying the parent(s).

(6) First aid supplies and a chart or handbook of first aid instructions shall be maintained in one identified place but kept out of reach of children:

(a) The first aid supplies shall include bandaids, adhesive tape, sterile gauze pads, soap or sealed antiseptic towelettes or solution to be used as a

wound cleaning agent, scissors, disposable plastic gloves for handling blood spills, chlorine bleach for sanitizing after a blood spill, a sanitary temperature taking device, and CPR mouthguards; and

(b) First aid supplies shall be taken on all field trips.

(7) Injuries or accidents shall be reported to the child's parent(s) on the day of occurrence:

(a) A written report of the injury or accident shall be maintained on file;

(b) The report shall include the date, child's full name, nature of the injury, witnesses, action taken, and the signatures of the provider and parent(s); and

(c) The injury to or death of a child shall be reported to CCD in accordance with OAR 414-350-0050(9).

(8) No prescription or non-prescription medication, including, but not limited to, pain relievers, sunscreen, cough syrup, diapering and first aid ointments or nose drops, shall be given to a child except under the following conditions:

(a) A signed, dated, written authorization from the parent(s) is on file;

(b) Prescription medication is in the original container and labeled with the child's name, the name of the drug, dosage, directions for administering, date and physician's name;

(c) Non-prescription medication is in the original container, labeled with the child's name, the dosage, and directions for administering;

(d) A written record of all medications administered, listing, as a minimum, the name of the child, type of medication, the signature of the caregiver administering the medication, date, time, and dosage given, shall be kept;

(e) All medications shall be secured in a tightly-covered container with a child-proof lock or latch and stored so that they are not accessible to children;

(f) Medications requiring refrigeration shall be kept in the refrigerator in a separate, tightly-covered container, with a child-proof lock or latch, clearly marked "medication"; and

(g) Parent(s) shall be informed daily of medication administered to their child.

(9) Parents of all children enrolled in the certified family child care home shall be informed of any outbreak of communicable disease within the facility.

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260, 657A.280 & 657A.290

Hist.: CSD 12-1988, f. 6-29-88, cert. ef. 7-1-88; CSD 2-1989, f. & cert. ef. 1-25-89; CSD 10-1990, f. & cert. ef. 4-34-90; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0750; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 3-2002, f. 10-14-02, cert. ef. 10-15-02; CCD 2-2007, f. & cert. ef. 7-13-07

## \*\*\*\*\* Employment Relations Board

### Chapter 115

**Rule Caption:** Amends fees charged for services.

**Adm. Order No.:** ERB 1-2007(Temp)

**Filed with Sec. of State:** 6-29-2007

**Certified to be Effective:** 7-1-07 thru 12-27-07

**Notice Publication Date:**

**Rules Amended:** 115-035-0035, 115-040-0005, 115-070-0000, 115-070-0035

**Subject:** Conforms to recent statutory changes which raise the fee to answer a public sector unfair labor practice complaint to \$250 (currently \$100) and establishes fees for private sector unfair labor practice complaints equal to those for the public sector.

Raises the fee for facilitations, which has not been increased since it was instituted in 1995, and amends the agency's billing process.

**Rules Coordinator:** Leann G. Wilcox—(503) 378-8610

### 115-035-0035

#### Answer to Complaint

(1) Answer. The respondent shall have 14 days from date of service of the complaint in which to file an answer. All allegations in the complaint not denied by the answer, unless the respondent states in the answer that it is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown. Complainant shall be required to establish a prima facie case. The answer will be deemed sufficient if it generally denies all allegations of the complaint. Respondent shall specifically admit by way of answer any undisputed allegations and set forth any affirmative defenses.

(2) Service of Answer. Upon filing an answer, the respondent shall serve a copy upon the complainant or its representative of record. Proof of

# ADMINISTRATIVE RULES

such service, setting forth the time and manner thereof, shall be filed with the answer.

(3) Failure to File. If the respondent fails to file a timely answer, absent a showing of good cause, it will not be allowed to present evidence at the hearing, and will be restricted to making legal arguments.

(4) Filing Fee. A filing fee of \$250 must be paid by the respondent when the answer is filed. The answer will not be considered to be filed until the fee is paid.

**NOTE:** Former (2) Motion to Make More Definite is now renumbered as 115-035-0007.

Stat. Auth.: ORS 243

Stats. Implemented: ORS 243.672(3) & 243.676

Hist.: ERB 1-1980, f. & ef. 1-9-80; ERB 8-1985, f. 10-29-85, ef. 10-31-85; ERB 2-1995(Temp), f. 7-17-95, cert. ef. 8-1-95; ERB 4-1995, f. 11-30-95, cert. ef. 12-1-95; ERB 3-1998, f. & cert. ef. 1-26-98; ERB 1-2000, f. & cert. ef. 12-1-00; ERB 1-2007(Temp), f. 6-29-07, cert. ef. 7-1-07 thru 12-27-07

## 115-040-0005

### Conciliation Service Fees

(1) Interest Mediation: When mediation concerns negotiations over the terms of a collective bargaining agreement, a local public employer and an exclusive representative each will be charged \$500 for mediation services. If two or more mediation sessions are provided after a notice of intent to strike or notice of intent to implement the employer's last offer has been given, the local public employer and the exclusive representative each will be charged an additional \$500 for mediation services.

(2) Grievance Mediation: When mediation concerns a grievance arising under a collective bargaining agreement, a local public employer and an exclusive representative each will be charged \$250.

(3) Unfair Labor Practice Mediation: When mediation concerns a pending unfair labor practice complaint, a local public employer and an exclusive representative each will be charged \$250.

(4) Interest-Based Training: The Conciliation Service shall offer training in interest-based bargaining, labor/management cooperation, problem solving and similar programs specifically designed for particular local public employer/exclusive representative needs. Fees for such training shall be \$2,500 for two-day training programs, \$1,500 for one-day refresher training, and \$700 for half-day training programs. The fees for facilitations and related travel time shall be \$60 per hour.

(5) Billing: For mediation services, parties will be billed when the first mediation session occurs. For training, parties will be billed when the training session occurs, with the employer and exclusive representative sharing equally the costs unless the parties agree otherwise.

(6) Definitions: "Local public employer" means any political subdivision in this state, including a city, county, community college, school district, special district, mass transit district, metropolitan service district, public service corporation or municipal corporation and a public and quasi-public corporation. "Exclusive representative" has the meaning given that term in ORS 243.650(8).

Stat. Auth.: ORS 243.766(7)

Stats. Implemented: ORS 240.610

Hist.: ERB 1-1995(Temp), f. 6-26-95, cert. ef. 7-1-95; ERB 5-1995, f. 11-30-95, cert. ef. 12-1-95; ERB 1-2007(Temp), f. 6-29-07, cert. ef. 7-1-07 thru 12-27-07

## 115-070-0000

### Filing an Unfair Labor Practice Charge

(1) Who May File. An injured party may file a charge alleging that a person(s) has engaged in or is engaging in an unfair labor practice. Such charge shall be filed in triplicate with the Board on forms provided by the Board.

(2) Content of Charge. The charge shall contain the following information:

(a) The name and address of the person making the charge;

(b) The name and address of the person(s) against whom the charge is made;

(c) A description of the nature of the business involved;

(d) A clear and concise statement of the facts constituting each alleged violation followed by the specific section and subsection of the law allegedly violated. Such statements shall include the names of persons committing specific complained of acts and the dates when such acts allegedly occurred; and

(e) The signature of the person filing the charge.

(3) Supporting Data. At the time the charge is filed, the charging party shall submit a written statement setting forth its version of the relevant facts, including names, dates, and places, together with any documentary evidence which may be relevant to the issues raised by the charge.

(4) Service of Charge. Concurrent with the filing of the charge, the filing party shall serve a copy of the charge upon the person against whom the charge is made and certify such service to the Board.

(5) Filing fee. A filing fee of \$250 must be paid at the time the charge is filed. A charge is not considered to be filed until the filing fee is paid.

Stat. Auth.: ORS 243

Stats. Implemented: ORS 663.175 & 663.180

Hist.: ERB 1-1980, f. & ef. 1-9-80; ERB 1-2007(Temp), f. 6-29-07, cert. ef. 7-1-07 thru 12-27-07

## 115-070-0035

### Answer to the Complaint

(1) Answer. The respondent shall have 14 days from date of service of the complaint in which to file an answer. All allegations in the complaint not denied by the answer, unless the respondent shall state in the answer that he/she is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown. The answer will be deemed sufficient if it generally denies all allegations of the complaint. Respondent shall specifically admit by way of answer any undisputed allegations and shall set forth any affirmative defenses.

(2) Service of Answer. Upon filing an answer, the respondent shall serve a copy upon the charging party or his/her attorney of record. Proof of such service, setting forth the time and manner thereof, shall be filed with the answer.

(3) Filing Fee. A filing fee of \$250 must be paid by the respondent when the answer is filed. The answer is not considered to be filed until the fee is paid.

Stat. Auth.: ORS 243

Stats. Implemented: ORS 663.185

Hist.: ERB 1-1980, f. & ef. 1-9-80; ERB 1-2007(Temp), f. 6-29-07, cert. ef. 7-1-07 thru 12-27-07

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## Office of Private Health Partnerships Chapter 442

**Rule Caption:** Clarifying applicants' ability to count dependents in their family size.

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

**Filed with Sec. of State:** 6-18-2007

**Certified to be Effective:** 6-18-07

**Notice Publication Date:** 6-1-07

**Rules Amended:** 442-005-0050

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

**Rules Coordinator:** Cindy Bowman—(503) 378-4674

## 442-005-0050

### Eligibility

In order for an applicant to qualify for a FHIAP subsidy, applicants must:

(1) Be a resident of Oregon or a full-time college student with a parent who is a resident of Oregon.

(2) Be a United States citizen or a qualified non-citizen who meets the alien status requirement.

(3) Not be eligible for or receiving Medicare benefits.

(4) Have investments and savings that are available of no more than \$10,000 on the last day of the month prior to the month the application is signed. Investments and Savings are not available if owned by or a beneficial interest in them is held by a separated spouse. FHIAP will determine when an applicant's spouse is deemed separated for the purposes of this subsection (4).

(5) Have income of less than 185% of the Federal Poverty Level in effect at the time of determination. Income determination is outlined in OAR 442-005-0070.

(6) Meet one of the statutory definitions of family in ORS 735.720(2) at the time of eligibility determination. To be included in the family size for FHIAP eligibility determination, the applicant's family members must meet the definition of dependent under OAR 442-005-0010(8):

# ADMINISTRATIVE RULES

(a) A dependent may be counted in two separate households for the purposes of determining eligibility for FHIAP and any other state assistance program;

(b) A dependent may be counted in two separate households for the purpose of determining eligibility for both families in FHIAP;

(c) A dependent may not be enrolled in FHIAP and OHP (or any other state medical assistance program) at the same time;

(d) A dependent may be enrolled in FHIAP and any other state assistance program (except medical) at the same time;

(e) If a dependent is counted in two separate households for the purpose of determining eligibility in two different assistance programs, enrollment will be determined by criteria established in procedure.

(7) Meet either a period of uninsurance requirement or exceptions listed in OAR 442-005-0060.

(8) Not be incarcerated for more than 30 days or be a ward of the State.

(9) Provide necessary materials in order to allow for eligibility determination. If information submitted is inconsistent, and applicant may be denied.

(10) If applying for subsidy in the group market, must be able to enroll in a group insurance plan that meets the benchmark standard established by the Office within twelve months of eligibility determination. If an applicant to the group market does not have access to a group plan, the group plan they have access to does not meet the benchmark standard, or they cannot enroll into their group plan within twelve months of eligibility determination, the applicant will be denied and placed on the reservation list for an individual subsidy using the same date they were placed on the group reservation list.

Stat. Auth.: ORS 735.734 & 735.720 - 735.740

Stats. Implemented: ORS 735.720 - 735.740

Hist.: IPGB 2-2006, f. & cert. ef. 6-1-06; IPGB 3-2006(Temp), f. & cert. ef. 11-27-06 thru 5-25-07; Administrative Correction, 6-16-07; OPHP 1-2007, f. & cert. ef. 6-18-07

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**Rule Caption:** Clarifying FHIAP definition of member.

**Adm. Order No.:** OPHP 2-2007

**Filed with Sec. of State:** 6-18-2007

**Certified to be Effective:** 7-9-07

**Notice Publication Date:** 6-1-07

**Rules Amended:** 442-005-0010, 442-005-0190, 442-005-0220, 442-005-0230

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

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

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

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

**Rules Coordinator:** Cindy Bowman—(503) 378-4674

## 442-005-0010

### Definitions

(1) "Alien Status Requirement." A qualified non-citizen meets the alien status requirement for FHIAP if the individual is one of the following:

(a) A person who was admitted as a qualified non-citizen on or before August 22, 1996;

(b) A person who entered the U.S. on or after August 22, 1996 and it has been five years since he or she became a qualified non-citizen;

(c) A person who has obtained their qualified non-citizen status less than five years ago, but entered the U.S. prior to August 22, 1996. The non-citizen must show that he or she has been living in the U.S. continuously for five years from a date prior to August 22, 1996 to the date the non-citizen obtained their qualified status and did not leave during that five year period. If the non-citizen cannot establish the five-year continuous residence before he or she obtained their qualified status, the person is not considered to have entered the U.S. prior to August 22, 1996;

(d) Regardless when they were admitted, a person with one of the following designated statuses:

(A) A person who is admitted as a refugee under section 207 of the INA;

(B) A person who is granted asylum under section 208 of the INA;

(C) A person whose deportation is being withheld under section 243(h) of the INA;

(D) A Cuban or Haitian entrant who is either a public interest or humanitarian parolee;

(E) A person who was granted immigration status according to the Foreign Operations Export Financing and Related Program Appropriation Act of 1988;

(F) A person who is a victim of a severe form of trafficking.

(e) Regardless of when they were admitted, a qualified non-citizen who is:

(A) A veteran of the U.S. Armed Forces, who was honorably discharged not on account of alien status and who fulfills the minimum active-duty service requirement; or

(B) On active duty in the U.S. Armed Forces (other than active duty for training);

(C) The spouse or unmarried dependent child of the veteran or person on active duty described in (e)(A) and (B).

(f) An American Indian born in Canada to whom the provisions of section 289 of the Immigration and Nationality Act (8 U.S.C. 1359) apply; or

(g) A member of an Indian tribe (as described in section 4(e) of the Indian Self-Determination and Education Act (25 U.S.C. 450b(e));

(h) Any legal non-citizen who was approved for a FHIAP subsidy prior to November 1, 2004.

(2) "Appeal" means the opportunity for an applicant to request and receive administrative review by Office staff of a decision made or action taken by the Third Party Administrator (TPA) or state office regarding program eligibility, subsidy level, termination, re-enrollment, overpayments, misrepresentation, or any other decision adverse to the applicant (ref. 442-005-0320).

(3) "Applicant" means a person who has initially applied or a member who is applying for continuation of FHIAP subsidy payments, but who has not yet been determined to be eligible to receive such subsidy or continued subsidy. "Applicant" also includes dependents as defined in OAR 442-005-0010(7).

(4) "Benchmark" means an identified minimum level of health insurance benefits qualifying for subsidy eligibility. The benchmark is established by the Office in consultation with the Health Insurance Reform Advisory Committee and is submitted to and approved by the federal government.

(5) "Carrier" means an insurance company or health care service contractor holding a valid certificate of authority from the Director of the Department of Consumer and Business Services that authorizes the transaction of health insurance. Carrier also includes the Oregon Medical Insurance Pool established under ORS 735.610.

(6) "Certified carrier" means a carrier that has been certified by the Office to participate in FHIAP. Certified carrier also includes the Oregon Medical Insurance Pool established under ORS 735.610.

(7) "Citizen" for the purposes of FHIAP means a native or naturalized member of the United States who can show proof of identity and citizenship as required in the Deficit Reduction Act (DRA) of 2005 (Pub. L. No. 109-171).

(8) "Dependent" for the purposes of FHIAP may include:

(a) An applicant's spouse, but not when deemed separated pursuant to OAR 442-005-0050(4) or 442-005-0070(5)(c);

(b) All of the applicant's and applicant's spouse's unmarried children, step children, legally adopted children or children placed under the legal guardianship of the applicant or applicant's spouse who are under the age of 23 and reside with the applicant, and all dependent children of a dependent child;

(c) An unborn child of any applicant or applicant's dependent as verified by written correspondence from a licensed medical practitioner;

(d) An elderly relative or an adult disabled child, regardless of age, who lives in the home of the applicant, may be included as a dependent:

(A) For the purpose of FHIAP administration as it relates to ORS 735.720(3)(b), dependent elderly relative means any person 55 and older.

(B) For the purpose of FHIAP administration as it relates to ORS 735.720(3)(b) adult disabled child means:

(i) A child of the applicant or applicant's spouse who is unmarried, a step child, a legally adopted child, or a child placed under the legal guardianship of the applicant or applicant's spouse who is over the age of 18 and resides with the applicant; and

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(ii) A child who is disabled with a physical or mental impairment that:  
(I) Is likely to continue without substantial improvement for no less than 12 months or to result in death; and

(II) Prevents performance of substantially all the ordinary duties of occupations in which a person not having the physical or mental impairment is capable of engaging, having due regard to the training, experience and circumstances of the individual with the physical or mental impairment.

(9) "Federal poverty level" means the poverty income guidelines as defined by the United States Department of Health and Human Services. These guidelines will be adopted by FHIAP no later than May 1 each year.

(10) "FHIAP" means the Family Health Insurance Assistance Program established by ORS 735.720 to 735.740.

(11) "Group" means insurance offered through an employer or an association.

(12) "Health insurance producer" means a person who holds a current, valid license pursuant to ORS 774.052 to 774.089 as an insurance producer, where such producer is authorized to transact health insurance.

(13) "Incarcerated" means a person living in a correctional facility, such as:

(a) Individuals who are legally confined to a correctional facility such as jail, prison, penitentiary, or juvenile detention center; or

(b) Individuals temporarily released from a correctional facility to perform court-imposed community service work; or

(c) Individuals on leave of less than 30 days from a correctional facility; or

(d) Individuals released from a correctional facility for the sole purpose of obtaining medical care.

(14) "Income" includes, but is not limited to, earned and unearned gross income received by adults and unearned income received by children. Income includes bartering, or working in exchange for goods and services, discounts on goods and services, working in exchange for rent, and payments made for personal living expenses from business funds:

(a) For purposes of determining average monthly income, an applicant may deduct child or spousal support payments made by the applicant for a child or spouse that FHIAP does not consider a dependent. No deduction is allowed for support that is owed but not paid and collected through an offset against the applicant's state income tax refund;

(b) Income does not include educational grants or scholarships.

(15) "Investments and savings" include, but are not limited to: cash, checking accounts, savings accounts, time certificates, stocks, bonds, non-retirement qualified annuities, other securities easily converted to cash, and the tax-assessed value, as indicated by the county assessor, of any real property. Any of the above investments and savings that are owned by or in which a beneficial interest is held by the applicant or any member of the applicant's family will be considered investments and savings of the applicant:

(a) "Investments and savings" does not include one piece of real property maintained by the applicant or the applicant's family as a primary residence. If the applicant or applicant's family maintain multiple residences or own real property as residential rentals, those properties (other than one single primary residence) are included within the definition of "investments and savings;"

(b) "Investments and savings" excludes 529 Educational Savings Plans and qualified retirement accounts, including but not limited to IRAs and 401(k) plans.

(16) "Medicaid," see OHP.

(17) "Medicare" means coverage under either parts A or B of Title XVIII of the Social Security Act, 42 U.S.C. 1395 et. seq., as amended.

(18) "Member" means a person approved for FHIAP and enrolled in a health insurance plan using the subsidy, or a Homecare Union Benefits Board (HUBB) applicant enrolled in a health benefit plan and approved for, but not yet enrolled in FHIAP.

(19) "Misrepresentation" means making an inaccurate or deliberately false statement of material fact, by word, action, or omission.

(20) "OHP" means the Oregon Health Plan Medicaid program and all programs that include medical assistance provided under 42 U.S.C. section 396a (section 1902 of the Social Security Act).

(21) "Overpayment" means any subsidy payment made that exceeds the amount a member is eligible for, and has been received by, or on behalf of, that member, as well as any civil penalty assessed by the Office.

(22) "Qualified non-citizen" for the purposes of FHIAP. A person is a "qualified non-citizen" if he or she is any of the following:

(a) A non-citizen who is lawfully admitted for permanent residence under the Immigration and Nationality Act (INA) (8 U.S.C. 1101 et seq);

(b) A refugee who is admitted to the United States as a refugee under section 207 of the INA (8 U.S.C. 1157);

(c) A non-citizen who is granted asylum under section 208 of the INA (8 U.S.C. 1158);

(d) A non-citizen whose deportation is being withheld under section 243(h) of the INA (8 U.S.C. 1523(h)) (as in effect immediately before April 1, 1997) or section 241(b)(3) of the INA (8 U.S.C. 251(b)(3) (as amended by section 305(a) of division C of the Omnibus Consolidated Appropriations Act of 1997, Pub. L. No. 104-208, 110 Stat. 3009-597 (1996));

(e) A non-citizen who is paroled into the United States under section 212(d)(5) of the INA (8 U.S.C. 1182(d)(5)) for a period of at least one year;

(f) A non-citizen who is granted conditional entry pursuant to section 203(a)(7) of the INA (8 U.S.C. 1153(a)(7)) as in effect prior to April 1, 1980;

(g) A non-citizen who is a "Cuban and Haitian entrant" (as defined in section 501(3) of the Refugee Education Assistance Act of 1980);

(h) A battered spouse or dependent child who meets the requirements of 8 U.S.C. 1641(c) and is in the United States on a conditional resident status, as determined by the United States Immigration and Naturalization Service;

(i) American Indians born in Canada to whom the provision of section 289 of the INA (8 U.S.C. 1359) apply;

(j) Members of an Indian tribe, as defined in section 4(e) of the Indian Self-Determination and Education Act (25 U.S.C. 450b(e));

(k) A veteran of the U.S. Armed Forces who was honorably discharged for reasons other than alien status and who fulfilled the minimum active-duty requirements described in 38 U.S.C. § 5303A(d);

(l) A member of the U.S. Armed Forces on active duty (other than active duty for training);

(m) The spouse or dependent child of a person described in either (k) or (l) above;

(n) A legal non-citizen approved for FHIAP subsidy prior to November 1, 2004.

(23) "Reapplication" means the periodic review and determination of a member's continued eligibility or subsidy level.

(24) "Reservation list" means a list of potential applicants for FHIAP, entered onto a register maintained by the TPA or state office as authorized by ORS 735.724.

(25) "Resident" means a citizen or qualified non-citizen who resides in Oregon or a full-time college student who is a citizen or qualified non-citizen with a parent who resides in Oregon.

(26) "Self-employment" means gross receipts received from a business owned, in whole or in part, by a FHIAP applicant or dependent if the gross receipts are reported on an Internal Revenue Service (IRS) Schedule C or 1099. Self employed income also includes income received for providing adult foster care if the recipient of the care lives in the applicant's home. Self-employment does not include income received from a partnership, S-corporation, C-corporation, or adult foster care if the care is not provided in the caregiver's home. Self-employment does not include income received from a Limited Liability Company except in the following situations:

(a) If an applicant or their dependent have income from a Limited Liability Company and file an IRS schedule C for said income, that income will be treated as self-employment and subject to business deductions;

(b) If an applicant or their dependent have income from a Limited Liability Company and file an IRS schedule F or J for said income, that income will be treated as Farming, Fishing or Ranching and subject to business deductions.

(27) "Support" means any court-ordered monetary payment for a child or former spouse or domestic partner whom FHIAP does not count in the applicant's family.

(28) "Voluntary payroll deduction" means an amount the employee has authorized the employer to deduct from the employee's income to pay expenses not required by law.

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

Stat. Auth.: ORS 735.724, 735-734 & 735.720 - 735.740

Stats. Implemented: ORS 735.720 - 735.740

Hist.: IPGB 2-2006, f. & cert. ef. 6-1-06; OPHP 2-2007, f. 6-18-07, cert. ef. 7-9-07

### 442-005-0190

#### Enrollment in FHIAP — Group Market

(1) Any applicant approved for a subsidy in the group market must enroll in a group plan that meets the benchmark standard within 12 months of being approved for FHIAP. Applicants that do not enroll in a group plan

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within 12 months will have to get back on the reservation list in order to reapply for a subsidy.

(2) Any FHIAP applicant or member who is enrolled in an individual plan and being subsidized by FHIAP must enroll into a group plan if one becomes available to them, provided the group plan meets the benchmark standard. Members who fail to enroll into such a plan are no longer eligible for a FHIAP subsidy in the individual market.

(3) If the applicant is approved for a group insurance subsidy, FHIAP will subsidize premiums that pay for the full approval month, no matter what day in the approval month the decision is made. The subsidy eligibility period will be based on the subsidy approval date.

(4) Once enrolled, if a member loses their group coverage due to loss of employment, or the employer discontinues the group plan, FHIAP will subsidize a COBRA, portability or individual plan. FHIAP will also subsidize a COBRA, portability, or individual plan for approved HUBB applicants who have not yet enrolled in the program.

Stat. Auth.: ORS 735.734 & 735.720 - 735.740

Stats. Implemented: ORS 735.720 - 735.740

Hist.: IPGB 2-2006, f. & cert. ef. 6-1-06; OPHHP 2-2007, f. 6-18-07, cert. ef. 7-9-07

## 442-005-0220

### Subsidy Payments — Group Market

(1) The amount FHIAP will subsidize is based on the monthly insurance premium less the employer's contribution.

(2) FHIAP will reimburse the eligible members' portion of the premium in the group market using submitted payment verification. Verification can include, but is not limited to payroll records, paycheck stubs, employer letters, carrier invoices, receipts, and cancelled check copies.

(3) FHIAP subsidies for HUBB will be paid in accordance with Individual Market OARs 442-005-0130, 442-005-0140, 442-005-0150, 442-005-0160, and 442-005-0170.

Stat. Auth.: ORS 735.734 & 735.720 - 735.740

Stats. Implemented: ORS 735.720 - 735.740

Hist.: IPGB 2-2006, f. & cert. ef. 6-1-06; OPHHP 2-2007, f. 6-18-07, cert. ef. 7-9-07

## 442-005-0230

### COBRA/Portability

(1) Potential applicants with a COBRA or Portability plan are placed on FHIAP's reservation list.

(2) Members receiving group subsidy who lose their insurance coverage may opt for COBRA, Portability, or an Individual insurance plan and FHIAP will continue to provide premium subsidy.

(3) Members approved for group subsidy who lose their insurance coverage prior to paying premiums are only eligible for COBRA or portability plan subsidy assistance.

(4) Members approved for group subsidy who lose their insurance coverage prior to using the FHIAP subsidy may opt to use their FHIAP subsidy toward COBRA, state continuation, or portability.

(5) HUBB applicants approved for group subsidy who lose their insurance may also use their FHIAP subsidy for an individual plan, in addition to COBRA, state continuation, or portability

Stat. Auth.: ORS 735.734 & 735.720 - 735.740

Stats. Implemented: ORS 735.720 - 735.740

Hist.: IPGB 2-2006, f. & cert. ef. 6-1-06; OPHHP 2-2007, f. 6-18-07, cert. ef. 7-9-07

## Oregon Department of Education Chapter 581

**Rule Caption:** Alters the type of appeal available to requests for audit adjustments.

**Adm. Order No.:** ODE 14-2007(Temp)

**Filed with Sec. of State:** 7-6-2007

**Certified to be Effective:** 7-6-07 thru 1-2-08

**Notice Publication Date:**

**Rules Amended:** 581-001-0100

**Subject:** The existing rule provides that school districts who dispute an audit adjustment may appeal that decision as a contested case hearing under ORS 183.413 through 183.470. The department and DOJ legal counsel believe that an order from the Superintendent in this or other cases involving adjustments of state school fund allocations are by definition "orders in other than a contested case" and are appeal able under ORS 183.484. The amendment proposed would clarify the process.

**Rules Coordinator:** Paula Merritt—(503) 947-5746

## 581-001-0100

### Audit Adjustments and Appeals

Any audit exception involving overpayment or underpayment for any program funded through the Oregon Department of Education shall be adjusted in a succeeding year, either by withholding the amount of overpayment, or by payment of funds due the recipient, unless the State Superintendent of Public Instruction agrees to an alternative method of adjustment.

Stat. Auth.: ORS 183 & 326

Stats. Implemented: ORS 326.111

Hist.: IEB 9-1982, f. & ef. 3-24-82; ODE 14-2007(Temp), f. & cert. ef. 7-6-07 thru 1-2-08

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**Rule Caption:** Defines requirements for human sexuality instruction.

**Adm. Order No.:** ODE 15-2007

**Filed with Sec. of State:** 7-6-2007

**Certified to be Effective:** 7-6-07

**Notice Publication Date:** 5-1-07

**Rules Amended:** 581-022-1440

**Subject:** 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—(503) 947-5746

## 581-022-1440

### Human Sexuality Education

(1) The follow definitions apply to Oregon Administrative Rule 581-022-1440:

(a) "Age-appropriate" means curricula designed to teach concepts, information, and skills based on the social, cognitive, emotional, and experience level of students;

(b) "Balanced" means instruction that provides information with the understanding of the preponderance of evidence;

(c) "Best practice" means something has the appearance of success, but has as yet not proved its effectiveness;

(d) "Comprehensive plan of instruction" (as defined by Oregon education statutes) means k-12 programs that emphasize abstinence, but not to the exclusion of condom and contraceptive education. The human sexuality information provided is complete, balanced, and medically accurate. Opportunities are provided for young people to develop and understand their values, attitudes, and beliefs about sexuality as a means of helping young people exercise responsibility regarding sexual relationships as further defined by (2) and (3);

(e) "Culturally sensitive" means materials and instruction that respond to culturally diverse individuals, families, and communities in an inclusive, respectful, and effective manner;

(f) "Gender identity" and "gender orientation" mean an individual's actual or perceived heterosexuality, homosexuality, bisexuality or gender identity, regardless of whether the individual's gender identity, appearance, expression or behavior differs from that traditionally associated with the individual's sex at birth;

(g) "Gender role" means the socially determined sets of behaviors assigned to people based on their biological sex;

(h) "Gender sensitive" means materials and instruction that are sensitive to individual's similarities and differences regarding gender role and/or gender identity;

(i) "Medically accurate" means information that is established through the use of the 'scientific method.' Results can be measured, quantified, and replicated to confirm accuracy, and are reported or recognized in peer-reviewed journals or other authoritative publications;

(j) "Research-based" means intervention is based on theoretical approaches that have been shown to be effective in achieving the intended outcomes. Evaluation based on studies using scientifically based designs; results published in recognized, peer-reviewed journals;

(k) "Sexual intercourse" means a type of sexual contact involving one of the following:

(A) Vaginal sexual intercourse;

(B) Oral sexual intercourse; or

(C) Anal sexual intercourse.

(l) "Shame or fear based" means terminology, activities, scenarios, context, language, and/or visual illustrations that are used to devalue, ignore, and/or disgrace students who have had or are having sexual relationships. Not all curricula or activities that describe risks of sexual activities can be considered "fear-based;"



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(m) "Skills-based" means instructional strategy that has students practice the desired skill.

(2) Each school district shall teach an age-appropriate, comprehensive plan of instruction focusing on human sexuality education, HIV/AIDS and sexually transmitted disease prevention in elementary and secondary schools as an integral part of health education and other subjects. Course material and instruction for all human sexuality education courses that discuss human sexuality in public elementary and secondary schools shall enhance students' understanding of sexuality as a normal and healthy aspect of human development. In addition, the HIV/AIDS and sexually transmitted disease prevention education and the human sexuality education comprehensive plan shall provide instruction at least annually, for all students grades 6–8 and at least twice during grades 9–12.

(3) Parents, teachers, school administrators, local health department staff, other community representatives, and persons from the medical community who are knowledgeable of the latest scientific information and effective education strategies shall develop the plan of instruction required by this rule cooperatively.

(4) Local school boards shall approve the plan of instruction and require that it be reviewed and updated biennially in accordance with new scientific information and effective education strategies.

(5) Any parent may request that his/her child be excused from that portion of the instructional program required by this rule under the procedures set forth in ORS 336.035(2).

(6) The comprehensive plan of instruction shall include information that:

(a) Promotes abstinence for school-age youth and mutually monogamous relationships with an uninfected partner for adults as the safest and mostly responsible sexual behavior to reduce the risk of unintended pregnancy and exposure to HIV, Hepatitis B/C and other sexually transmitted infectious diseases;

(b) Allays those fears concerning HIV that are scientifically groundless;

(c) Is balanced and medically accurate;

(d) Provides balanced and accurate information on the risks and benefits of contraceptive and other disease reduction measures which reduce the risk of unintended pregnancy, exposure to HIV, hepatitis B/C and other sexually transmitted infectious diseases;

(e) Discusses responsible sexual behaviors and hygienic practices which may reduce or eliminate unintended pregnancy, exposure to HIV, hepatitis B/C and other sexually transmitted diseases;

(f) Stresses the high risks of contracting HIV, hepatitis B and C and other infectious diseases through sharing of needles or syringes for injectable drugs including steroids, for tattooing, and body-piercing;

(g) Discusses the possible emotional, physical and psychological consequences of preadolescent and adolescent sexual intercourse and the emotional, physical and psychological consequences of unintended pregnancy. Pupils shall be provided with statistics based on the latest medical information regarding both the possible side effects and health benefits of all forms of contraceptives, including the success and failure rates for prevention of pregnancy and sexually transmitted diseases;

(h) Stresses that HIV/STDs and hepatitis B/C can be serious possible hazards of sexual contact;

(i) Advises students of the laws pertaining to their financial responsibility for their children;

(j) Advises pupils of the circumstances in which it is unlawful under ORS 163.435 and 163.445 for persons 18 years of age or older to have sexual relations with persons younger than 18 years of age to whom they are not married;

(k) Encourages family communication and involvement and helps students learn to make responsible decisions;

(l) Teaches that no form of sexual expression is acceptable when it physically or emotionally harms oneself or others and not to make unwanted physical and verbal sexual advances;

(m) Teaches that it is wrong to take advantage of or exploit another person;

(n) Validates through course material and instruction the importance of honesty with oneself and others, respect for each person's dignity and well-being, and responsibility for one's actions; and

(o) Uses culturally and gender sensitive materials, language, and strategies that recognizes different gender identities/orientations and gender roles.

(7) The comprehensive plan of instruction shall include skills-based instruction that:

(a) Assists students to develop and practice effective communication skills, the development of self-esteem and the ability to resist peer pressure;

(b) Provides students with the opportunity to learn about and personalize peer, media and community influences that both positively and negatively impact their decisions to abstain from sexual intercourse;

(c) Enhances students' ability to access valid health information and resources related to their sexual health;

(d) Teaches how to decline unwanted sexual advances, or accept the refusal of unwanted sexual advances, through the use of refusal and negotiation skills;

(e) Is research-based and/or best practice; and

(f) Aligns with the Oregon Health Education Content Standards and Benchmarks.

(8) All human sexuality education programs shall emphasize that abstinence from sexual intercourse, when practiced consistently and correctly, is the only method that is 100 percent effective against unintended pregnancy, HIV infection, hepatitis B/C infection, and other sexually transmitted diseases. Abstinence is to be stressed, but not to the exclusion of other methods for preventing unintended pregnancy, HIV infection, sexually transmitted diseases, and hepatitis B/C. Such courses are to acknowledge the value of abstinence while not devaluing or ignoring those students who have had or are having sexual relationships. Further, sexuality education materials, instructional strategies, and activities must not, in any way, use shame or fear based tactics.

(9) Materials and information shall be presented in a manner sensitive to the fact that there are students who have experienced sexual abuse.

Stat. Auth.: ORS 326.051

Stats. Implemented: ORS 336.455

Hist.: EB 18-1996, f. & cert. ef. 11-1-96; EB 2-1997, f. & cert. ef. 3-27-97; ODE 25-2002, f. & cert. ef. 11-15-02; ODE 15-2007, f. & cert. ef. 7-6-07

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

**Adm. Order No.:** ODE 16-2007

**Filed with Sec. of State:** 7-6-2007

**Certified to be Effective:** 7-6-07

**Notice Publication Date:** 5-1-07

**Rules Amended:** 581-053-0002, 581-053-0008

**Subject:** 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—(503) 947-5746

## 581-053-0002

### Administration of Pupil Transportation

(1) Definitions of terms used in OAR 581-053-0002 through 581-053-0550 shall be as follows:

(a) A school bus shall be as defined in ORS 801.460;

(b) A school activity vehicle shall be as defined in ORS 801.455;

(c) For purposes of OAR 581-053-0006, a diabetic is a person who takes insulin.

(d) Pupil transporting vehicles shall include all school buses as well as other vehicles that are owned or under contract with the school districts, private or parochial schools and are used to transport pupils to or from school or an authorized school activity or function.

(2) School districts shall provide transportation in compliance with all applicable laws and administrative rules.

(3) School districts or other employers shall not require or knowingly permit any person to operate a school bus or other pupil transporting vehicle in violation of any applicable rules of the Oregon Department of Education or Oregon laws.

(4) School boards shall adopt and implement written policies that insure that transportation officials receive notification of students having special medical or behavioral protocols identified in student records and that drivers receive appropriate training related to specified protocols, including requirements of confidentiality.

(5) School districts shall adopt and implement written transportation policy, including provisions regarding student suspensions and expulsions from district-provided transportation:

## ADMINISTRATIVE RULES

(a) Written transportation suspension and expulsion policy shall include at least the following:

(A) Definitions for the terms "suspension" and "expulsion" from district-provided transportation services and identify the specific applicable time limits; and

(B) Identification of criteria used for student suspension and expulsion from district-provided pupil transportation services; and

(C) Special provisions for the application of the policy to students receiving services under the Individuals with Disabilities Education Act; ORS 339.250, and 343.363; or

(b) An adoption as local board policy all elements listed below:

(A) Students may be suspended from district-provided pupil transportation services when such suspensions are executed within the provisions contained in OAR 581-021-0065(1) through (3) and all applicable procedures are consistent with OAR 581-053-0002(9), 581-053-0010, and the Individuals with Disabilities Education Act;

(B) The school district board shall limit the term of a suspension for a specific incident to a specific number of days. The maximum shall not exceed 10 school days when transportation is provided;

(C) Upon the occurrence within one school year of a subsequent incident or any occurrence of a severe disciplinary problem constituting a demonstrable safety hazard for the pupil-transporting vehicle or persons inside/outside the vehicle, the student may be expelled from district-provided transportation services for a period not to exceed one school year. Parent notification and procedural rules for yearlong length expulsions must be included in local board-approved transportation policy and must comply with those set forth for student expulsion in OAR 581-021-0070. An expulsion may extend into a second term or semester if the current term or semester ends within such a short period of time that the expulsion would be too short to be effective;

(D) Suspensions and expulsions shall be ordered by the school board, the executive officer of the school district or his or her designated representative. The district school board shall have the right of final review if the school board itself does not take the action. The school board may affirm, amend, modify, or rescind any suspension or expulsion order.

(6) School buses and all other pupil transporting vehicles shall be maintained in safe operating condition and shall meet or exceed the minimum standards in effect at the time of purchase, plus any subsequent rules applicable to the vehicle.

(7) Any additions of vehicle equipment or alterations in the vehicle construction not provided for in the applicable minimum standards for Oregon school buses or school activity vehicles are prohibited without prior approval from the Oregon Department of Education.

(8) All school buses and school activity vehicles that will be transporting students for the first time in a school system in Oregon must conform, or be made to conform within thirty days of notice of nonconformity, to the minimum standards for Oregon school buses or school activity vehicles currently in force as they apply to each vehicle. Written notification must be sent to the Superintendent of Public Instruction when relocating school or activity buses for a period exceeding 10 days. School and activity buses with a manufacture date prior to September 1, 1993 shall not be relocated. Type 21 activity vehicles may not be entered into the fleet for the first time with a manufacture date prior to April 1, 1977. Oregon Department of Education personnel may give a written order that a vehicle is unsafe and shall not be used to transport students when there is reason to believe that a deficiency is such that continued operation of the vehicle may jeopardize the safety of students or the public. The vehicle owner shall notify the Oregon Department of Education that the deficiency is corrected before transporting students.

(9) Vehicle maintenance records shall be kept for each vehicle used to transport students. These records shall be available to Department of Education personnel upon request. The following minimum information shall be kept for each vehicle by date and mileage at the time of service, adjustment or repair:

(a) Chassis lubrications;

(b) Engine oil and filter changes;

(c) Major engine tune-ups and repairs;

(d) All adjustment, service and repair of brake system;

(e) All adjustment, service and repair of steering mechanism and other related parts;

(f) Tires; and

(g) Drive train components.

(10) A seat that fully supports the passenger shall be provided for every passenger on all pupil-transporting vehicles. Seating is not permitted

on any portion of the vehicle not designed for that purpose. Passengers shall not be permitted to stand while vehicle is in motion.

(11) Safety instruction:

(a) All regularly transported pupils in schools which provide pupil transportation shall receive the following instruction at least once within the first six (6) weeks of the first half and once within the first six (6) weeks of the second half of each school year:

(A) Safe school bus riding procedures, including but not limited to loading, unloading, crossing, etc.;

(B) Use of emergency exits; and

(C) Planned and orderly evacuation of the school bus in case of emergency, including participation in actual evacuation drills.

(b) All pupils in schools where pupil transportation is provided who are not regularly transported shall receive the following instruction at least once in the first half of each school year:

(A) Safe school bus riding procedures; and

(B) Use of emergency exits.

(c) Records listing safety instruction course content and dates of training shall be maintained locally.

(12) All school buses manufactured prior to September 1, 1979 shall be equipped to meet all requirements of the applicable minimum standards for Oregon school buses in effect on that date.

(13) School systems shall provide for the required training, examination, and testing of their school bus and school activity vehicle drivers to comply with Oregon Department of Education rules. Appropriate specialized training designed for special needs transportation shall be provided prior to allowing drivers to transport students with disabilities. Records to document training and testing shall be maintained by school districts. Such records shall be made part of each driver's driver-training record file. Records shall be made available to Oregon Department of Education personnel or the driver upon request.

(14) School districts or contractors employing school bus drivers or Type 10 or Type 20 school activity vehicle drivers shall immediately notify the Department of Education if they have reason to believe any change in the driver(s)' criminal or driving record has occurred which could affect their ability to:

(a) Maintain a school bus driver permit or certificate under the provisions of OAR 581-053-0006(8); or

(b) Meet the requirements listed in OAR 581-053-0545 and 581-053-0550 for activity vehicle drivers.

(15) Schools or contractors selling a used school bus shall be responsible for removing all markings that would identify it as a school bus including the school bus safety lights. Exception: If the school bus is sold for the purpose of transporting school children to and from school, the school bus identification and school bus safety lights need not be removed. If sold for the purpose of transporting workers, the school bus safety lights need not be removed.

(16) Schools or contractors planning to rebuild a school bus shall first secure approval from the Pupil Transportation Section, Oregon Department of Education. (This does not apply to repair of damage.) All rebuilt school buses must meet current Oregon Minimum Standards for School Buses and applicable Federal Department of Transportation regulations.

(17) Special vehicles used for transportation of students with disabilities or for specific educational purposes that do not meet all current Oregon Minimum Standards for School Buses must be approved by the Pupil Transportation Section, Oregon Department of Education.

(18) Appeal for Variance:

(a) A school or contractor desiring to purchase a school bus or school activity vehicle which cannot meet all required minimum construction standards for school buses or school activity vehicles as applicable in Oregon must forward an "Appeal for Variance" request to the State Superintendent of Public Instruction, Salem, Oregon. This appeal must be made by the highest ranking official with the local operation and contain at least the following information:

(A) The need for such a vehicle;

(B) Why a standard school bus or school activity vehicle will not suffice;

(C) List of items, which will not meet applicable standards; and

(D) Passenger capacity of vehicle.

(b) This variance provision is designed for unique changes or alterations necessary to accommodate special equipment or conditions.

(19) In case of an accident involving serious injury or death, the Oregon Department of Education shall be notified immediately.

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(20) A school district or contractor shall notify the Department of Education in writing within 30 days of notification of school bus driver who:

(a) No longer meet the physical requirements for school bus drivers in OAR 581-053-0006(7);

(b) Have received a conviction for a driving violation or criminal offenses specified in OAR 581-053-0006(8);

(c) Have had their driving privileges revoked, restricted or suspended;

(d) Fail to comply with testing or screening requirements established by the Federal Highway Administration for commercial drivers.

(21) School district shall report to the Department of Education statistics related to pupil transportation: Information required shall be related to mileage, numbers and types of school buses, and numbers of students.

(22) Any person performing the annual school bus inspections required under OAR 581-053-0008 must be qualified to perform such inspections as defined under the provisions of that rule.

Stat. Auth.: ORS 327.013 & 820.100 - 820.120

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

Hist.: 1EB 13-1978, f. 4-3-78, ef. 9-1-78; 1EB 5-1979, f. & ef. 3-30-79; EB 3-1987, f. & ef. 2-18-87; EB 43-1988, f. 12-16-88, cert. ef. 1-1-89; EB 5-1992, f. & cert. ef. 2-21-92; EB 21-1993, f. & cert. ef. 6-2-93; ODE 11-1999, f. & cert. ef. 2-12-99; ODE 30-1999, f. 12-13-99, cert. ef. 12-14-99; ODE 7-2002, f. & cert. ef. 3-11-02; ODE 1-2003(Temp), f. & cert. ef. 3-4-03 thru 8-1-03; ODE 11-2003, f. & cert. ef. 6-13-03; ODE 11-2004, f. & cert. ef. 8-4-04; ODE 16-2007, f. & cert. ef. 7-6-07

## 581-053-0008

### Pupil Transporting Vehicle Inspection

(1) Transporting districts shall have all vehicles used in transporting pupils inspected annually by inspectors holding current school bus inspection certification, and certify to the Oregon Department of Education that all deficiencies have been corrected before September 1 each year.

(2) The Oregon Department of Education shall furnish forms for the inspection and for the certification reports.

(3) Oregon Department of Education personnel may make pupil transporting vehicle inspections at any time or upon request of local school districts. The Department may investigate accidents and examine pupil transporting vehicles involved in accidents as the Department considers necessary.

(4) Upon inspection of pupil transporting vehicles by Oregon Department of Education personnel, school districts shall be notified in writing of deficiencies. Such deficiencies shall be corrected within 30 days. If the district is unable to cause the deficiency to be corrected within 30 days, the district may submit a written request for an extension of time to the Oregon Department of Education. Such request may be granted, provided the deficiency does not affect the safety of students or public, and is not contrary to Oregon Motor Vehicle Laws.

(5) Oregon Department of Education personnel may issue a written order that a vehicle is unsafe and shall not be used to transport students when there is reason to believe that a deficiency is such that continued operation of the vehicle may jeopardize the safety of students or public.

(6) The district shall notify the Oregon Department of Education in writing that the deficiency is corrected before transporting students in a vehicle that has been declared unsafe in section (5) of this rule.

(7) The school bus driver shall inspect the following daily, unless the inspection is performed by other designated employees:

(a) Windshield and wipers;

(b) All outside lights;

(c) Service door;

(d) Tires and wheel lug nuts;

(e) Battery, belts, oil and coolant level;

(f) Horns;

(g) Brakes;

(h) Steering;

(i) Exhaust system;

(j) See that lights, windshield, mirrors, and warning sign is clean;

(k) Emergency equipment;

(l) Emergency exits and audible warning devices.

(8) The school activity vehicle driver shall inspect the vehicle as required by OAR 581-053-0545, 581-053-0550, or 581-053-0555, whichever is applicable.

(9) The driver shall report as soon as possible to the proper official any deficiency or malfunction of any equipment or component of the vehicle.

(10) The driver shall not transport students unless the vehicle is safe to operate.

(11) In addition to qualifications established by a local school district, any person performing an annual school bus inspection and signing the Annual Vehicle Inspection and Maintenance Report form 581-2255-M must successfully complete a test administered by the Oregon Department of Education and be certified over the contents of the "School Bus Maintenance and Inspection Manual for Oregon School Buses, current edition:"

(a) Oregon Department of Education may suspend or revoke this certificate if evidence is found that the inspection or report form has been falsified;

(b) Oregon Department of Education may require re-certification when the School Bus Maintenance and Inspection Manual is revised;

(c) Under the direction of a certified inspector, repair items listed below may be done by uncertified personal:

(A) Belts and hoses;

(B) Body and paint repair;

(C) Camera systems;

(D) Electrical systems;

(E) Exhaust systems;

(F) Fluid changes;

(G) Glass repair;

(H) Lights;

(I) Seat repairs;

(J) Tires;

(K) Tuneups.

Stat. Auth.: ORS 327.013 & 820.100 - 820.120

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

Hist.: 1EB 218, f. 2-17-76, ef. 3-15-76; EB 3-1987, f. & ef. 2-18-87; EB 43-1988, f. 12-16-88, cert. ef. 1-1-89; EB 21-1993, f. & cert. ef. 6-2-93; ODE 16-2007, f. & cert. ef. 7-6-07

## Oregon Patient Safety Commission

### Chapter 325

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

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

**Filed with Sec. of State:** 7-2-2007

**Certified to be Effective:** 7-2-07

**Notice Publication Date:** 6-1-07

**Rules Amended:** 325-005-0015

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

**Rules Coordinator:** Jim Dameron—(503) 224-9226

### 325-005-0015

#### Biennial Budget

The Commission hereby adopts by reference the Oregon Patient Safety Commission's 2007–2009 Biennial Budget of \$1,047,933 covering the period July 1, 2007, through June 30, 2009. The Commission's Administrator will amend budgeted accounts as necessary, within the approved budget of \$1,047,933 for the effective operation of the Commission. The Commission will not exceed the approved 2007–2009 Biennium Budget without amending this rule, notifying interested parties, and holding a public hearing as required by ORS Chapter 182.462. Copies of the budget are available from the Commission's office and are posted on the Commission's website.

Stat. Auth.: ORS 442.820 & Sec. 9 Ch. 686 OL 2003

Stats. Implemented: ORS 183.453(1), 183.453(2)

Hist.: PSC 1-2006, f. & cert. ef. 2-6-06; PSC 4-2007, f. & cert. ef. 7-2-07

## Oregon State Marine Board

### Chapter 250

**Rule Caption:** Establish a 5-mph zone on the Willamette River in the I-5 Boones Bridge area.

**Adm. Order No.:** OSMB 5-2007(Temp)

**Filed with Sec. of State:** 6-18-2007

**Certified to be Effective:** 6-18-07 thru 12-13-07

**Notice Publication Date:**

**Rules Amended:** 250-020-0032

**Subject:** This rule will set a 5 mph-slow no wake zone on the Willamette River in the Boones Bridge area near Wilsonville. House-

# ADMINISTRATIVE RULES

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

**Rules Coordinator:** June LeTarte—(503) 378-2617

## 250-020-0032

### Boat Operations on the Willamette River in Clackamas County

(1) No person shall operate a motorboat in excess of 10 MPH in the following areas:

- (a) Between the southern shore of Hog Island and the mainland;
  - (b) Within 100 feet of the west shore, between RM 30.0 and 30.5.
- (2) No person shall operate a boat:

(a) Downstream from Oregon City Falls in an area from the base of the falls to a line across the river between the northeast corner of the Crown Zellerbach's Mill A Grinder Room on the west bank of the river to the southwest corner of Publisher's Paper Company Power Plant on the east bank of the river as marked;

(b) In the area commonly known as the "cul-de-sac" or the Simpson Paper Company tailrace; beginning at the mouth of the tailrace on the south bank then extending across the tailrace following the line established by the bridge across the tailrace to the north bank, then in a westerly, southerly, and easterly direction around the bank of the tailrace to the place of beginning.

(c) Exceptions:

(A) Boats of any federal, state, county, or local governmental agency and Portland General Electric Sullivan Plant and Crown Zellerbach Corporation Mill maintenance crews may operate in the closed area when on official business;

(B) Boats used in taking lamprey under a permit issued by the State Department of Fish and Wildlife may operate in the closed area subject to the conditions specified in the permit.

(3) No person shall operate a boat at a speed in excess of a "Slow — No Wake" maximum 5 MPH speed on the following waters:

(a) Cedar Island lagoon;

(b) From the north point of the eastern spit of Cedar Island 100 yards due north and thence due west to the shore line;

(c) Within 200 feet of a designated public launching ramp and/or marked swimming area;

(d) Within 200 feet of shore adjacent to George Rogers Park (Lake Oswego), from the southern bank of Sucker Creek north along the west bank of the Willamette, to a point 200 yards north of the boat ramp, as posted;

(e) From the I-5 Boones Bridge west approximately 1,700 feet to the Railroad Bridge.

(4) No person shall operate a personal watercraft in continuous operation on the Willamette River between Hog Island and the Union Pacific Railroad Bridge during the period from May 1 through September 30, except to transit through this zone.

Stat. Auth.: ORS 830

Stats. Implemented: ORS 830.110 & 830.175

Hist.: MB 26, f. 7-20-64; MB 80, f. & ef. 4-19-77; MB 83, f. & ef. 4-22-77; Renumbered from 250-020-0142; MB 9-1982, f. 10-13-82, ef. 10-15-82; MB 6-1986, f. & ef. 5-23-86; MB 1-1987, f. & ef. 2-4-87; MB 13-1987, f. & ef. 6-15-87; MB 3-1996, f. & cert. ef. 2-22-96; OSMB 5-2000, f. & cert. ef. 10-30-00; OSMB 5-2007(Temp), f. & cert. ef. 6-18-07 thru 12-13-07

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**Rule Caption:** Identifies specific equipment requirements for ocean charter vessels.

**Adm. Order No.:** OSMB 6-2007

**Filed with Sec. of State:** 7-2-2007

**Certified to be Effective:** 7-2-07

**Notice Publication Date:** 2-1-07

**Rules Amended:** 250-015-0033

**Subject:** This rule allows the use of a satellite telephone as a substitute for the single sideband radio required for vessels operating more than 20 miles from the nearest port, in addition to other mandatory equipment.

**Rules Coordinator:** June LeTarte—(503) 378-2617

## 250-015-0033

### Additional Equipment

Vessels operating more than 20 miles from the nearest port, in addition to the equipment previously specified, must also carry:

(1) Single Sideband Radio (Title 47 CFR Parts 80.901 & 80.905

(a)(2)). Vessels must be equipped with a medium frequency transmitter capable of transmitting J3E emissions and a receiver capable of reception

of J3E emissions within the band of 1710 to 2850 kHz and be capable of operation on 2670 kHz, or:

(2) All of the following:

(a) Satellite Telephone;

(A) Hard-wired for a constant charge, with charging indicator light;

(B) Portable, removable from charging base, able to operate independently;

(C) Mounted within reach of the boat operator, at the pilot station; and

(D) Programmable, emergency numbers programmed for speed-dial.

(b) 406 MHz Emergency Positioning Indicating Radio Beacon (EPIRB), and a

(c) VHF Radiotelephone

(3) Life Raft, Unsinkable Shore Boat (Title 46 CFR Part 180.15). Vessels must carry a life raft, unsinkable shore boat or buoyancy apparatus with a rated capacity sufficient for passengers and crew.

(4) Water Lights (Title 46 CFR Part 25.25-1). Each life jacket must have a water light/life jacket light attached. The Code of Federal Regulations is available online and in the library. The Code of Federal Regulations is available online and in the Library

Stat. Auth.: ORS 830.110

Stats. Implemented: ORS 830.430 - 830.460 & Title 46 CFR

Hist.: OSMB 3-2005, f. & cert. ef. 1-24-05; OSMB 6-2007, f. & cert. ef. 7-2-07

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

**Adm. Order No.:** OSMB 7-2007

**Filed with Sec. of State:** 7-2-2007

**Certified to be Effective:** 7-2-07

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

**Rules Amended:** 250-020-0102

**Subject:** This rule changes the speed limit for safe operation of boats on Plat I in Douglas County.

**Rules Coordinator:** June LeTarte—(503) 378-2617

## 250-020-0102

### Boat Operations in Douglas County

(1) No person shall operate a motorboat at a speed in excess of 10 MPH in the following areas:

(a) On Carter Lake;

(b) On Plat I Reservoir.

(2) No person shall operate a motorboat at a speed in excess of 5 MPH in the following areas:

(a) Within the Harbor limits of Salmon Harbor on Winchester Bay;

(b) On the Umpqua River in the vicinity of River Forks Park from a point 30 yards downstream (North) from the launching ramp to a point upstream 100 yards on each the North Fork and South Fork of the Umpqua River;

(c) On the Umpqua River within 300 feet of the boat launching ramp and designated swimming area at Scottsburg Park.

(3) Lemolo Lake:

(a) No person shall operate a motorboat in excess of a "Slow-No Wake" maximum 5 MPH speed within 150 feet of the shore or pier line in a zone extending from the launch ramp at Lemolo Lake Resort south to Pool Creek Inlet, and from a point 200 feet south of Pool Creek Inlet south to the small unnamed island, and thence south from the south tip of the island across to the nearest peninsula;

(b) Boats shall not exceed a "Slow-No Wake" maximum 5 MPH speed in the area from where U.S. Forest Service Road Number 2666 crosses the North Umpqua River, to a point 2,000 feet westward thereof;

(c) Boats shall not exceed a maximum speed of 40 MPH on all other waters of Lemolo Lake.

(4) No person shall operate a motorboat for any purpose on the following bodies of water:

(a) Amos and Andy Lakes;

(b) June Lake;

(c) Indigo Lake;

(d) Maidu Lake;

(e) Wolf Lake;

(f) Skookum Lake;

(g) Fish Lake;

(h) Buckeye Lake;

(i) Cliff Lake;

(j) Calamut Lake;

(k) Lucile Lake;

(l) Faller Lake;

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- (m) Lower Twin Lake;
- (n) Upper Twin Lake;
- (o) Lake in the Woods.
- (5) Cooper Creek Reservoir: No person shall operate a motorboat in excess of:
  - (a) 40 MPH on the main body of the Reservoir;
  - (b) 5 MPH within the buoyed area of Rachele Inlet; Pierce Canyon Inlet; Sutherlin Inlet and Douglas Inlet;
  - (c) 5 MPH within 200 feet of a boat launching ramp or designates swimming area.
  - (6) Ben Irving Reservoir: No person shall operate a motorboat in excess of:
    - (a) 35 MPH from the markers (identified by the letter "A") located where the reservoir narrows, downstream for approximately 1.2 miles to the dam;
    - (b) 5 MPH;
    - (A) From the markers (identified by the letter "A") located where the reservoir narrows, upstream for approximately one mile to the second set of markers (identified by the letter "B");
    - (B) Within 100 feet of the boat ramp as marked.
    - (c) No person shall operate a motorboat upstream from the second markers (identified by the letter "B") except that electric motors may be used;
    - (d) No boats shall be permitted within the log boomed area in the vicinity of the dam spillway.
    - (7) Galesville Reservoir: No person shall operate a motorboat in excess of:
      - (a) 40 MPH on the main body of the lake;
      - (b) 5 MPH along the north shore between the launch ramp and log boom, in the buoyed areas;
      - (c) 5 MPH between the buoy line at the upper end of the lake to the powerboat deadline as marked;
      - (d) Above the 5 MPH zone, as marked, no person shall operate a motorboat, except those propelled by electric motors;
      - (e) Persons operating a motorboat in excess of 5 MPH in the otherwise unrestricted portions of the lake shall proceed about the lake in a counter clockwise direction.
      - (8) No person shall operate a motorboat on the North Umpqua River between the boat ramp at Lone Rock Camp (approximate RM 32) upstream to Lemolo Lake.
      - (9) Loon Lake:
        - (a) Except for safe take-offs and landings, no person shall operate a motorboat in excess of a 5 MPH "Slow-No Wake" speed within 200 feet of the designated swimming area and boat mooring area at the BLM day use area, as marked. Boats towing skiers may exceed 5 MPH to extent necessary to maintain the skier in a skiing position, within 200 feet from the designated swimming area and boat mooring area only under safe conditions as outlined in this section. A safe take-off or landing will not be considered "safe" unless it can be accomplished without risk to any swimmer or craft within 200 feet from designated swimming area and boat mooring area. If a safe landing as thus defined is not possible, skiers must be picked up by the boat before coming within 200 feet from the designated swimming area and boat mooring area and brought to shore under usual speed restrictions (5 MPH with in 200 feet of the designated swimming area and boat mooring area). Take-offs and landings are required to be made following the mandatory counter-clockwise pattern.
        - (b) Persons operating a motorboat in excess of 10 MPH shall proceed in a counter-clockwise direction in the otherwise unrestricted portions of the lake.
        - (c) No person shall operate a motorboat in excess of a 5 MPH "Slow-No Wake" speed within the buoyed area extending from the north shore of the cove at Fish Haven Resort in a southwest direction across the lake to the end of the prominent point of land on the south shore of the lake, as marked.
      - (10) Diamond Lake:
        - (a) No person shall operate a motorboat in excess of 45 MPH between the hours of 9 a.m. and 6 p.m.;
        - (b) No person shall operate a motorboat in excess of 10 MPH between 6 p.m. and 9 a.m.;
        - (c) No person shall operate a motorboat in excess of 10 MPH within 200 yards of any boat ramp, boat dock, swimming area, inlet or outlet of the lake, designated campground or summer home.
        - (d) No person shall operate a personal watercraft as defined in OAR 250-021-0020 at anytime;
        - (e) No person shall operate a motorboat that exceeds the noise levels specified in OAR 250-010-0121.

(11) Hemlock Lake: No person shall operate a motorboat, except those propelled by electric motors.  
Stat. Auth.: ORS 830  
Stats. Implemented: ORS 830.110, 830.175 & 830.185  
Hist.: MB 20, f. 3-20-63; MB 29, f. 6-17-66; MB 32, f. 9-14-66; MB 34, f. & ef. 6-2-67; MB 41, f. 9-18-68; MB 47, f. 7-14-70, ef. 8-11-70; MB 74(Temp), f. 5-18-76, ef. 6-1-76 thru 9-28-76; MB 82, f. & ef. 4-19-77; Renumbered from 250-020-0083; MB 4-1981(Temp), f. & ef. 4-17-81; MB 7-1981, f. & ef. 11-16-81; MB 4-1987, f. 4-20-87, ef. 5-1-87; MB 21-1987, f. 12-31-87, ef. 1-1-88; MB 5-1995, f. & cert. ef. 7-14-95; OSMB 8-2000, f. & cert. ef. 12-1-00; OSMB 7-2002, f. & cert. ef. 10-15-02; OSMB 1-2006, f. & cert. ef. 3-28-06; OSMB 7-2006(Temp), f. 8-15-06, cert. ef. 9-5-06 thru 9-30-06; Administrative correction 10-16-06; OSMB 7-2007, f. & cert. ef. 7-2-07

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**Rule Caption:** Rule provides licensing reciprocity for outfitters and guides operating on the Columbia River.

**Adm. Order No.:** OSMB 8-2007

**Filed with Sec. of State:** 7-2-2007

**Certified to be Effective:** 7-2-07

**Notice Publication Date:** 5-1-07

**Rules Adopted:** 250-016-0014

**Subject:** This rule provides licensing reciprocity between Washington and Oregon for outfitters and guides operating on the lower Columbia River downstream of the bridge at Longview-Rainier.

**Rules Coordinator:** June LeTarte—(503) 378-2617

## 250-016-0014

### Reciprocity Provisions for Outfitters and Guides on the lower Columbia River downstream of the bridge at Longview — Rainier

(1) The purpose of this rule is to give outfitters and guides operating on the lower Columbia River downstream of the Lewis and Clark bridge at Longview — Rainier the opportunity to share in the reciprocity between Oregon and Washington regarding the licensing of charter vessels. 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 downstream of the bridge at Longview — Rainier while operating on the lower Columbia River.

(2) 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.

(3) 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.

(4) ORS 704.025(1) provides that the State Marine Board may adopt rules that exempt persons possessing a valid Washington license, permit or registration from the outfitter and guide registration required under Chapter 704, if the Board determines the license, permit or registration requirements of Washington are comparable to those of Oregon. Washington has decided to grant reciprocity to Oregon Ocean Charter boats on the lower Columbia River (WAC 220-20-005).

(5) The State Marine Board finds that a Washington charter license issued under RCW 77.65.150 is comparable to an Oregon Ocean Charter license for the carrying of passengers for hire for angling purposes on the lower Columbia River downstream of the Lewis and Clark bridge at Longview-Rainier.

(6) Outfitters and Guides registered under ORS Chapter 704 may obtain an Ocean Charter Vessel license in addition to their outfitter and guide registration. As authorized by the Oregon Legislature, the Marine Board waives the fee for an Ocean Charter Vessel License for Oregon resident outfitters and guides who conduct activities on the Lower Columbia River downstream of the Lewis and Clark bridge.

(7) Oregon Outfitters and Guides who choose not to obtain an Ocean Charter Vessel License for operations on the Columbia downstream of the Lewis and Clark bridge at Longview — Rainier must ensure that their operations remain in Oregon waters at all times.

(8) The reciprocity provisions of this rule, and those of 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 outfitter and guide is registered and/or charter vessel is licensed.

Stat. Auth.: ORS 830.110

# ADMINISTRATIVE RULES

Stats. Implemented: ORS 704.025, ORS 830.435  
Hist.: OSMB 8-2007, f. & cert. ef. 7-2-07

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

**Adm. Order No.:** OSMB 9-2007

**Filed with Sec. of State:** 7-2-2007

**Certified to be Effective:** 7-2-07

**Notice Publication Date:** 6-1-07

**Rules Amended:** 250-010-0055, 250-010-0300, 250-010-0320

**Subject:** These rules provide the process by which a lost boat title application is made and issued. In addition, these rules outline the registration numbering system used for floating homes and boat-houses in Oregon.

**Rules Coordinator:** June LeTarte—(503) 378-2617

## 250-010-0055

### Certificates of Boat Title

(1) When the owner of a boat submits an application for Certificate of Boat Title only, and under normal circumstances the boat would require in addition to the title, a certificate of number, the Director shall not issue the title until first obtaining from the owner a signed statement that the boat will not be used on any waters over which this state has jurisdiction until all registration requirements have been complied with.

(2) Before issuing a Certificate of Title for a boat the Director shall require "Proof of Ownership" which may include a notarized transfer of title by the previous title owners, a Manufacturer's Statement of Origin (MSO) properly executed by the manufacturer, a Homemade Boat Builders Certificate properly executed by the builder, a Certificate of Boat Title issued by another state or an original certificate of number for boats previously registered in another state that does not issue a Certificate of Title for a Boat.

(a) When an application is made for an initial Oregon title, the following boats must be inspected by the Oregon State Police, an Oregon county sheriff's representative, or Marine Board staff:

(A) Homemade boats; and

(B) Boats not titled and/or registered in Oregon or another state with the exception of new boats when a manufacturer's statement of origin has been submitted.

(C) When a boat is currently unavailable for inspection or when it is evident that a typographical error or misinterpretation of a number or letter has occurred, a title and registration may be issued after a pencil tracing (rubbing) or digital photo is submitted, provided:

(i) The boat has a title or out of state registration;

(ii) There are no stolen records or red flags; and,

(iii) The boat is more than 20 years old and/or has an estimated value less than \$2,000.

(b) The Board at its discretion may inspect any boat before issuing an Oregon title.

(3) When an application for a certificate of boat title indicates that the legal owner of the boat is other than the principal owner, the title must be mailed to the legal owner.

(4) An application to replace a lost boat title may be made to the Board. A lost boat title must be issued to the title owners indicated in the Board's records, unless a notarized transfer of title signed by the previous title owners has been submitted in connection with the lost title application.

Stat. Auth.: ORS 830

Stats. Implemented: ORS 830.110

Hist.: MB 1, f. 2-4-60; MB 8, f. 6-30-61; MB 10, f. 11-14-61; MB 12, f. 3-27-62; MB 24, f. 3-13-64; Suspended by MB 9-1983(Temp), f. 11-29-83, ef. 12-1-83; MB 3-1984, f. & ef. 1-5-84; MB 5-1997, f. & cert. ef. 5-30-9; OSMB 4-2006, f. & cert. ef. 7-3-06; OSMB 9-2007, f. & cert. ef. 7-2-07

## 250-010-0300

### Definitions

(1) "Board" means the Oregon State Marine Board.

(2) "Boathouse" means a covered structure on floats or piles used for the protected moorage of boats.

(3) "Floating Home" means a moored structure that is secured to a pier or pilings and is used primarily as a domicile and not as a boat.

(4) "Owner" means a person or persons who have a property interest other than a security interest in a floating home or boathouse, and the right of use or possession of the floating home or boathouse, but does not include a lessee.

(5) "Ownership" means a property interest other than a security interest.

(6) "Person" means an individual, partnership, firm, corporation, association, or other entity.

(7) "Security Interest" means an interest reserved or created by agreement which secures payment or performance of an obligation as more particularly defined by subsection (37) of ORS 71.2010.

(8) "Waters of This State" means all waters within the territorial limits of this state, the marginal sea adjacent to this state, and the high seas when navigated as a part of a journey or ride to and from the shore of this state.

Stat. Auth.: ORS 830

Stats. Implemented: ORS 830.850

Hist.: MB 1-1978, f. & ef. 4-5-78; OSMB 9-2007, f. & cert. ef. 7-2-07

## 250-010-0320

### Oregon Floating Home/Boathouse Registration Numbering System

(1) The Floating Home/Boathouse numbering system adopted for use in the State of Oregon shall consist of the designator FH (Floating Home), BH (Boathouse), or C (Combination Floating Home/Boathouse). The assigned number will correspond to the identifying registration plate issued with the initial title or the replacement plate if applicable. NUMBERING EXAMPLES:

(a) FH0001 through FH9999

(b) BH0001 through BH9999

(c) C0001 through C9999

(2) The title number will contain seven numeric characters preceded by an alpha letter upon issuance of the second title, beginning with the letter A and continuing through Z as subsequent titles are issued. TITLE NUMBERING EXAMPLES: Initial title 0000001 then A000001 through Z9999999.

Stat. Auth.: ORS 830

Stats. Implemented: ORS 830.870

Hist.: MB 1-1978, f. & ef. 4-5-78; OSMB 9-2007, f. & cert. ef. 7-2-07

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## Oregon University System Chapter 580

**Rule Caption:** To adopt the 2007–08 tuition and fee rates and the room/board changes.

**Adm. Order No.:** OSSHE 3-2007

**Filed with Sec. of State:** 6-21-2007

**Certified to be Effective:** 6-21-07

**Notice Publication Date:** 4-1-07

**Rules Amended:** 580-040-0040

**Subject:** To establish tuition and fees for the 2007–08 Academic Year, including room and board rates.

**Rules Coordinator:** Marcia M. Stuart—(541) 347-5749

## 580-040-0040

### Academic Year Fee Book

The document entitled "Academic Year Fee Book" dated June 08, 2007, is hereby amended by reference as a permanent rule. All prior adoptions of academic year fee documents are hereby repealed except as to rights and obligations previously acquired or incurred thereunder.

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

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 4-1978, f. & ef. 6-15-78; HEB 5-1979, f. & ef. 7-20-79; HEB 11-1979, f. & ef. 8-22-79; HEB 1-1980, f. & ef. 4-18-80; HEB 7-1980, f. & ef. 6-18-80; HEB 11-1980, f. & ef. 8-20-80; HEB 4-1981(Temp), f. 6-30-81, ef. 7-1-81; HEB 5-1981, f. & ef. 8-18-81; HEB 15-1981(Temp), f. & ef. 12-18-81; HEB 5-1982, f. & ef. 7-14-82; HEB 4-1983, f. & ef. 7-29-83; HEB 4-1984, f. & ef. 6-20-84; HEB 5-1985, f. & ef. 8-12-85; HEB 12-1986, f. & ef. 7-30-86; HEB 6-1987, f. & ef. 8-4-87; HEB 8-1988, f. & cert. ef. 8-5-88; HEB 10-1988, f. & cert. ef. 11-16-88; HEB 3-1989, f. & cert. ef. 11-27-89; HEB 6-1989, f. & cert. ef. 7-28-89; HEB 7-1990, f. & cert. ef. 6-4-90; HEB 8-1990(Temp), f. & cert. ef. 7-26-90; HEB 12-1990, f. & cert. ef. 10-3-90; HEB 5-1991, f. & cert. ef. 8-15-91; HEB 8-1992, f. & cert. ef. 7-31-92; HEB 2-1993, f. & cert. ef. 2-5-93; HEB 5-1993, f. & cert. ef. 8-11-93; HEB 7-1994, f. & cert. ef. 8-4-94; HEB 3-1995, f. & cert. ef. 8-1-95; HEB 3-1996, f. & cert. ef. 8-8-96; HEB 5-1996, f. & cert. ef. 12-18-96; HEB 3-1997, f. & cert. ef. 7-24-97; OSSHE 4-1998, f. & cert. ef. 7-22-98; OSSHE 5-1998(Temp), f. & cert. ef. 8-21-98 thru 1-31-99; OSSHE 9-1998, f. & cert. ef. 12-23-98; OSSHE 3-1999(Temp), f. & cert. ef. 7-22-99 thru 1-14-00; OSSHE 4-1999, f. & cert. ef. 9-16-99; OSSHE 3-2000, f. & cert. ef. 7-26-00; OSSHE 4-2001, f. & cert. ef. 7-27-01; OSSHE 8-2002, f. & cert. ef. 8-14-02; OSSHE 2-2003, f. & cert. ef. 8-4-03; OSSHE 6-2004, f. & cert. ef. 6-15-04; OSSHE 2-2006, f. & cert. ef. 6-8-06; OSSHE 3-2007, f. & cert. ef. 6-21-07

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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.

# ADMINISTRATIVE RULES

**Adm. Order No.:** OSU 1-2007  
**Filed with Sec. of State:** 6-18-2007  
**Certified to be Effective:** 7-1-07  
**Notice Publication Date:** 5-1-07  
**Rules Amended:** 576-010-0000

**Subject:** The 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 changes 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—(541) 737-6262

## 576-010-0000

### Fees and Charges

The University hereby adopts by reference a list of fees and charges for fiscal year 2007–2008. This List of Fees and Charges is available at the Oregon State University Office of Budget and Fiscal Planning and the Oregon State University Valley Library, and is hereby incorporated by reference in the rule.

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

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

Stats. Implemented: ORS 351.070 & 352.360

Hist.: OSU 3-1980, f. & ef. 10-31-80; OSU 1-1982, f. & ef. 8-27-82; OSU 1-1983(Temp), f. & ef. 9-26-83; OSU 1-1986, f. & ef. 6-4-86; OSU 2-1987, f. 6-11-87, ef. 7-1-87; OSU 2-1988, f. 6-15-88, cert. ef. 7-1-88; OSU 4-1989, f. 6-13-89, cert. ef. 7-1-89; OSU 1-1990, f. 6-15-90, cert. ef. 7-1-90; OSU 6-1991, f. 6-3-91, cert. ef. 7-1-91; OSU 2-1992, f. 6-5-92, cert. ef. 7-1-92; OSU 5-1993, f. 6-9-93, cert. ef. 7-1-93; OSU 1-1994, f. 6-8-94, cert. ef. 7-1-94; OSU 2-1995, f. 6-20-95, cert. ef. 7-1-95; OSU 6-1996, f. & cert. ef. 7-1-96; OSU 5-1997, f. 6-16-97, cert. ef. 7-1-97; OSU 7-1998, f. 6-30-98, cert. ef. 7-1-98; OSU 3-1999, f. 6-17-99, cert. ef. 7-1-99; OSU 1-2000, f. 6-21-00, cert. ef. 7-1-00; OSU 5-2001, f. 6-18-01, cert. ef. 7-1-01; OSU 6-2002, f. 6-5-02, cert. ef. 7-1-02; OSU 1-2003, f. 6-19-03, cert. ef. 7-1-03; OSU 1-2004, f. 6-23-04, cert. ef. 7-1-04; OSU 1-2005, f. 6-13-05, cert. ef. 7-1-05; OSU 1-2006, f. 6-23-06, cert. ef. 7-1-06; OSU 1-2007, f. 6-18-07, cert. ef. 7-1-07

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## Oregon University System, Portland State University Chapter 577

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

**Adm. Order No.:** PSU 3-2007

**Filed with Sec. of State:** 7-5-2007

**Certified to be Effective:** 7-5-07

**Notice Publication Date:** 6-1-07

**Rules Amended:** 577-060-0020

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

**Rules Coordinator:** Jeremy Randall Dalton—(503) 725-3701

## 577-060-0020

### Schedule of Fees for General Services and Other Charges

The Schedule of Fees for General Services and Other Charges for the 2007–2008 Fiscal Year are hereby adopted by reference by Portland State University.

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

Stat. Auth.: ORS 351.070, 352.260

Stats. Implemented: ORS 351.070, 352.260

Hist.: PSU 16(Temp), f. 8-24-77, ef. 9-1-77; PSU 18, f. & ef. 10-4-77; PSU 19(Temp), f. & ef. 10-11-77; PSU 20, f. & ef. 11-18-77; PSU 3-1978(Temp), f. 6-19-78, ef. 7-1-78; PSU 7-1978, f. & ef. 9-5-78; PSU 1-1979, f. & ef. 9-17-79; PSU 3-1980, f. & ef. 9-4-80; PSU 2-1981, f. & ef. 9-10-81; PSU 3-1982, f. & ef. 9-3-82; PSU 1-1983, f. & ef. 2-8-83; PSU 2-1983, f. 6-22-83, ef. 7-1-83; PSU 1-1984, f. 6-8-84, ef. 7-1-84; PSU 1-1985, f. 6-26-85, f. 7-1-85; PSU 1-1986, f. 6-25-86, ef. 7-1-86; PSU 1-1987, f. 6-19-87, ef. 7-1-87; PSU 3-1987(Temp), f. & ef. 8-11-87; PSU 5-1987, f. & ef. 10-27-87; PSU 5-1988, f. & cert. ef. 7-18-88; PSU 7-1988(Temp), f. & cert. ef. 11-29-88; PSU 3-1989, f. & cert. ef. 7-26-89; PSU 5-1990, f. & cert. ef. 7-5-90; PSU 2-1991(Temp), f. & cert. ef. 6-28-91; PSU 3-1991, f. & cert. ef. 8-7-91; PSU 4-1991(Temp), f. & cert. ef. 12-4-91; PSU 1-1992, f. & cert. ef. 1-17-92; PSU 2-1992, f. & cert. ef. 6-16-92 (and corrected 6-19-92); PSU 1-1993, f. & cert. ef. 6-11-93; PSU 2-1993(Temp), f. & cert. ef. 7-13-93; PSU 3-1993(Temp), f. & cert. ef. 7-30-93; PSU 4-1994, f. & cert. ef. 11-3-94; PSU 1-1995, f. & cert. ef. 8-9-95; PSU 1-1996(Temp), f. 1-18-96, cert. ef. 3-1-96; PSU 3-1996, f. & cert. ef. 6-27-96; PSU 1-1997, f. & cert. ef. 8-1-97; PSU 4-1998, f. & cert. ef. 9-17-98; PSU 4-1999, f. & cert. ef. 8-11-99; PSU 2-2000, f. & cert. ef. 8-1-00; PSU 1-2001, f. & cert. ef. 8-14-01; PSU 2-2003, f. 6-27-03, cert. ef. 7-1-03; PSU 4-2003(Temp), f. & cert. ef. 11-18-03 thru 5-14-04; PSU 1-2004, f. & cert. ef. 8-20-04; PSU 1-2005(Temp), f. & cert. ef. 7-15-05 thru 12-28-05; PSU 3-2005, f. & cert. ef. 12-13-05; PSU 2-2006, f. & cert. ef. 6-30-06; PSU 5-2006(Temp), f. & cert. ef. 8-30-06 thru 1-31-07; Administrative correction, 2-16-07; PSU 3-2007, f. & cert. ef. 7-5-07

## Oregon University System, University of Oregon Chapter 571

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

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

**Filed with Sec. of State:** 6-19-2007

**Certified to be Effective:** 6-29-07

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

**Rules Amended:** 571-060-0005

**Subject:** Update the University of Oregon fee list for special fees, fines, penalties and services charges to reflect charges required to cover actual costs of services rendered. The University of Oregon administration determined that the adoption of the amendments to the fee list were necessary in order to provide the basis for funding to cover the expenses for services rendered and to maintain a current fee list.

**Rules Coordinator:** Deb Eldredge—(541) 346-3082

## 571-060-0005

### Special Fees, Fines, Penalties, Service Charges

The University of Oregon has adopted by reference a list of Special Fees, Fines, Penalties, Service Charges, etc., for the current fiscal year:

(1) The fees, fines, penalties and service charges listed by reference in this rule are updated annually and copies are on file in the listed departments by July 1.

(2) The amounts and conditions of these fees may change from time to time throughout the year due to administrative considerations, changing costs, changes in institutional budgets, etc. If the size and the amount of these fees are or could be of importance to users, they should verify the details prior to making a commitment, before entering into any planning activities or before actually incurring any charges.

(3) The master copy of the current list of fees is maintained in the Office of the Director of Business Affairs and is available upon request to any person during regular business hours. The Director of Business Affairs also maintains a bulletin board where fee changes made during each 30-day period are posted. Following that posted period, the changes are filed with in the master copy.

(4) University departments charging fees shall maintain a copy of at least that department's section of the list of special fees, fines, penalties and service charges including any updates made during the course of the fiscal year. The list and all current changes shall be available upon request to any person during regular departmental business hours.

(5) No department may change fees between annual amendments to this rule without first obtaining an approved statement of justification signed by the appropriate Vice-President. Prior to granting approval of any fee charged to students, the Vice-President shall consult with the Office of Student Advocacy. Changes in fees approved by the Vice-President and the justification statement shall be posted for 15-days in a public area of the departmental office. The new fee, fine, penalty or charge becomes effective at the end of the 15-day posting period after it is filed with the Director of Business Affairs along with the justification statement.

(6) However, student loan service charges, charges levied as penalties for prohibited conduct, general tuition, building fees, incidental fees, health service fees, and residence hall and housing charges, shall be adopted in accordance with the provision of ORS 183.310 to 183.500.

(7) Certain charges, fees or fee schedules may, according to ORS 351.072(b), be adopted without compliance with rulemaking provisions of ORS 183.310 to 183.500. They are: charges relating to symposiums, conferences, short courses, food, books or other retail goods, prices of admission to athletic, entertainment or cultural events or advertising rates in student or institutional publications.

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

Stat. Auth.: ORS 351.070, 351 & 352

Stats. Implemented: ORS 351.070

Hist.: UOO 20, f. & cert. ef. 4-27-76; UOO 34(Temp), f. & cert. ef. 8-8-77; UOO 37, f. & cert. ef. 9-30-77; UOO 3-1978, f. & cert. ef. 7-1-78; UOO 1-1979(Temp), f. 6-26-79, ef. 7-1-79; UOO 4-1979, f. & cert. ef. 10-3-79; UOO 7-1980, f. 6-30-80, ef. 7-1-80; UOO 7-1981(Temp), f. 6-16-81, ef. 7-1-81; UOO 9-1981(Temp), f. & cert. ef. 6-29-81; UOO 2-1982, f. & cert. ef. 4-14-82; UOO 4-1982, f. & cert. ef. 6-10-82; UOO 4-1983, f. & cert. ef. 6-10-83; UOO 5-1983(Temp), f. & cert. ef. 6-15-83; UOO 2-1984, f. 6-11-84, ef. 7-1-84; UOO 3-1985, f. 6-19-85, ef. 7-1-85; UOO 1-1986, f. 6-4-86, ef. 7-1-86; UOO 4-1986(Temp), f. & cert. ef. 11-10-86; UOO 7-1986(Temp), f. 12-30-86, ef. 1-1-87; UOO 8-1986(Temp), f. 12-30-86, ef. 1-1-87; UOO 1-1987, f. & cert. ef. 1-29-87; UOO 3-1987, f. 6-17-87, ef. 7-1-87; UOO 6-1988, f. 6-29-88, cert. ef. 7-1-88; UOO 8-1988, f. & cert. ef. 8-17-88; UOO 5-1989, f. 6-20-89, cert. ef. 7-1-89; UOO 7-1990, f. 6-14-90, cert. ef. 7-1-90; UOO 9-1991, f. 6-12-91, cert. ef. 7-1-91; UOO 1-1992, f. 4-9-92, cert. ef. 7-1-92; UOO 2-1993, f. 4-19-93, cert.

# ADMINISTRATIVE RULES

of 7-1-93; UOO 9-1993, f. & cert. ef. 6-15-93; UOO 11-1993, f. 8-29-93, cert. ef. 9-1-93; UOO 2-1994, f. 6-13-94, cert. ef. 7-1-94; UOO 3-1994, f. 6-14-94, cert. ef. 7-1-94; UOO 4-1995, f. 6-13-95, cert. ef. 7-1-95; UOO 5-1995, f. 7-31-95, cert. ef. 8-1-95; UOO 3-1996, f. 6-6-96, cert. ef. 7-1-96; UOO 6-1997, f. 6-18-97, cert. ef. 7-1-97; UOO 7-1997, f. 6-18-97, cert. ef. 7-1-97; UO 1-1998, f. 6-17-98, cert. ef. 7-1-98; UO 2-1998, f. 6-17-98, cert. ef. 7-1-98; UO 2-1999, f. 6-1-99, cert. ef. 7-1-99; UO 3-1999, f. 6-1-99, cert. ef. 7-1-99; UO 2-2000, f. 6-15-00, cert. ef. 7-1-00; UO 1-2001, f. 6-18-01, cert. ef. 7-1-01; UO 2-2001, f. 6-18-01, cert. ef. 7-1-01; UO 2-2002, f. 6-19-02, cert. ef. 7-1-02; UO 3-2002, f. 6-19-02, cert. ef. 7-1-02; UO 1-2003, f. 6-23-03, cert. ef. 7-1-03; UO 2-2003, f. 6-23-03, cert. ef. 7-1-03; UO 2-2004, f. 5-11-04, cert. ef. 7-1-04; UO 3-2004, f. 6-30-04, cert. ef. 7-1-04; UO 6-2007, f. & cert. ef. 2-22-07; UO 8-2007, f. & cert. ef. 3-12-07; UO 9-2007, f. 5-10-07, cert. ef. 6-29-07; UO 11-2007, f. 6-19-07, cert. ef. 6-29-07

## Oregon Youth Authority Chapter 416

**Rule Caption:** Oregon Youth Authority Division 530 Foster Care Program.

**Adm. Order No.:** OYA 2-2007

**Filed with Sec. of State:** 7-13-2007

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**Subject:** These rules establish OYA foster care standards for: The certification and re-certification process for foster parents. The standards that foster parents must meet while providing youth offender foster care services under the OYA Foster Care Program. The process by which a certification to maintain a youth offender foster home may be placed on inactive referral status, terminated, suspended or revoked. These rules apply to applicants seeking OYA certification, certified foster parents and respite providers, and Private Youth Care Agency proctor parents unless otherwise specified.

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### 416-530-0000

#### Purpose

(1) The OYA seeks to ensure community safety, youth offender accountability and youth offender reformation by providing youth offender foster care as an integral part of its continuum of services. OYA provides foster care for youth offenders who are 12 years of age through the age of 24. These rules establish OYA foster care standards for:

(a) The certification and re-certification process for foster parents.

(b) The standards that foster parents must meet while providing youth offender foster care services under the OYA Foster Care Program.

(c) The process by which a certification to maintain a youth offender foster home may be placed on inactive referral status, terminated, suspended, or revoked.

(2) These rules apply to applicants seeking OYA certification, certified foster parents and respite providers, and Private Youth Care Agency proctor parents unless otherwise specified.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 420.810 - 420.840 & 420.888 - 420.892

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 1-2000, f. & cert. ef. 4-4-00; OYA 15-2004, f. & cert. ef. 11-12-04; OYA 2-2007, f. & cert. ef. 7-13-07

### 416-530-0010

#### Definitions

(1) Applicant: A person who applies for youth offender foster home certification to operate and maintain a foster home for youth offenders. For purposes of these rules, the term "Applicant" and "Applicants" are interchangeable and the use of one does not preclude the use of the other.

(2) Case Plan: A formal plan with prescribed interventions and documentation requirements and a tool to assist staff in managing cases, setting goals and reviewing youth offenders' interventions and progress. A Case Plan constitutes and fulfills the requirements of the Reformation Plan as defined in ORS 420A.005, 420A.125 and 420A.010 and is created and maintained in the statewide Juvenile Justice Information System (JJIS).

(3) Certification process: The process of initial application or recertification to operate and maintain a youth offender foster home.

(4) Computerized criminal records checks: The access and use of automated or manual files, or associated systems available to the OYA as a criminal justice agency, through the Law Enforcement Data Systems

(LEDS) including on-line information from the Federal Bureau of Investigation's (FBI) National Crime Information Center (NCIC), the Department of Human Services (DHS) Child Abuse Registry, and the National Law Enforcement Telecommunications System (NLETS).

(5) Criminal records check: The process used by the OYA to conduct criminal records background checks on persons pursuant to these rules and OAR chapter 416, division 800, that includes computerized and fingerprint-based processes.

(6) Deadly weapon: Any instrument, article or substance specifically designed for, and presently capable of, causing death or serious injury.

(7) Denial: An action by the OYA to deny youth offender foster home certification or re-certification.

(8) Discipline: A process by which foster parents and the OYA provide sanctions for non-compliance with established rules of the foster home and conditions of probation or parole. Such sanctions assist youth offenders in developing the self-control and self-direction necessary to assume responsibilities, make appropriate daily living decisions, and learn to live in conformity with accepted levels of social behavior.

(9) Domestic animals: Any of various animals domesticated so as to live and breed in a tame condition as household pets. Examples of domestic animals include but are not limited to dogs, cats, and horses.

(10) Foster care maintenance payment: A monthly payment to the foster parent to defray expenses such as the youth offender's room, board, clothing, allowance, personal incidentals, transportation, respite services, educational supplies, or other costs approved by the OYA.

(11) Foster parent: A person approved by the OYA who demonstrates special competence to supervise youth offenders with serious social and/or behavioral maladaptive characteristics in a youth offender foster home setting. A foster parent must be unrelated to a youth offender by blood or marriage. Foster parents provide supervision, food, and lodging to youth offenders as they progress through their case plan. The terms "foster parent" or "foster parents" are interchangeable and the use of one does not preclude the use of the other.

(12) Frequent Visitor: A person who makes repeated visits to the foster home as a result of a social or business relationship with the foster parent or members of the household

(13) Home study: An assessment, conducted prior to issuance of a Youth Offender Foster Home Certificate, to determine an applicant's ability and suitability to provide foster care services to youth offenders

(14) Inactive referral status: A temporary change in the terms of youth offender foster home certification that precludes new referrals of youth offenders to the home. Youth offenders that reside in homes on inactive referral status continue to live in the home.

(15) Information required: All information requested by the OYA, including information used to conduct criminal records checks.

(16) Juvenile Probation/Parole Officer (JPPO): The OYA case manager who works with the offender and his/her family and the community while the offender is in OYA custody.

(17) Mechanical restraint: Any apparatus, device, or contraption applied or affixed to a youth offender to limit movement.

(18) Member of the household: Any person, other than youth offenders, who lives in the youth offender foster home, on the property where the youth offender foster home is located, is a frequent visitor to the foster home or who assists in the care provided to youth offenders including but not limited to volunteers or a person providing services such as tutoring, recreation, relief care, household chores, or other services, whether paid or unpaid.

(19) Multidisciplinary Team (MDT): A group of persons responsible for developing comprehensive case plans for youth offenders. The process is a collaborative effort between OYA staff, the youth offender's biological and foster family and service providers. The MDT is responsible for ensuring that case plans are developed, reviewed and revised.

(20) Psychotropic medications: Medication prescribed with the intent to affect or alter thought processes, mood, or behavior, including but not limited to, anti-psychotic, 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.

(21) Punishment: The intentional infliction of physical or emotional pain. Punishment includes, but is not limited to physical force or threat of physical force inflicted in any manner upon a youth offender; verbal abuse, including derogatory remarks about the youth offender or his/her family; denial of food, clothing, or shelter; assignment of unreasonably strenuous exercise or work; punishment for bed-wetting; delegating or permitting



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punishment of a youth offender by another youth offender; and use of a cold shower as punishment.

(22) Records: any information in written form, pictures, photographs, charts, graphs, recordings, or documents pertaining to a youth offender's case.

(23) Respite care: A temporary arrangement between a foster parent and an OYA-certified respite provider to allow the foster parent(s) time away from a youth offender.

(24) Respite provider: An individual, at least 21 years of age and certified by the OYA, who temporarily assists with supervision of youth offenders when the foster parent is not available. A respite provider who provides respite care in his/her own home must have a current and valid Youth Offender Respite Home Certificate that specifically states the respite provider is authorized to serve youth offenders in his/her home.

(25) Revocation: An action taken by the OYA to rescind a Youth Offender Foster Home Certificate based on non-compliance with statute, administrative rule(s) or the Youth Offender Foster Home Agreement.

(26) Second-hand smoke: Smoke that is exhaled by a smoker, or originates from a tobacco product which a person is using to which a second person is exposed. It includes smoke from a smoldering cigarette, cigar, pipe, or other tobacco material.

(27) Structured Supervision: Supervision and knowledge of the approved whereabouts of a youth offender by a certified foster parent while the youth offender engages in daily living activities or recreation.

(28) Suspension: A temporary withdrawal of youth offender foster home certification pending determination of non-compliance with statute, administrative rule(s) or the Youth Offender Foster Home Agreement by the foster parent. Youth offenders are removed from the youth offender foster home and no referrals will be made to a youth offender foster home until a determination has been made on the suspension.

(29) Termination: An action taken by the OYA or the foster parent to terminate the Youth Offender Foster Home Agreement. Termination of the Youth Offender Foster Home Agreement does not terminate the Youth Offender Foster Home Certificate.

(30) Volunteer: Any person who is not a member of the household and who assists youth offenders in the home with activities for no compensation and under foster parent supervision.

(31) Youth Offender: a person who has been found to be within the jurisdiction of the juvenile court under ORS 419C.005 for an act committed when the person was under 18 years of age.

(32) Youth offender foster home: A home in the community that is maintained and lived in by an OYA-certified foster parent who provides supervision, food, and lodging for youth offenders in that home.

(33) Youth Offender Foster Home Agreement: A written agreement between the OYA and the foster parent stating mutual expectations of the parties.

(34) Youth Offender Foster Home Certificate: A certificate of approval, issued by the OYA, to operate and maintain a youth offender foster home.

Stat. Auth.: ORS 420A.025  
Stats. Implemented: ORS 420.888 - 420.892  
Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 1-2000, f. & cert. ef. 4-4-00; OYA 5-2002, f. & cert. ef. 1-18-02; OYA 15-2004, f. & cert. ef. 11-12-04; OYA 5-2005, f. & cert. ef. 3-9-05; OYA 14-2005, f. & cert. ef. 6-13-05; OYA 26-2005(Temp), f. & cert. ef. 11-8-05 thru 5-7-06; OYA 5-2006, f. & cert. ef. 3-20-06; OYA 2-2007, f. & cert. ef. 7-13-07

## 416-530-0020

### Certification Process

(1) The OYA seeks to recruit individuals who meet or exceed the qualifications described in these rules to provide foster care services to youth offenders. The OYA further seeks to retain qualified foster parents who continue to provide an important component of the OYA service delivery system to youth offenders. In order to accomplish these objectives and to ensure that youth offenders receive services in a safe, respectful, rehabilitative, and positive atmosphere, the OYA has developed a thorough certification process

(2) The certification process is a partnership between the applicant or foster parent and the OYA. The process allows for individuals interested in providing youth offender foster care services to ask questions about foster care standards, foster parent qualifications, foster home qualifications, and supervision of youth offenders and it allows the OYA to assess the willingness, abilities, and suitability of applicants to provide such foster care services. The process also allows foster parents to review the prior year during the re-certification process and allows the OYA to re-assess the foster parent's continued qualification, willingness and ability to provide services.

(3) The granting of a foster home certificate is not a guarantee that youth offenders will be placed in the foster home

(4) The OYA has a responsibility to Oregonians to manage its resources within available funds. When the OYA Director or designee determines that funding for these resources is jeopardized or otherwise not available, the OYA Director may suspend recruitment of new foster home resources in areas where the availability of foster homes exceeds the need for placements.

Stat. Auth.: ORS 420A.025  
Stats. Implemented: ORS 420.888 - 420.892  
Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 15-2004, f. & cert. ef. 11-12-04; OYA 2-2007, f. & cert. ef. 7-13-07

## 416-530-0030

### Application Process

Applicants for initial certification must:

(1) Complete and submit all forms required by the OYA

(2) Participate in home studies as required by the OYA.

(3) Provide all information required by the OYA to verify compliance with these rules, including, but not limited to:

(a) Name(s), gender, address, birth date, social security number, and Oregon driver's license number of all applicants and members of the household.

(b) Names and addresses of at least four persons, three of whom are unrelated to the applicant, who have known the applicant for two years or more and who can attest to the applicant's ability to provide care and supervision to youth offenders. If the applicants are applying for joint certification, each person will provide at least two different references unrelated to the applicant, who have known the applicant for two or more years, and who can attest to the applicant's ability to provide care and supervision to youth offenders.

(c) A statement as to whether the applicant or any member of the household has ever operated or currently is operating a licensed/certified care facility or foster home and reasons for the termination or closure of that license or certification.

(d) Documentation from the applicant and all members of the household regarding all criminal arrests, all charges, and all convictions including juvenile delinquency arrests, adjudications, and charges, the dates of offenses, and the resolution of those matters.

(e) Documentation from the applicant and all members of the household regarding all allegations or charges of abuse or neglect, with dates, locations, and resolutions of those matters.

(f) Proof of sufficient income to meet the needs and ensure the stability and financial security of the members of the household, independent of the foster care maintenance payment. The OYA will request copies of pay stubs, W-2 forms, or recent tax returns as proof of income

(4) Participate in a criminal records check process, as defined by these rules and OAR chapter 416, division 800.

(a) The OYA will require a criminal records check, including fingerprints, for applicants and other members of the household 18 years of age and older.

(b) The OYA will require a computerized criminal records check for members of the household 12 through 17 years of age.

(c) The OYA will conduct criminal records checks at any time that the OYA deems it necessary for the safety of youth offenders in the home.

Stat. Auth.: ORS 420A.025  
Stats. Implemented: ORS 420.888 - 420.892  
Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 15-2004, f. & cert. ef. 11-12-04; OYA 2-2007, f. & cert. ef. 7-13-07

## 416-530-0035

### Application Process for Re-certification

A foster parent applying for re-certification must:

(1) Complete and submit all forms required by the OYA

(2) Provide information as requested by the OYA to verify compliance with these rules.

(3) Participate in home studies as required by the OYA.

(4) Participate in a criminal records check process, as defined by these rules and OAR chapter 416, division 800:

(a) The OYA will require a criminal records check of all members of the household 18 years of age and older;

(b) The criminal records check of new members of the household will occur prior to the new member of the household establishing the foster home as his/her residence;

(c) The OYA will require a computerized criminal records check for members of the household 12 through 17 years of age.

(5) Provide documentation from the foster parent and all members of the household regarding all criminal arrests, all charges, and all convictions

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during the preceding year including juvenile delinquency arrests, adjudications, or charges, the dates of offenses, and the resolution of those matters

(6) Documentation from the applicant and all members of the household regarding all allegations or charges of abuse or neglect, with dates, locations, and resolutions of those matters.

(7) Provide proof of sufficient income to meet the needs and ensure the stability and financial security of the members of the household, independent of the foster care maintenance payment for the preceding year. The OYA will request copies of pay stubs, W-2 forms, or recent tax returns as proof of income.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 420.888 - 420.892

Hist.: OYA 2-2007, f. & cert. ef. 7-13-07

## 416-530-0040

### Foster Parent Qualifications

Applicants must:

(1) Be at least 21 years of age.

(2) Meet the qualifications and standards described in these rules and OAR chapter 416, division 800.

(3) Be a citizen or legal resident of the United States.

(4) Demonstrate the following personal qualifications.

(a) Be a responsible, stable, emotionally mature adult who exercises sound judgment and displays the capacity to meet the mental, physical and emotional needs of youth offenders placed in foster care.

(b) Understand the behaviors of youth offenders.

(c) Have knowledge and understanding of non-punitive discipline and ways of helping a youth offender build positive personal relationships, self-control, and self-esteem.

(d) Have respect for persons with differing values, lifestyles, philosophies, religious, and cultural identity and heritage.

(e) Be able to realistically evaluate which youth offenders they can accept, work with, and integrate into their family.

(f) Have supportive ties with family, friends, the neighborhood, and the community.

(g) Provide appropriate supervision to ensure community safety

(5) Be physically and mentally able to perform the duties of foster care.

(a) The OYA may require a medical statement from a physician verifying that the applicant or any member of the household is physically capable of supervising and caring for youth offenders.

(b) The OYA may require the applicant to consent to the release of psychological, medical or physical, drug and alcohol, or other reports and evaluations to the OYA for the consideration of the applicant's ability to supervise and care for youth offenders

(c) In the case of alcohol or substance abuse, the applicant must be able to provide evidence that he or she has been substance-free and sober for at least two years prior to making application for certification.

(6) Be free from a professional or personal conflict of interest. If the applicant is an OYA staff or works in a professional capacity which may contribute to a conflict of interest, the application and supporting study must be approved by the OYA Assistant Director, Program Office, or designee.

(7) Not have any documented incidents of abuse or neglect that resulted in a founded disposition by DHS. The OYA will conduct DHS Child Abuse Registry checks at the time of certification and re-certification, at the time a foster home certified by another agency wishes to serve OYA youth offenders, and when the OYA deems it necessary for the safety of youth offenders in the home.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 420.888 - 420.892

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 1-2000, f. & cert. ef. 4-4-00; OYA 5-2002, f. & cert. ef. 1-18-02; OYA 16-2002, f. & cert. ef. 10-11-02; OYA 15-2004, f. & cert. ef. 11-12-04; OYA 26-2005(Temp), f. & cert. ef. 11-8-05 thru 5-7-06; OYA 5-2006, f. & cert. ef. 3-20-06; OYA 2-2007, f. & cert. ef. 7-13-07

## 416-530-0050

### Selection

(1) The selection of individuals to provide foster care services to youth offenders is based on a number of criteria, not the least of which is the criminal records check on every individual either directly supervising youth offenders or members of the household of the applicant or foster parent. Certain criminal records will automatically preclude any further certification steps.

(a) Such records include but are not limited to a founded disposition of child abuse or neglect documented in the DHS Child Abuse Registry.

(b) Applicants denied foster care certification or recertification as a result of a criminal record check will be provided written notice and may request a contested case hearing described in OAR 416 Division 800.

(2) Other considerations include information collected from the application, reference checks, interview results, safety checks of the proposed foster home, and any other information including information about other members of the household that comes to the attention of the OYA.

(a) Applicants denied foster care certification or recertification will be provided with written notice and may request a contested case hearing as described in these rules

(3) The OYA will determine which applicants undergo a complete certification study, which applicants are certified, and which homes qualify to best meet the needs of youth offenders.

(4) The OYA will review the application and supporting documentation to determine compliance with these rules before making a decision to grant or deny an application for certification or re-certification.(5) In addition to the application information, the OYA may contact other relevant sources, including but not limited to: schools, employers, and other persons, including the applicant's adult children.

(6) The OYA will make its decision, regarding certification, within 90 days of the receipt of the application and all supporting documentation. The OYA will make its decision, regarding re-certification, prior to the expiration of the current certification. The OYA will not review the application for certification or re-certification unless all materials have been submitted and received by OYA.

(7) After successful completion of the application process, a certificate will be issued.

(8) Certificates must state:

(a) The period of time for which it is issued;

(b) The name of the foster parents or respite provider;

(c) The address of the residence; and

(d) The number of youth offenders the home is certified to serve.

(9) Upon certification, the foster parent and OYA will enter into a Youth Offender Foster Home Agreement before youth offenders are placed in the foster home.

(10) The OYA may deny certification or re-certification if:

(a) The applicant fails to meet the qualifications in these rules.

(b) Applicants falsify (including by act of omission) information.

(c) Any member of the household fails to meet the requirements of OAR chapter 416, division 800 or these rules.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 420.888 - 420.892

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 1-2000, f. & cert. ef. 4-4-00; OYA 5-2002, f. & cert. ef. 1-18-02; OYA 16-2002, f. & cert. ef. 10-11-02; OYA 15-2004, f. & cert. ef. 11-12-04; OYA 2-2007, f. & cert. ef. 7-13-07

## 416-530-0060

### Foster Parent Duties and Responsibilities

(1) Governance:

(a) Foster parents must comply with the standards of these rules and OYA procedures.

(b) Foster parents must abide by the responsibilities described in the OYA Youth Offender Foster Home Agreement. This agreement will be signed at the time of initial certification and annually, thereafter.

(c) Foster parents must provide care and supervision in accordance with the youth offender's individual case plan.

(d) Foster parents will not leave youth offenders unsupervised in the foster home.

(e) Foster parents must allow the OYA access to the home, youth offenders, and foster care records, for the purpose of on-going compliance monitoring.

(2) Training:

(a) An applicant must complete an OYA-mandated pre-service training before he or she is approved for certification.

(b) On an annual basis, thereafter, each foster parent must complete a minimum of 10 hours of training.

(c) All training must be provided or approved by the OYA and must include educational opportunities designed to enhance the foster parent's knowledge, skills, and abilities to meet the special needs of youth offenders.

(A) If youth offenders are in the home and the annual training hours have not been completed, the youth offender foster home certification will be placed on inactive referral status. No additional youth offender referrals will be made until the training hours are completed.

(B) The OYA may suspend a certificate if no youth offenders are currently in placement and the training requirements have not been met.

(3) Foster parents will work with OYA staff, by:

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(a) Participating in Multidisciplinary Team (MDT) reviews.  
(b) Implementing changes in care and supervision only as guided by the supervising Juvenile Parole/Probation Officer (JPPO) and the youth offender's case plan.

(c) Providing a youth offender with the opportunity for regular contacts and private visits or telephone calls with his/her JPPO.

(d) Notifying the OYA Foster Home Certifier, or designee, of changes likely to impact the life and circumstances of the foster family, including but not limited to the following situations:

(A) Immediate notification to the OYA of any circumstance involving the youth offender, foster parent, or other members of the household which may have a serious impact on the health, safety, physical or emotional well being of the youth offender. This includes, but is not limited to, injury, illness, accident, law violation, or unauthorized absence.

(B) Immediate notification of any visitor remaining in the home overnight who has not received prior approval by the OYA. Foster parents and the Certifier will collaborate to ensure the safety of the youth offender and visitor(s).

(C) Prior notification when a change in address is anticipated. In the case of an emergency (e.g., fire), foster parents must provide this information as soon as possible after the change of address occurs.

(D) Prior notification when a change in the membership of the household is anticipated. In the event of an emergency (e.g. death), foster parents must provide this information as soon as possible after the change occurs.

(e) Prior written approval from the OYA to take a youth offender out of state.

(4) Foster parents will respect and support the youth offender's relationship with his/her family by:

(a) Assisting OYA staff in planning and implementing visits between the youth offender and his/her family as indicated by the youth offender's case plan.

(b) Allowing a youth offender opportunities to have at least one phone call weekly with his/her family.

(c) Informing the JPPO if the youth offender chooses to decline family visits.

(5) Confidentiality: Youth offender information and records are confidential. Foster parents must maintain information relating to youth offenders including but not limited to information relating to a youth's health, education, and placement progress in a manner sufficient to prevent unauthorized access.

(a) Foster parents must not disclose youth offender records, or the names of persons involved in the youth offender's case plan, without authorization from the OYA.

(b) Youth offender records may be disclosed only when necessary to provide for the safety and well-being of youth offenders and with prior approval of the OYA.

(c) Unauthorized disclosure of youth offender records may lead to suspension of certification.

(6) Records:

(a) Foster parents must, for the duration of the youth offender's placement in the foster home, maintain records, including, but not limited to, information relating to the youth offender's health (including immunizations), education, and placement progress.

(b) All records belong to the OYA and the youth offender. The foster parent must immediately provide all records to the youth offender's JPPO or designee when the youth offender leaves the foster home.

(A) Any records request by foster parents after the records have been returned to OYA will be released according OAR chapter 416, division 105.

(7) Youth offender reformation/supervision:

(a) Foster parents must provide structure, accountability, and supervision designed to promote the physical, social, intellectual, spiritual, and emotional development of youth offenders, while providing for community protection. In accordance with a youth offender's case plan, foster parents must:

(b) Treat each youth offender with respect and dignity.

(c) Help the youth offender develop skills and perform tasks that promote independence and self-sufficiency.

(d) Ask youth offenders to assume household chores appropriate to the youth offender's age and ability, and commensurate with those expected of the foster parent's own children.

(8) Household composition:

(a) No more than three OYA youth offenders may reside in any given foster home at one time. In addition, no more than five total children (including the foster parent's own children under the age of 18) may reside in one foster home.

(A) Children of foster parents age 18 and older will not be counted toward the limitation of five children in the foster home.

(B) Members of the household age 18 and older who remain in or return to the home after becoming 18 years of age are subject to a criminal records check, including a fingerprint records check. It will be responsibility of the foster parent to notify the OYA and ensure that the fingerprint records check is initiated for these persons.

(b) Foster parents must not care for unrelated adults on a commercial basis, accept children for day care, or accept any person for placement from any source other than the OYA without prior OYA written approval.

(9) Respite care:

(a) When foster parents are absent from providing supervision of youth offenders, an OYA-certified respite provider at least 21 years of age, capable of assuming foster care responsibilities, will be present.

(b) When foster parents anticipate being absent from providing supervision youth offenders for overnight or longer, the OYA must be given advance notice and the planned absence must be approved. The foster parent will provide the following information: the dates of absence; the telephone number where the foster parents can be reached; and the name, telephone number, and home address of the OYA-certified respite provider.

(c) On occasion, to offer foster parents respite from foster care responsibilities, the total number of youth offenders per home may be increased, in a manner consistent with these rules, to the home's certified maximum.

(d) Any respite care beyond 10 days requires review and approval by the Foster Care Manager.

(10) Food and nutrition:

(a) On a daily basis, foster parents must provide an appropriate quantity and quality of meals (i.e., three well-balanced meals) and appropriate snacks.

(b) Foster parents will accommodate any special and/or cultural dietary needs of the youth offenders, including those ordered by a physician.

(11) Clothing and personal belongings:

(a) Foster parents must provide each youth offender with clean clothing that is appropriate to the youth offender's age, gender, and individual needs.

(b) Youth offenders must be allowed to participate in choosing their own clothing.

(c) Youth offenders may bring and acquire appropriate personal belongings as approved by the JPPO.

(d) Foster parents must provide a weekly allowance to youth offenders in a fair and consistent manner.

(e) Foster parents must develop house rules that will include, but are not limited to, youth offender money and youth offender accounts.

(f) Foster parents must provide each youth offender with individual items necessary for personal hygiene and grooming.

(12) Discipline and guidance:

(a) Foster parents will work with a youth offender's JPPO to develop a behavior management plan that sets clear expectations, limits, and consequences of behavior through use of adequate and appropriate structure and supervision.

(A) Foster parents must provide clearly-stated basic rules, a system of incentives and rewards, graduated sanctions when necessary to hold youth offenders accountable, supervision, and guidance.

(B) Discipline must be designed to guide youth offenders with kindness and understanding, while holding the youth offender accountable for personal behaviors.

(b) No youth offender or other person(s) in a foster home will be subjected to physical abuse, sexual abuse, sexual exploitation, neglect, emotional abuse, mental injury or threats of harm.

(13) Health care:

(a) Foster parents will work with the OYA to ensure that a youth offender's physical and mental health care needs are met, including but not limited to:

(A) Scheduling appointments and arranging transportation to medical, dental, or counseling appointments or assisting youth offenders in doing so if age appropriate.

(B) Ensuring that immunizations are current.

(C) Reporting to the OYA when corrective or follow-up medical, mental health or dental care is needed, and arranging necessary care.

(D) Arranging for necessary consents from the OYA for medical treatment that is not routine, including surgery.

(E) Obtaining emergency medical care, when necessary.

(b) Medication Administration:

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(A) The provisions of OAR chapter 416, division 340 apply.

(B) A youth offender has a right to refuse his/her medications. When this occurs, the foster parent must document the refusal and immediately notify the youth offender's JPPO.

(C) Prescription medications must be administered only when ordered by a physician.

(D) All medications must be stored in locked storage sufficient to prevent unauthorized access.

(E) Foster parents must inform a youth offender's JPPO within one working day if any psychotropic medication is prescribed or changed for the youth offender.

(d) Medical information:

(A) Youth offender medical information must be kept confidential and in a secure location.

(B) Medical information will be shared only in compliance with Oregon Revised Statutes, and OYA administrative rules.

(C) Copies of medical information must be provided to the OYA.

(14) Religious, cultural, and ethnic heritage: Foster parents must respect the ethnic heritage, religious, cultural identity, and language of a youth offender and the youth offender's family by:

(a) Providing reasonable and meaningful opportunities for a youth offender to develop relationships with others of like cultural and ethnic background.

(b) Providing a youth offender opportunities to attend religious services of his/her choice.

(c) Not requiring a youth offender to participate in religious activities or events contrary to his/her beliefs.

(15) Education:

(a) Within five days of placement in the foster home, the foster parent must enroll a youth offender in an appropriate educational or vocational program, as outlined in his/her case plan.

(b) Foster parents must be actively involved in a youth offender's educational or vocational programs.

(c) Foster parents will allow a youth offender adequate time each evening to complete homework in a location conducive to study and provide assistance as needed.

(d) Foster parents will work with school personnel when issues arise at school, and report to a youth offender's JPPO any situation that may require OYA involvement.

(16) Recreation:

(a) Recreational activities appropriate to the age and abilities of a youth offender must be provided, as described in OAR chapter 416, division 500.

(b) A youth offender will be encouraged to participate in community activities both with the foster family and on his/her own, in accordance with the case plan.

(c) Foster parents must provide opportunities for a youth offender to pay restitution and perform community service obligations as directed by the case plan.

(17) Restrictions:

(a) No mechanical restraints, other than car seat belts, may be used on OYA youth offenders.

(b) Foster parents will not provide tobacco products in any form to youth offenders.

(c) Swimming pools and hot tubs must be made inaccessible to youth offenders unless responsible adult supervision is provided.

(d) All alcoholic beverages will be stored and locked in a manner sufficient to prevent unauthorized access.

(18) Safety:

(a) Foster parents must be aware of a youth offender's location at home and in the community at all times.

(b) Foster parents must have an adequate system for monitoring youth offenders during the night.

(c) Foster parents must ensure that keys to locked storage and motor vehicles are secured at all times.

(d) Foster parents must inspect a youth offender's room on regular basis to prevent the offender from possessing contraband.

(e) Foster parents must observe OYA health and safety requirements for the prevention of accidents and injuries.

(f) Foster parents must understand suicide prevention techniques and reporting requirements.

(g) Foster parents must be knowledgeable about boundaries, inappropriate sexual behavior, monitoring and other aspects of youth offender care at the level appropriate for supervising youth offenders that are placed in the home.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 420.888 - 420.892

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 15-2004, f. & cert. ef. 11-12-04; OYA 2-2007, f. & cert. ef. 7-13-07

## 416-530-0070

### Standards for the Foster Home

(1) General: (a) Schools, recreation, churches, medical care, and community facilities must be accessible from the foster home. The foster home and its premises must be comparable in appearance to other homes in the community in which it is located.

(b) If care is to be provided to one or more developmentally disabled or physically impaired youth offenders, the OYA must consult with the relevant professionals to identify necessary accommodations to the foster home and ask the foster parent to implement the necessary accommodations prior to placement.

(A) OYA will coordinate the accommodations to the foster home

(B) If the foster parent refuses to make the necessary accommodations the youth offender will not be placed into the foster home

(c) Foster homes must have a working telephone with service. Foster parents must secure an alternative phone service within 24 hours of any disruption of existing phone service and communicate the new telephone number to the Foster Home Certifier.

(2) Kitchen:

(a) Foster homes must have the equipment necessary for the safe preparation, storage, serving and cleanup of meals.

(b) Foster parents must ensure that all cooking and refrigeration equipment is sanitary and in working condition

(c) Foster parents must ensure that meals are prepared and served in a safe and sanitary manner minimizing the possibility of food poisoning or food contamination.

(3) Living areas:

(a) The foster home must have sufficient living or family room space that is comfortably furnished and accessible to all members of the household, including youth offenders.

(b) Foster homes must be well-heated and well-ventilated.

(4) Bedrooms:

(a) Bedrooms occupied by youth offenders must:

(A) Be safe and have adequate living space for each youth offender.

(B) Have windows that open and provide sufficient natural light and ventilation.

(C) Have a bed for each youth offender and clean bed linens, blankets (as appropriate to the season) and pillows.

(D) Have a functioning smoke alarm.

(b) Youth offender(s) age 18 or older may not share a bedroom with a youth offender under age 18 without the approval of the OYA Foster Care Manager or OYA Community Resources Manager

(c) Children of foster parents are prohibited from sharing a bedroom with a youth offender.

(d) In no event will more than three youth offenders sleep in one bedroom.

(e) Each youth offender must be provided with adequate storage space in or near the bedroom he or she occupies for personal belongings and a designated space for hanging clothes.

(f) Flexibility in the decoration of sleeping areas must be allowed to accommodate the personal tastes and expressions of the youth offenders in care.

(g) Bedroom doors must not have locks.

(h) Youth offenders with a history of inappropriate sexual behavior or adjudicated for a sexual offense may not share a bedroom with non-sex offenders. Sex offenders must occupy a bedroom either individually, or in a group of three sex offenders. Two sex offenders must not occupy a single bedroom

(i) Bedrooms used by youth offenders that are located in basements or above the ground floor must have safe and direct emergency exits to the ground.

(5) Domestic animals:

(a) Foster parents must restrict access to potentially dangerous animals.

(b) Only domestic animals allowed by local ordinances may be kept as pets.

(c) Domestic animals must be properly cared for, supervised, and otherwise maintained in compliance with local ordinances.

(d) Rabies vaccination for pets must be kept current as required by law. Proof of rabies vaccination must be available to the OYA upon request.

(6) Firearms

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(a) Foster parents must immediately notify the OYA Foster Home Certifier any time a firearm is brought to the foster home.

(b) Any foster parent or member of the household who possesses a concealed weapon permit must:

(A) Give the OYA a copy of the permit;

(B) Give the OYA a written plan regarding how the foster parent or member of the household will keep concealed weapons secure from youth offenders.

(c) Firearms must remain unloaded and stored in a locked compartment that prohibits access and is not visible to youth offenders. Ammunition must be stored in a separate locked compartment. Trigger locks alone are not considered adequate.

(d) With the exception of law enforcement personnel, no person in any vehicle transporting a youth offender may carry a loaded firearm.

(7) Deadly weapons: Foster parents must immediately notify the Foster Home Certifier any time a deadly weapon is brought to the foster home.

(a) Deadly weapons must be stored in a locked compartment that prohibits access and is not visible to youth offenders.

(8) Safety:

(a) Swimming pools and hot tubs must be maintained in a safe and clean condition, and must comply with local safety regulations and ordinances.

(b) Any safety hazard identified by OYA staff or qualified trade service provider must immediately be remedied by the foster parent.

(c) An emergency access must be available to any room that has a lock.

(d) Stairways must be equipped with handrails.

(e) All medications, hazardous chemicals, and solvents must be stored in locked storage sufficient to prevent unauthorized access.

(f) Cleaning materials classified as poisonous and flammable must be stored in locked storage sufficient to prevent unauthorized access.

(g) At least one working smoke alarm must be placed on each floor of the foster home. In addition, there must be a working smoke alarm in each bedroom in which a youth offender sleeps.

(h) At least one unexpired and operable class 2-A-10BC or higher rated fire extinguisher must be available and maintained in each foster home.

(i) Outdoor tools and equipment, machinery, chemicals, flammable or combustibles must be stored in locked storage sufficient to prevent unauthorized access.

(k) A written home evacuation plan must be available to all youth offenders.

(A) The evacuation plan must be practiced with each youth offender at the time of placement and at least once a year to ensure all youth offenders understand the procedures.

(B) The evacuation plan, including evacuation diagram, must be posted in a clearly visible and conspicuous location.

(l) The use of space heaters is limited to electric space heaters equipped with tip-over protection. No extension cords may be used with such heaters or in place of permanent wiring. No propane space heaters without approved venting are to be used in the foster home. Kerosene space heaters are not allowed.

(m) Foster homes must have two unrestricted emergency exits in case of fire.

(A) A sliding door or window that can be used to evacuate youth offenders may be considered a usable emergency exit.

(B) Barred windows used as possible emergency exit in case of fire must be fitted with operable quick release mechanisms.

(9) Sanitation and health:

(a) The foster home must be kept clean and free of hazards to the health and physical well being of the family.

(b) Measures must be taken to keep the house and premises free of vermin.

(c) First aid supplies must be stored in an easily accessible place.

(d) A continuous supply of safe, clean drinking water must be available.

(A) Private water sources and septic tank systems must be kept safe and functioning properly.

(B) Private water sources must be tested and approved by an appropriate official upon OYA request.

(e) Only pasteurized milk, juices, or powdered milk must be used for youth offender consumption.

(f) All plumbing must be kept in working order, and an adequate supply of hot water for bathing and dish washing must be available.

(g) Water heaters must be accessible for inspection and equipped with a safety release valve and an overflow pipe that directs water to the floor or to another approved location.

(h) The foster home must have a minimum of one flush toilet, one washbasin with running water, and one bath or shower with hot and cold water.

(i) Pending weekly removal, garbage/refuse must be stored appropriately, with no accumulation of garbage, debris, or rubbish that emits offensive odors.

(j) Youth offenders in the foster home will not be subjected to second hand smoke.

(10) Transportation safety:

(a) All vehicles used to transport youth offenders must have, at a minimum, liability insurance coverage in accordance with Oregon law.

(b) Only foster parents and other members of the household that are licensed and insured drivers, 21 years of age or older, that possess a current and valid driver's license, may transport youth offenders.

(c) At least one member of the household must possess a valid license to drive.

(d) The driver must ensure that all passengers use seat belts during the transport.

(e) Youth offenders are prohibited from operating vehicles owned by foster parents, any member of the household, or volunteer that requires a state license to be operated on public roads.

(f) Youth offenders may engage in driver's education provided by public school or driver training delivered by a licensed provider in accordance with the youth offender's case plan.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 420.888 - 420.892

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 15-2004, f. & cert. ef. 11-12-04; OYA 2-2007, f. & cert. ef. 7-13-07

## 416-530-0080

### Exceptions

(1) Any exceptions to these rules must be approved by the OYA Program Office Assistant Director.

(a) Exception requests must be made in writing, state the need for the exception, and signed by the person requesting the exception.

(b) Each request for an exception must be accompanied by a written plan showing how the safety of the youth offenders in placement will be ensured while the exception is in effect.

(c) The OYA will evaluate each request for an exception on its own merits to determine whether the exception is supported by a written plan adequate to ensure the safety of youth offenders in placement. Granting an exception does not set a precedent that must be followed by the OYA when evaluating subsequent requests for exceptions.

(d) In evaluating a request for an exception, the OYA will consider, among other factors, the ratio of adults to youth offenders, the level of supervision available, the skill level of the foster parent and the needs of other children in the home.

(e) No exception is effective until granted in writing and signed by the OYA Program Office Assistant Director. A copy of the approved exception will be filed in the certification file.

(2) No exceptions will be made for rules relating to fire safety.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 420.888 - 420.892

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 15-2004, f. & cert. ef. 11-12-04; OYA 2-2007, f. & cert. ef. 7-13-07

## 416-530-0090

### Denial, Suspension, and Revocation of Youth Offender Foster Home Certification or Re-Certification; Inactive Referral Status

(1) Denial:

(a) The OYA may deny an application for a youth offender foster home certification or re-certification if an applicant or foster parent fails to meet any of the criteria set forth in these rules, or does any of the following:

(A) Falsifies an application, either knowingly or inadvertently, by providing inaccurate information or by omitting information;

(B) Fails to provide information requested by the OYA within the time frame set by the OYA; or

(C) Fails to inform the OYA of conditions that could disqualify the foster parent or the foster home from certification.

(b) If the OYA proposes to deny an application for a foster home certification or re-certification, the OYA will provide the applicant or foster parent with a written Notice of Proposed Denial of Youth Offender Foster Home Certification or Re-certification and a proposed Order Denying

# ADMINISTRATIVE RULES

Certification or Recertification, mailed to the applicant or foster parent, by certified or registered mail or personally served upon the applicant or foster parent, and stating the reason(s) for the proposed denial.

(c) If an application for a youth offender foster home certification or re-certification is denied, no other current member of the household may apply

(d) An applicant or foster parent has 60 days from the date of mailing or service of the Notice of Proposed Denial of Youth Offender Foster Home Certification or Re-certification to request a hearing. The request for hearing must be received by the OYA within the 60-day period.

(e) An applicant or foster parent who has been denied certification or re-certification may not re-apply for or hold a foster home certification for a period of five years from the effective date of the Final Order Denying Youth Offender Foster Home Certification or Re-certification

## (2) Suspension:

(a) The OYA may suspend a youth offender foster home certification without a hearing if the OYA finds a serious danger to the public health or safety, including the health or safety of a youth offender or the community. In the event of an suspension, youth offenders will be removed from the foster home and no further referrals will be made to the foster home unless and until the suspension is lifted

(b) A foster parent has 90 days from the date of mailing or service of the Notice of Suspension to request a hearing on the emergency suspension. The request for hearing must be received by the OYA within the 90-day period

(c) The Notice of Suspension must be mailed by certified mail or personally served on the foster parent.

(d) If, within 10 days from the date of mailing of the Notice of Suspension, the foster parent does not enter into a written agreement containing a corrective action plan with the OYA, the OYA will initiate proceedings to revoke the youth offender foster home certification. The 10-day period may be extended upon prior written approval of the OYA.

(e) If the suspension will exceed 180 days or the expiration date of the current certification, the OYA will terminate the Youth Offender Foster Home Agreement with the foster parent until such time as the suspension has been resolved as set out in this rule. The foster parent will be placed on inactive referral status and will not receive youth offender referrals until the matter is resolved

## (3) Revocation:

(a) The OYA may initiate revocation proceedings of a youth offender foster home certification after considering any of the following:

(A) The severity of any alleged violation of these rules;

(B) The number of similar or related violations;

(C) Whether the violations, including the alleged violation, were willful or intentional;

(D) The prior history of violations;

(E) Any other mitigating or aggravating circumstance determined by the OYA to be relevant to the alleged violation, or to the appropriate response to the alleged violation.

(b) The OYA may initiate revocation proceedings of a youth offender foster home certification if:

(A) The foster parent falsified an application, either knowingly or inadvertently, by providing inaccurate information or by omitting information;

(B) After certification, the foster parent fails to provide information requested by the OYA in the time frame set by the OYA;

(C) The foster parent fails to inform the OYA of conditions that could disqualify the foster parent or the foster home from certification; or

(D) The foster parent fails to comply with a corrective action plan within the time frame set by the OYA and the foster parent remains in violation of any of these rules.

(d) If the OYA initiates revocation proceedings of a youth offender foster home certification, the OYA will provide a written Notice of Proposed Revocation of Youth Offender Foster Home Certification and proposed Order Revoking Youth Offender Foster Home Certification. The Notice of Proposed Revocation and proposed Order will be mailed, by certified or registered mail, or personally delivered, to the foster parent stating the reason(s) for revocation proceedings.

(e) A foster parent has 10 days from the date of mailing of the Notice of Proposed Revocation of Youth Offender Foster Home Certification to request a hearing. The request for hearing must be received by the OYA within the ten-day period.

(f) A foster parent whose certificate has been revoked may not reapply for or hold a foster home certification for five years from the effective date of the Final Order Revoking Youth Offender Foster Home

Certification, unless a lesser time or specific condition is stated in the Final Order.

## (4) Inactive Referral Status:

(a) Inactive referral status, provider-initiated: A foster parent may ask to be placed on inactive referral status for up to 12 months.

(A) In order for inactive referral status to be granted, there can be no unresolved matters relating to non-compliance with certification rules.

(B) Prior to a return to active referral status, a foster parent must be in compliance with all certification rules, including training requirements.

## (b) Inactive referral status, OYA-initiated:

(A) The OYA may place a foster parent on inactive referral status due to changes in the foster parent's family, including but not limited to death, divorce, new members joining the household, significant disabling health condition, or other circumstances that the OYA determines will put additional stress or pressure on the family. Prior to placing a foster parent on inactive referral status, the OYA will discuss the status change with the foster parent. The OYA will notify the foster parent in writing of the change in referral status and the expected duration of that change.

(B) The OYA-initiated inactive status may last for up to 180 days, during which time no additional youth offenders will be placed in the home. The OYA may continue the inactive status for more than 180 days if:

(i) The OYA and the foster parent do not enter into an agreement that addresses the issues that led to the change to inactive status;

(ii) The foster parent is not in compliance with all certification rules, including training requirements.

(5) Contested Case Hearings. Pursuant to the provisions of ORS 183.341, the OYA adopts the Attorney General's Model Rules of Procedure OAR 137-003-0001 to 137-003-0091 and 137-003-0580, effective January 1, 2006, as procedural rules for contested case hearings.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 183.341, 183.430, 420.888 - 420.892

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 16-2002, f. & cert. ef. 10-11-02; OYA 15-2004, f. & cert. ef. 11-12-04; OYA 2-2007, f. & cert. ef. 7-13-07

## 416-530-0100

### Purpose

(1) These rules set forth standards specific to the OYA relationship with Private Youth Care Agencies offering residential care programs in a foster home model, hereafter called proctor homes.

(2) The OYA will obtain and consider criminal records checks on certain employees and volunteers of Private Youth Care Agencies in order to protect the best interest of youth offenders.

(3) Unless otherwise specified, the provisions of OAR 416-530-0000 to 416-530-0090 and OAR chapter 416, division 800, apply.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 420.888 - 420.892

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 15-2004, f. & cert. ef. 11-12-04; OYA 2-2007, f. & cert. ef. 7-13-07

## 416-530-0110

### Definitions

(1) Private Youth Care Agency employee: An individual applying for a salaried position with a Private Youth Care Agency or having a salaried position and being considered for an assignment within a Private Youth Care Agency.

(2) Proctor home: A home in the community that is co-certified by the OYA and a Private Youth Care Agency and supervised by the Private Youth Care Agency.

(3) Proctor parent: A person co-certified by the OYA and a Private Youth Care Agency in accordance with the provisions of these rules and employed by the Private Youth Care Agency.

(4) Proctor parent agreement: A written agreement between the Private Youth Care Agency and the proctor parent stating mutual expectations of the parties.

(5) Private Youth Care Agency Volunteer: An individual applying for or requesting to work on assignments for a Private Youth Care Agency on an unsalaried basis.

(6) Private Youth Care Agency: Any agency, society, institution, organization, or group under private management and organized in whole or in part for the temporary or continued care of youth offenders in a residential facility or placement of youth offenders in proctor homes.

(7) Youth offender proctor care: Includes care, food, and lodging provided on a 24-hour basis for youth offenders in a home approved by the OYA and the Private Youth Care Agency, as defined by these rules and OAR chapter 416, divisions 550 and 800.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 420.888 - 420.892

# ADMINISTRATIVE RULES

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 15-2004, f. & cert. ef. 11-12-04; OYA 2-2007, f. & cert. ef. 7-13-07

## 416-530-0125

### Certificate of Approval

(1) Proctor parents are recruited, trained, paid and supported in their efforts by a Private Youth Care Agency and monitored by a Private Youth Care Agency's professional staff. Proctor parents are co-certified by the OYA and the Private Youth Care Agency.

(2) A Private Youth Care Agency will not place youth offenders in a proctor home without a current, valid youth offender proctor home certification issued by the OYA.

(3) In addition to compliance with these rules, Private Youth Care Agencies and their proctor homes must comply with the following provisions.

(a) Licensing standards of the Oregon Department of Human Services, or other agency recognized by the state of Oregon to issue a license for services.

(b) Contractual agreements between the Private Youth Care Agency and the OYA.

(c) Intergovernmental agreements between the OYA and other agencies, as applicable.

(d) In order to ascertain compliance with the standards of these rules, the OYA may examine the records and files of the Private Youth Care Agency, inspect and observe the physical premises of the proctor home, and interview youth offenders, Private Youth Care Agency staff, proctor parents, and persons in the community.

(4) Private Youth Care Agencies must utilize employees or volunteers whose presence does not jeopardize the health, safety or welfare of youth offenders. When making a determination about a person's suitability to work with youth offenders, the Private Youth Care Agency must consider the provisions of OAR chapter 416, division 800 and all other information described in these rules to judge the person's fitness to work with youth offenders.

(5) If the applicant meets the requirements of these rules, the OYA will issue a youth offender proctor home certificate to operate a proctor home under contract with a Private Youth Care Agency.

(a) This certificate will specify the type of care and/or service to be provided, the address of the premises to which the certification applies, the name of the Private Youth Care Agency under which the certification is valid, and other information deemed necessary.

(b) This certification will automatically terminate upon the closure of the Private Youth Care Agency or when the agreement between the Private Youth Care Agency and the proctor parent is terminated. The Private Youth Care Agency must immediately notify the OYA in writing when either of these situations occurs.

(6) The Private Youth Care Agency is responsible for ensuring that the proctor home and proctor parents continue to meet the standards set out in these rules, and correct deficiencies when they are noted. The OYA must agree in writing to any exceptions to these rules.

(7) If a proctor home fails to comply with these rules, the OYA may propose to deny an application, place the home on inactive referral status, or propose to suspend or revoke the youth offender proctor home certification, in accordance with the provisions of OAR 416-530-0090. The proctor parent may appeal this decision in accordance with the provisions of OAR 416-530-0090.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 420A.010, 420.810, 420.815 & 420.840

Hist.: OYA 15-2004, f. & cert. ef. 11-12-04; OYA 2-2007, f. & cert. ef. 7-13-07

## 416-530-0130

### General Provisions for Proctor Parents

(1) The Private Youth Care Agency must ensure that its proctor parents meet the standards set out in these rules and OAR chapter 416, division 800.

(2) The Private Youth Care Agency must provide or cause to be provided structured supervision twenty-four (24) hours per day, seven days a week, to youth offenders placed in proctor homes. The Private Youth Care Agency must provide specific proctor parent support services that enhance the proctor parents' ability to successfully meet the supervision needs of youth offenders placed by the OYA.

(3) The Private Youth Care Agency must ensure that no more than three OYA youth offenders reside in any given proctor home at one time. In addition, no more than five total children (including the proctor parent's own children) may reside in one proctor home.

(4) Under no circumstances will OYA youth offenders reside with youth served under the Private Youth Care Agency's other programs,

including private pay placements and placements of youth from out-of-state, except for youth offenders placed through Interstate Compact with courtesy supervision provided by the OYA.

(5) On occasion, to offer proctor parents respite from proctor care responsibilities, the total number of offenders per home may be increased to no more than four, in a manner consistent with these rules, to the home's certified maximum.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 420A.010, 420.810, 420.815, 420.840

Hist.: OYA 15-2004, f. & cert. ef. 11-12-04; OYA 2-2007, f. & cert. ef. 7-13-07

## 416-530-0140

### Youth Offender Proctor Home Requirements

(1) The Private Youth Care Agency must ensure that its youth offender proctor homes meet the standards of these rules and OAR chapter 416, divisions 500 and 800.

(2) The Private Youth Care Agency must develop and maintain written agreements with proctor parents providing proctor care. These agreements must be approved by the OYA prior to placement of OYA youth offenders in the proctor home and must address the following:

(3) Supervision responsibilities:

(A) Proctor parents may, with the Private Youth Care Agency's prior written consent, schedule 48 hours per month of time away from youth offender care responsibility.

(B) At least one certified proctor parent or certified respite provider must be on premises at all times that youth offenders are present in the home.

(b) Reporting requirements:

(A) Proctor parents must maintain daily required documentation and submit reports to Private Youth Care Agency as required on each youth offender in placement.

(B) Proctor parents with whom youth offenders are placed must contact Private Youth Care Agency staff immediately in the case of emergencies.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 420A.010, 420.810, 420.815 & 420.840

Hist.: OYA 15-2004, f. & cert. ef. 11-12-04; OYA 2-2007, f. & cert. ef. 7-13-07

## 416-530-0150

### Combination of Care

(1) The Private Youth Care Agency or its proctor homes will not combine the care of youth offenders in OYA custody with boarding, day care, nursing, foster, or convalescent care for adults or children, except as authorized in writing by the OYA.

(2) If such combination of care is approved, the provisions of interagency agreements must be met in addition to the applicable statutes, administrative rules, and policies of all agencies involved.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 420A.010, 420.810, 420.815 & 420.840

Hist.: OYA 15-2004, f. & cert. ef. 11-12-04; OYA 2-2007, f. & cert. ef. 7-13-07

## 416-530-0160

### Enforcement

In order to ascertain continued compliance with these standards, the OYA must have right of entry, privilege of inspection, and access to staff and all records of the Private Youth Care Agency and the youth offender proctor home.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 420A.010, 420.810, 420.815 & 420.840

Hist.: OYA 15-2004, f. & cert. ef. 11-12-04; OYA 2-2007, f. & cert. ef. 7-13-07

## 416-530-0170

### Exceptions

Any exceptions to these rules must be approved by the OYA Program Office Assistant Director.

(1) Exception requests must be made in writing, state the need for the exception, and signed by the person requesting the exception.

(2) Each request for an exception must be accompanied by a written plan showing how the safety of the youth offenders in placement will be ensured while the exception is in effect.

(3) The OYA will evaluate each request for an exception on its own merits to determine whether the exception is supported by a written plan adequate to ensure the safety of youth offenders in placement. Granting an exception does not set a precedent that must be followed by the OYA when evaluating subsequent requests for exceptions.

(4) In evaluating a request for an exception, the OYA will consider, among other factors, the ratio of adults to youth offenders, the level of supervision available, the skill level of the foster parent and the needs of other children in the home.

# ADMINISTRATIVE RULES

(5) No exception is effective until granted in writing and signed by the OYA Program Office Assistant Director. A copy of the approved exception will be filed in the certification file.

(6) No exceptions will be made for rules relating to fire safety.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 420A.010, 420.810, 420.815 & 420.840

Hist.: OYA 15-2004, f. & cert. ef 11-12-04; OYA 2-2007, f. & cert. ef. 7-13-07

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**Racing Commission**  
**Chapter 462**

**Rule Caption:** Suspension of OAR 462-200-0630, which allows Electronic 1-2-3 with Pick N wagering (Instant Racing).

**Adm. Order No.:** RC 4-2007(Temp)

**Filed with Sec. of State:** 6-28-2007

**Certified to be Effective:** 7-1-07 thru 12-27-07

**Notice Publication Date:**

**Rules Suspended:** 462-200-0630

**Subject:** OAR 462-200-0630 sets out the parameters for a particular type of wagering — Electronic 1-2-3 with Pick N. This type of wagering requires the bettor to select the first three finishers for a single contest selected from a historical library of previously run horse races that are replayed for the bettor. The temporary rule would suspend the operation of this rule.

**Rules Coordinator:** Carol N. Morgan—(971) 673-0207

## 462-200-0630

### Electronic 1-2-3 with Pick N

(1) Summary: Electronic 1-2-3 with Pick N is a method of pari-mutuel wagering which requires selection of the first three finishers for a single contest selected from a historical library of previously run contests that are replayed from a central video server according to the following procedures:

(a) The contest from the historical library is selected at random before the player enters any selection.

(b) The player may examine one or more charts including past performance information showing the relative merits of the contestants as they actually were on the day of the contest.

(c) After the player's selections are registered, the identity of the contest is revealed, a video segment of the contest finish is shown, and the actual official results are displayed.

(d) A player wins by matching some or all of the first three finishers in one of several different ways. Any winnings may be collected instantly.

(e) A player must risk a second unit bet in the wager to qualify for the highest value pool(s), (for example the Pick N, matching the first finisher in N consecutive contests).

(2) Wager Amount:

(a) Absent prior approval by the commission, acceptable wagering units shall be no lower than \$0.25 and no higher than \$20.

(b) The player may enter only one or two unit bets per play.

(3) Pool Split: After the applicable takeout has been deducted from the wager, the remaining amount shall be apportioned among several separate pools which have been carried over from previous contests played by all players:

(a) The remaining amount (after takeout) of the first unit bet shall be apportioned among the first unit bet pools, including one pool for each of several ways to win, and to the first Seed Pool when it is below its designated cap amount.

(b) The remaining amount (after takeout) of the second unit bet, if wagered, shall be apportioned among the second unit bet pools (for example the Pick N), and to the second Seed Pool when it is below its designated cap amount.

(4) Ways to Win for the First Unit Bet: For players who risked either one or two unit bets in each wager, some or all of the following ways to win, or other similar ways, may be declared:

(a) 3 Exact Order: The player's selections correctly match the first three finishers in exact order.

(b) 3 Any Order: The player's selections correctly match the first three finishers in any order.

(c) Top 2 Exact Order: The player's top two selections correctly match the first two finishers in exact order.

(d) 3 to get Top 2: Any of the player's three selections correctly match the first two finishers in any order.

(e) Top Pick Wins Contest: The player's top selection correctly matches the first (winning) finisher.

(f) Any 2 of 3:

(A) The player's selections correctly match any two of the first three finishers in any order.

(B) Second Pick Wins Contest: The player's first or second selection correctly matches the first (winning) finisher.

(g) Any Pick Wins Contest: Any one of the player's selections correctly matches the first (winning) finisher.

(5) Ways to Win for the Second Unit Bet: For players who risked two unit bets in each wager, some or all of the following ways to win, or other similar ways, may be declared:

(a) Pick N: The player has won the Top Pick Wins Contest pool in N consecutive plays, with two unit bets in each wager. After winning the Pick N pool, the player must start over accumulating wins to be eligible for either the Pick N pool or the Pick N-1 pool again.

(b) Pick N-1: The player has won the Top Pick Wins Contest pool in N-1 consecutive plays, with two unit bets in each wager.

(c) Pick N Consolation: The player has won the Top Pick Wins Contest pool in N-1 consecutive plays and then has lost in the next, with two unit bets in each wager. The Pick N Consolation shall be declared as a way to win only when the Pick N-1 pool has not been.

(6) Payment Calculation:

(a) For each way to win except the Pick N Consolation, the winning price shall be the entire amount in the pool for which the wager qualifies, less the price round-off (breakage).

(b) For the Pick N Consolation, the winning price shall be a designated percentage of the amount in the Pick N pool, less the price round-off (breakage). The remaining amount of the Pick N pool carries forward for the next Pick N winner.

(c) When the first unit bet qualifies to win more than one of its ways to win, only the largest single pool amount qualified for shall be paid.

(d) When the second unit bet qualifies to win more than one of its ways to win, only the largest single pool amount qualified for shall be paid.

(e) When the second unit bet qualifies to win, its winning price shall be added to the winning price from the first unit bet.

(f) Each way to win has a minimum payout amount for winning wagers, which shall be posted.

(g) In the case of a minus pool, the minimum payout amount shall not be less than the amount of one unit bet wagered.

(h) If two players qualify to win the same pool within a short time, the first winner shall be paid the current pool and the second shall be paid the new pool, which begins with the minimum payout amount.

(7) Dead Heat: A contest that has a dead heat for first, second, or third shall not be used for Electronic 1-2-3 with Pick N wagering.

(8) Coupled Entries, Mutuel Fields:

(a) A contest involving coupled entries or mutuel fields shall not be used for Electronic 1-2-3 with Pick N wagering if there are two or more betting interests live for a single contestant number.

(b) The one remaining live betting interest of a coupled entry or mutuel field shall be represented by its contestant number without a letter. For example, contestant number "1" represents either contestant "1" or "1A."

(9) Seed Pool: To cover the cases when one of the minimum payout amounts is paid, the Seed Pool is accumulated from a designated percent of wagers.

(a) Each time a pool's minimum payout amount is paid in excess of the actual amount available in the pool, the shortfall shall be deducted from the Seed Pool.

(b) After a pool is paid, the actual amount of the pool may be seeded from the Seed Pool to a specified initial amount less than or equal to its minimum payout amount.

(c) While the Seed Pool is below a designated cap amount, the allotments to the other pools are each decreased and the difference shall be allotted to the Seed Pool.

(d) The Seed Pool of the first unit bet shall be kept separate from that of the second unit bet.

(10) Commission Approval:

(a) The takeout rate may not exceed a maximum rate approved by the commission. Subject to that restriction, the takeout rate shall be set by the race meet licensee and reported to the commission.

(b) The method of apportioning wagers to each of the pools shall be approved by the commission.

(c) The method of seeding pools shall be approved by the commission.



# ADMINISTRATIVE RULES

(d) The number of pools and specific "Ways to Win," declared from time to time by the race meet licensee from the list set forth above or other similar ways, shall be approved by the commission.

(e) When a Pick N Consolation has been declared as a way to win, the percentage of the Pick N pool to be paid as a consolation shall be approved by the commission.

(f) Should the Electronic 1-2-3 with Pick N pools be designated for termination or mandatory distribution on a specific date, a method approved by the commission shall be used.

(g) The method of picking the random numbers used for selecting contests and past performance charts shall be certified by an independent authority that is approved by the commission.

(11) Additional Requirements:

(a) Contests shall be randomly selected from a historical library of actual contests that were previously run. Only contests that were run at licensed racetracks may be used.

(b) The total amount in each pari-mutuel pool shall be posted at all times.

(c) Minimum payouts shall be posted at all times.

(12) Interpretation:

(a) Electronic 1-2-3 with Pick N shall be considered a form of interstate simulcast wagering.

(b) In the event of any inconsistency between the provisions of this rule regarding Electronic 1-2-3 with Pick N and the provisions of any other rule, the provisions of this rule shall control.

Stat. Auth.: ORS 462.270(3)

Stats. Implemented: ORS 462.270(3)

Hist.: RC 2-2003, f. & cert. ef. 4-23-03; RC 4-2007(Temp), f. 6-28-07, cert. ef. 7-1-07 thru 12-27-07

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

**Rule Caption:** Real Estate Advertising.

**Adm. Order No.:** REA 3-2007

**Filed with Sec. of State:** 6-29-2007

**Certified to be Effective:** 6-29-07

**Notice Publication Date:** 6-1-07

**Rules Amended:** 863-015-0125

**Subject:** The amendments limit the delegation of the authority of a principal broker for advertising that "originates in a branch office" to a principal broker who manages that branch office. Therefore, a real estate broker who is not a principal broker cannot be delegated authority for advertising. Delegation of authority must be in written policy. The amendments provide that if the name of an associated broker is used in advertising, it may not be larger than the name of the firm in order to provide good disclosure to the public, with an effective date of March 1, 2008 for this section of the rule. The amendments allow associated real estate broker to advertise property owned by the broker for rent or lease and requires advertising to state that the property owner is a licensed real estate broker only if the property has more than four residential units or is a commercial property.

**Rules Coordinator:** Laurie Skillman—(503) 378-4170 ext. 237

**863-015-0125**

**Advertising**

(1) As used in this rule, "advertising" and "advertisement" includes all forms of representation, promotion and solicitation disseminated in any

manner and by any means for any purpose related to professional real estate activity, including, without limitation, advertising by mail, telephone, the Internet, E-mail, electronic bulletin board or other similar electronic systems, business cards, signs, lawn signs, billboards and telephonic greetings or answering machine messages.

(2) Advertising by a licensee, in process and in substance, shall:

(a) Be identifiable as advertising of a real estate licensee;

(b) Be truthful and not deceptive or misleading;

(c) Not imply that the real estate broker or property manager associated with the principal real estate broker is the person responsible for the operation of the real estate brokerage;

(d) Not use words that state or imply that the licensee is qualified or has a level of expertise other than as currently maintained by the licensee; and

(e) Be done only with the written permission of the property owner(s) or owner(s') authorized agent.

(3) Except as provided in sections (7) and (8) of this rule, all advertising must state the principal real estate broker's, sole practitioner real estate broker's or property manager's licensed name or registered business name.

(4) A principal real estate broker is responsible for:

(a) All advertising that states the principal real estate broker's licensed name or registered business name; and

(b) Except as provided in section (7) and (8) of this rule, all advertising of a real estate broker or a property manager who is associated with the principal real estate broker.

(5) A principal real estate broker may delegate direct supervisory authority and responsibility for advertising originating in a branch office to the principal broker who manages the branch office if the delegation of such authority is contained in written policies as described in OAR 863-015-0220.

(6) Effective March 1, 2008, if a licensee's name is used in advertising, the name of the licensee may not be in a larger type size than the licensed name or registered business name of the principal real estate broker, sole practitioner real estate broker or property manager.

(7) A licensee associated with a principal real estate broker may advertise property owned by the licensee for sale, exchange or lease option, if:

(a) The property is not listed for sale, exchange or lease option with the principal broker;

(b) The advertising states that the owner of the property is a real estate licensee; and

(c) The advertising complies with section (2)(a), (b) and (d) of this rule.

(8) A licensee associated with a principal real estate broker may advertise property owned by the licensee for rent or lease and:

(a) If the property has one to four residential units, the advertising is not required to state that the owner of the property is a real estate licensee; and

(b) If the property has more than four residential units or is a commercial property, the advertising must state that the owner of the property is a real estate licensee and comply with section (2)(a), (b) and (c) of this rule.

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.020 & 696.301(1), (4)

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 3-2006(Temp), f. 12-28-06, cert. ef. 1-1-07 thru 6-29-07; REA 3-2007, f. & cert. ef. 6-29-07

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333-030-0075	7-13-07	Amend	8-1-07	333-102-0015	3-1-07	Amend	4-1-07
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333-030-0095	7-13-07	Amend	8-1-07	333-102-0035	3-1-07	Amend	4-1-07
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333-060-0206	7-13-07	Adopt	8-1-07	333-102-0293	3-1-07	Amend	4-1-07
333-060-0207	7-13-07	Adopt	8-1-07	333-102-0297	3-1-07	Amend	4-1-07
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333-105-0600	3-1-07	Amend	4-1-07	333-116-0055	3-1-07	Amend	4-1-07
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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
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333-116-0290	3-1-07	Amend	4-1-07	333-116-0720	3-1-07	Amend	4-1-07
333-116-0300	3-1-07	Amend	4-1-07	333-116-0730	3-1-07	Amend	4-1-07
333-116-0310	3-1-07	Amend	4-1-07	333-116-0740	3-1-07	Amend	4-1-07
333-116-0320	3-1-07	Amend	4-1-07	333-116-0750	3-1-07	Amend	4-1-07
333-116-0330	3-1-07	Amend	4-1-07	333-116-0760	3-1-07	Amend	4-1-07
333-116-0340	3-1-07	Amend	4-1-07	333-116-0800	3-1-07	Amend	4-1-07
333-116-0350	3-1-07	Amend	4-1-07	333-116-0810	3-1-07	Amend	4-1-07
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333-116-0370	3-1-07	Amend	4-1-07	333-116-0830	3-1-07	Amend	4-1-07
333-116-0380	3-1-07	Amend	4-1-07	333-116-0840	3-1-07	Amend	4-1-07
333-116-0390	3-1-07	Amend	4-1-07	333-116-0850	3-1-07	Amend	4-1-07
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333-116-0430	3-1-07	Amend	4-1-07	333-116-1000	3-1-07	Amend	4-1-07
333-116-0440	3-1-07	Amend	4-1-07	333-116-1010	3-1-07	Amend	4-1-07
333-116-0445	3-1-07	Amend	4-1-07	333-116-1015	3-1-07	Amend	4-1-07
333-116-0447	3-1-07	Amend	4-1-07	333-116-1030	3-1-07	Amend	4-1-07
333-116-0450	3-1-07	Amend	4-1-07	333-118-0010	3-1-07	Amend	4-1-07
333-116-0460	3-1-07	Amend	4-1-07	333-118-0020	3-1-07	Amend	4-1-07
333-116-0470	3-1-07	Amend	4-1-07	333-118-0030	3-1-07	Amend	4-1-07
333-116-0475	3-1-07	Amend	4-1-07	333-118-0040	3-1-07	Amend	4-1-07
333-116-0480	3-1-07	Amend	4-1-07	333-118-0050	3-1-07	Amend	4-1-07
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333-116-0525	3-1-07	Amend	4-1-07	333-118-0090	3-1-07	Amend	4-1-07
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333-116-0540	3-1-07	Amend	4-1-07	333-118-0110	3-1-07	Amend	4-1-07
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333-116-0583	3-1-07	Amend	4-1-07	333-118-0180	3-1-07	Amend	4-1-07
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333-116-0650	3-1-07	Amend	4-1-07	333-120-0100	3-1-07	Amend	4-1-07
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333-120-0215	3-1-07	Amend	4-1-07	333-250-0080	2-1-07	Amend	3-1-07
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333-120-0320	3-1-07	Amend	4-1-07	333-255-0050	2-1-07	Amend	3-1-07
333-120-0330	3-1-07	Amend	4-1-07	333-255-0060	2-1-07	Amend	3-1-07
333-120-0400	3-1-07	Amend	4-1-07	333-255-0070	2-1-07	Amend	3-1-07
333-120-0410	3-1-07	Amend	4-1-07	333-255-0071	2-1-07	Amend	3-1-07
333-120-0420	3-1-07	Amend	4-1-07	333-255-0072	2-1-07	Amend	3-1-07
333-120-0430	3-1-07	Amend	4-1-07	333-255-0073	2-1-07	Amend	3-1-07
333-120-0440	3-1-07	Amend	4-1-07	333-255-0079	2-1-07	Amend	3-1-07
333-120-0450	3-1-07	Amend	4-1-07	333-255-0080	2-1-07	Amend	3-1-07
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333-120-0500	3-1-07	Amend	4-1-07	333-255-0082	2-1-07	Amend	3-1-07
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333-120-0520	3-1-07	Amend	4-1-07	333-255-0091	2-1-07	Amend	3-1-07
333-120-0530	3-1-07	Amend	4-1-07	333-255-0092	2-1-07	Amend	3-1-07
333-120-0540	3-1-07	Amend	4-1-07	333-255-0093	2-1-07	Amend	3-1-07
333-120-0550	3-1-07	Amend	4-1-07	333-265-0130	2-1-07	Amend	3-1-07
333-120-0560	3-1-07	Amend	4-1-07	334-001-0012	6-29-07	Amend	8-1-07
333-120-0600	3-1-07	Amend	4-1-07	334-001-0012	7-3-07	Amend	8-1-07
333-120-0610	3-1-07	Amend	4-1-07	334-010-0010	6-29-07	Amend	8-1-07
333-120-0620	3-1-07	Amend	4-1-07	335-001-0000	2-9-07	Amend	3-1-07
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333-120-0660	3-1-07	Amend	4-1-07	335-010-0070	2-1-07	Amend	3-1-07
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333-120-0710	3-1-07	Amend	4-1-07	335-070-0050	2-1-07	Amend	3-1-07
333-120-0720	3-1-07	Amend	4-1-07	335-070-0055	2-1-07	Amend	3-1-07
333-120-0730	3-1-07	Amend	4-1-07	335-095-0050	2-1-07	Amend	3-1-07
333-120-0740	3-1-07	Amend	4-1-07	335-095-0060	2-1-07	Amend	3-1-07
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340-041-0046	3-15-07	Amend	4-1-07	340-228-0640	12-22-06	Adopt	2-1-07
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340-041-0053	3-15-07	Amend	4-1-07	340-228-0644	12-22-06	Adopt	2-1-07
340-041-0104	3-15-07	Amend	4-1-07	340-228-0646	12-22-06	Adopt	2-1-07
340-041-0121	3-15-07	Amend	4-1-07	340-228-0648	12-22-06	Adopt	2-1-07
340-041-0175	3-15-07	Amend	4-1-07	340-228-0650	12-22-06	Adopt	2-1-07
340-041-0180	3-15-07	Amend	4-1-07	340-228-0652	12-22-06	Adopt	2-1-07
340-041-0185	3-14-07	Amend	4-1-07	340-228-0654	12-22-06	Adopt	2-1-07
340-041-0195	3-14-07	Amend	4-1-07	340-228-0656	12-22-06	Adopt	2-1-07
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340-041-0235	3-15-07	Amend	4-1-07	340-228-0660	12-22-06	Adopt	2-1-07
340-041-0260	3-15-07	Amend	4-1-07	340-228-0662	12-22-06	Adopt	2-1-07
340-041-0271	3-15-07	Amend	4-1-07	340-228-0664	12-22-06	Adopt	2-1-07
340-041-0300	3-15-07	Amend	4-1-07	340-228-0666	12-22-06	Adopt	2-1-07
340-041-0315	3-15-07	Amend	4-1-07	340-228-0668	12-22-06	Adopt	2-1-07
340-041-0320	3-15-07	Amend	4-1-07	340-228-0670	12-22-06	Adopt	2-1-07
340-041-0340	3-15-07	Amend	4-1-07	340-228-0671	12-22-06	Adopt	2-1-07
340-041-0345	3-15-07	Amend	4-1-07	340-228-0672	12-22-06	Adopt	2-1-07
340-041-0350	3-15-07	Amend	4-1-07	340-228-0673	12-22-06	Adopt	2-1-07
340-045-0075	7-3-07	Amend	8-1-07	340-228-0674	12-22-06	Adopt	2-1-07
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340-200-0040	6-28-07	Amend	8-1-07	340-232-0020	4-12-07	Amend	5-1-07
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340-204-0040	4-12-07	Amend	5-1-07	340-242-0030	4-12-07	Amend	5-1-07
340-204-0040	6-28-07	Amend	8-1-07	340-242-0040	4-12-07	Amend	5-1-07
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340-224-0060	4-12-07	Amend	5-1-07	340-242-0070	4-12-07	Amend	5-1-07
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340-228-0606	12-22-06	Adopt	2-1-07	340-242-0180	4-12-07	Amend	5-1-07
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340-228-0618	12-22-06	Adopt	2-1-07	340-242-0260	4-12-07	Amend	5-1-07
340-228-0620	12-22-06	Adopt	2-1-07	340-242-0270	4-12-07	Amend	5-1-07
340-228-0622	12-22-06	Adopt	2-1-07	340-242-0280	4-12-07	Amend	5-1-07
340-228-0624	12-22-06	Adopt	2-1-07	340-242-0290	4-12-07	Amend	5-1-07
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410-122-0700	1-1-07	Amend	1-1-07	411-026-0020	12-1-06	Amend	1-1-07
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410-125-0146	1-1-07	Amend	1-1-07	411-026-0050	12-1-06	Amend	1-1-07
410-125-0195	1-1-07	Amend	1-1-07	411-026-0060	12-1-06	Amend	1-1-07
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410-129-0060	7-1-07	Amend	7-1-07	411-027-0000(T)	4-17-07	Repeal	6-1-07
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410-130-0180	7-1-07	Amend	7-1-07	411-030-0080	5-1-07	Amend(T)	5-1-07
410-130-0200	7-1-07	Amend	7-1-07	411-030-0090	3-30-07	Amend(T)	5-1-07
410-130-0220	7-1-07	Amend	7-1-07	411-031-0020	4-17-07	Amend	5-1-07
410-130-0255	7-1-07	Amend	7-1-07	411-031-0020(T)	4-17-07	Repeal	5-1-07
410-130-0368	7-1-07	Amend	7-1-07	411-031-0040	4-17-07	Amend	5-1-07
410-130-0580	7-1-07	Amend	7-1-07	411-031-0040(T)	4-17-07	Repeal	5-1-07
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410-141-0220	1-1-07	Amend	1-1-07	411-050-0437	1-1-07	Repeal	2-1-07
410-141-0420	1-1-07	Amend(T)	2-1-07	411-050-0440	1-1-07	Amend	2-1-07
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410-141-0520	1-1-07	Amend	1-1-07	411-050-0443	1-1-07	Amend	2-1-07
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411-335-0060	1-1-07	Amend	2-1-07	413-015-0225	3-20-07	Amend	5-1-07
411-335-0070	1-1-07	Amend	2-1-07	413-015-0300	3-20-07	Amend	5-1-07
411-335-0080	1-1-07	Amend	2-1-07	413-015-0302	3-20-07	Amend	5-1-07
411-335-0090	1-1-07	Amend	2-1-07	413-015-0305	3-20-07	Amend	5-1-07
411-335-0100	1-1-07	Amend	2-1-07	413-015-0310	3-20-07	Amend	5-1-07
411-335-0110	1-1-07	Amend	2-1-07	413-015-0400	3-20-07	Amend	5-1-07
411-335-0120	1-1-07	Amend	2-1-07	413-015-0405	3-20-07	Amend	5-1-07
411-335-0130	1-1-07	Amend	2-1-07	413-015-0409	3-20-07	Adopt	5-1-07
411-335-0140	1-1-07	Amend	2-1-07	413-015-0415	3-20-07	Adopt	5-1-07
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459-007-0300	1-23-07	Amend	3-1-07	461-115-0050	1-1-07	Amend	2-1-07
459-009-0084	11-24-06	Amend	1-1-07	461-115-0050	7-1-07	Amend	8-1-07
459-009-0085	11-24-06	Amend	1-1-07	461-115-0090	7-1-07	Amend	8-1-07
459-009-0090	11-24-06	Adopt	1-1-07	461-115-0140	7-1-07	Amend	8-1-07
459-011-0050	1-23-07	Amend	3-1-07	461-115-0145	7-1-07	Amend	8-1-07
459-011-0100	11-24-06	Amend	1-1-07	461-115-0190	7-1-07	Amend	8-1-07
459-016-0100	11-24-06	Amend	1-1-07	461-115-0510	1-1-07	Am. & Ren.	2-1-07
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459-050-0037	5-1-07	Adopt	3-1-07	461-115-0540	1-1-07	Amend	2-1-07
459-050-0070	1-23-07	Amend	3-1-07	461-115-0651	1-1-07	Amend	2-1-07
459-050-0077	5-1-07	Adopt	3-1-07	461-115-0705	1-1-07	Amend	2-1-07
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461-135-0750	4-1-07	Amend	5-1-07	461-145-0343	1-1-07	Adopt	2-1-07
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461-140-0210	1-1-07	Amend	2-1-07	461-145-0490	7-1-07	Amend	8-1-07
461-140-0220	1-1-07	Amend	2-1-07	461-145-0505	1-1-07	Amend	2-1-07
461-140-0242	1-1-07	Amend	2-1-07	461-145-0510	4-1-07	Amend	5-1-07
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461-140-0242	4-1-07	Amend	5-1-07	461-145-0540	1-1-07	Amend	2-1-07
461-140-0242	7-1-07	Amend	8-1-07	461-145-0540	4-1-07	Amend	5-1-07
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461-145-0140	4-1-07	Amend	5-1-07	461-155-0295	3-1-07	Amend(T)	4-1-07
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461-160-0580	4-1-07	Amend	5-1-07	462-160-0120	3-7-07	Adopt	4-1-07
461-160-0610	1-1-07	Amend	2-1-07	462-160-0120(T)	3-7-07	Repeal	4-1-07
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461-160-0620	1-1-07	Amend	2-1-07	462-160-0140	3-7-07	Adopt	4-1-07
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461-160-0620	7-1-07	Amend	8-1-07	462-160-0140(T)	3-7-07	Repeal	4-1-07
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461-175-0250	7-1-07	Amend	8-1-07	571-021-0019	2-14-07	Suspend	3-1-07
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571-021-0160	2-14-07	Adopt(T)	3-1-07	571-050-0115	6-4-07	Adopt(T)	7-1-07
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800-025-0023	2-1-07	Amend	2-1-07	812-002-0537	1-1-07	Amend	1-1-07
800-025-0027	2-1-07	Amend	2-1-07	812-002-0540	1-1-07	Amend	1-1-07
800-025-0040	2-1-07	Amend	2-1-07	812-002-0670	1-1-07	Amend	1-1-07
800-025-0050	2-1-07	Amend	2-1-07	812-002-0673	7-1-07	Adopt	8-1-07
800-025-0060	2-1-07	Amend	2-1-07	812-003-0130	7-1-07	Amend	8-1-07
801-001-0035	1-1-07	Amend	2-1-07	812-003-0140	1-1-07	Amend	1-1-07
801-005-0010	1-1-07	Amend	2-1-07	812-003-0150	1-1-07	Amend	1-1-07
801-010-0010	1-1-07	Amend	2-1-07	812-003-0160	1-1-07	Amend	1-1-07
801-010-0050	1-1-07	Amend	2-1-07	812-003-0175	1-1-07	Amend	1-1-07
801-010-0065	1-1-07	Amend	2-1-07	812-003-0240	2-1-07	Amend	3-1-07
801-010-0080	1-1-07	Amend	2-1-07	812-003-0260	1-1-07	Amend	1-1-07
801-010-0100	1-1-07	Amend	2-1-07	812-003-0280	1-1-07	Amend	1-1-07
801-010-0110	1-1-07	Amend	2-1-07	812-003-0300	1-1-07	Amend	1-1-07
801-010-0345	1-1-07	Amend	2-1-07	812-003-0400	1-1-07	Amend	1-1-07
801-020-0620	1-1-07	Amend	2-1-07	812-003-0430	1-1-07	Amend	1-1-07
801-020-0690	1-1-07	Amend	2-1-07	812-003-0450	5-1-07	Adopt	6-1-07
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801-030-0010	1-1-07	Amend	2-1-07	812-004-0110	1-1-07	Amend	1-1-07
801-030-0015	1-1-07	Amend	2-1-07	812-004-0110	7-1-07	Amend	8-1-07
801-030-0020	1-1-07	Amend	2-1-07	812-004-0120	1-1-07	Amend	1-1-07
801-040-0010	1-1-07	Amend	2-1-07	812-004-0140	1-1-07	Amend	1-1-07
804-001-0002	7-1-07	Amend	7-1-07	812-004-0160	1-1-07	Amend	1-1-07
804-010-0000	4-27-07	Amend	6-1-07	812-004-0180	1-1-07	Amend	1-1-07
804-010-0010	4-27-07	Amend	6-1-07	812-004-0195	1-1-07	Amend	1-1-07
804-010-0020	4-27-07	Am. & Ren.	6-1-07	812-004-0210	1-1-07	Amend	1-1-07
804-020-0001	4-27-07	Am. & Ren.	6-1-07	812-004-0240	1-1-07	Amend	1-1-07
804-020-0003	4-27-07	Am. & Ren.	6-1-07	812-004-0250	1-1-07	Amend	1-1-07
804-020-0005	4-27-07	Amend	6-1-07	812-004-0260	1-1-07	Amend	1-1-07
804-020-0030	4-27-07	Amend	6-1-07	812-004-0300	1-1-07	Amend	1-1-07
804-020-0045	4-27-07	Amend	6-1-07	812-004-0320	1-1-07	Amend	1-1-07
804-022-0000	4-27-07	Am. & Ren.	6-1-07	812-004-0340	1-1-07	Amend	1-1-07
804-022-0005	4-27-07	Adopt	6-1-07	812-004-0350	1-1-07	Amend	1-1-07
804-022-0010	4-27-07	Am. & Ren.	6-1-07	812-004-0360	1-1-07	Amend	1-1-07
806-001-0003	7-1-07	Amend	6-1-07	812-004-0400	1-1-07	Amend	1-1-07
806-010-0060	12-13-06	Amend	1-1-07	812-004-0420	1-1-07	Amend	1-1-07
806-010-0145	12-13-06	Amend	1-1-07	812-004-0440	1-1-07	Amend	1-1-07
808-001-0008	5-16-07	Amend	7-1-07	812-004-0450	1-1-07	Amend	1-1-07
808-003-0260	2-1-07	Amend	3-1-07	812-004-0460	1-1-07	Amend	1-1-07
809-010-0001	7-1-07	Amend	8-1-07	812-004-0470	1-1-07	Amend	1-1-07
809-010-0025	7-1-07	Amend	8-1-07	812-004-0480	1-1-07	Amend	1-1-07
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812-004-0530	1-1-07	Amend	1-1-07	812-010-0300	1-1-07	Amend	1-1-07
812-004-0535	1-1-07	Amend	1-1-07	812-010-0320	1-1-07	Amend	1-1-07
812-004-0540	1-1-07	Amend	1-1-07	812-010-0340	1-1-07	Amend	1-1-07
812-004-0540	7-1-07	Amend	8-1-07	812-010-0360	1-1-07	Amend	1-1-07
812-004-0550	1-1-07	Amend	1-1-07	812-010-0380	1-1-07	Amend	1-1-07
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812-004-0600	1-1-07	Amend	1-1-07	812-010-0430	1-1-07	Amend	1-1-07
812-004-0600	7-1-07	Amend	8-1-07	812-010-0460	1-1-07	Amend	1-1-07
812-005-0200	1-1-07	Amend	1-1-07	812-010-0470	1-1-07	Amend	1-1-07
812-005-0210	1-1-07	Amend	1-1-07	812-010-0480	1-1-07	Amend	1-1-07
812-005-0800	1-1-07	Amend	1-1-07	813-010-0006	1-11-07	Amend	2-1-07
812-005-0800	7-1-07	Amend	8-1-07	813-010-0011	1-11-07	Amend	2-1-07
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812-006-0450	7-1-07	Amend	8-1-07	813-010-0024	1-11-07	Repeal	2-1-07
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812-007-0020	1-1-07	Amend	1-1-07	813-010-0032	1-11-07	Amend	2-1-07
812-007-0030	1-1-07	Amend	1-1-07	813-010-0033	1-11-07	Amend	2-1-07
812-007-0040	1-1-07	Amend	1-1-07	813-010-0036	1-11-07	Amend	2-1-07
812-007-0050	1-1-07	Amend	1-1-07	813-010-0042	1-11-07	Amend	2-1-07
812-007-0060	1-1-07	Amend	1-1-07	813-010-0051	1-11-07	Amend	2-1-07
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812-009-0070	1-1-07	Amend	1-1-07	813-012-0040	1-11-07	Amend	2-1-07
812-009-0090	1-1-07	Amend	1-1-07	813-012-0050	1-11-07	Amend	2-1-07
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813-030-0067	1-11-07	Amend	2-1-07	813-060-0030	1-11-07	Amend	2-1-07
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813-035-0005	1-11-07	Amend	2-1-07	813-060-0036	1-11-07	Adopt	2-1-07
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860-016-0025	12-15-06	Amend	1-1-07	918-098-1010	1-1-07	Amend	2-1-07
860-016-0030	12-15-06	Amend	1-1-07	918-098-1020	1-1-07	Am. & Ren.	2-1-07
860-022-0070	1-23-07	Amend	3-1-07	918-098-1025	1-1-07	Amend	2-1-07
860-024-0010	5-14-07	Amend	6-1-07	918-098-1030	1-1-07	Amend	2-1-07
860-024-0016	5-14-07	Amend	6-1-07	918-098-1040	1-1-07	Repeal	2-1-07
860-028-0020	4-16-07	Amend	6-1-07	918-098-1042	1-1-07	Repeal	2-1-07
860-028-0050	4-16-07	Adopt	6-1-07	918-098-1045	1-1-07	Repeal	2-1-07
860-028-0060	4-16-07	Adopt	6-1-07	918-098-1050	1-1-07	Repeal	2-1-07
860-028-0070	4-16-07	Adopt	6-1-07	918-098-1055	1-1-07	Repeal	2-1-07
860-028-0080	4-16-07	Adopt	6-1-07	918-098-1060	1-1-07	Repeal	2-1-07
860-028-0100	4-16-07	Adopt	6-1-07	918-098-1065	1-1-07	Repeal	2-1-07
860-028-0110	4-16-07	Amend	6-1-07	918-098-1070	1-1-07	Repeal	2-1-07
860-028-0115	4-16-07	Adopt	6-1-07	918-098-1075	1-1-07	Repeal	2-1-07
860-028-0120	4-16-07	Amend	6-1-07	918-098-1085	1-1-07	Repeal	2-1-07
860-028-0130	4-16-07	Amend	6-1-07	918-098-1200	1-1-07	Repeal	2-1-07
860-028-0140	4-16-07	Amend	6-1-07	918-098-1205	1-1-07	Repeal	2-1-07
860-028-0150	4-16-07	Amend	6-1-07	918-098-1220	1-1-07	Repeal	2-1-07
860-028-0170	4-16-07	Amend	6-1-07	918-098-1305	1-1-07	Amend	2-1-07
860-028-0180	4-16-07	Amend	6-1-07	918-098-1310	1-1-07	Amend	2-1-07
860-028-0190	4-16-07	Amend	6-1-07	918-098-1315	1-1-07	Amend	2-1-07
860-028-0230	4-16-07	Amend	6-1-07	918-098-1320	1-1-07	Amend	2-1-07
860-028-0310	4-16-07	Amend	6-1-07	918-098-1325	1-1-07	Amend	2-1-07
860-038-0480	5-15-07	Amend	6-1-07	918-098-1330	1-1-07	Amend	2-1-07
863-001-0005	1-1-07	Amend	2-1-07	918-098-1400	1-1-07	Repeal	2-1-07
863-015-0020	3-21-07	Amend(T)	5-1-07	918-098-1440	1-1-07	Amend	2-1-07
863-015-0030	3-21-07	Amend(T)	5-1-07	918-098-1450	1-1-07	Amend	2-1-07
863-015-0050	3-21-07	Amend(T)	5-1-07	918-098-1620	1-1-07	Amend	2-1-07
863-015-0064	3-21-07	Adopt(T)	5-1-07	918-098-1630	1-1-07	Amend	2-1-07
863-015-0065	3-21-07	Amend(T)	5-1-07	918-225-0230	12-29-06	Repeal	2-1-07
863-015-0125	1-1-07	Amend(T)	2-1-07	918-225-0405	9-1-07	Repeal	8-1-07
863-015-0125	6-29-07	Amend	8-1-07	918-225-0430	1-1-07	Amend	2-1-07
863-025-0005	3-12-07	Amend	4-1-07	918-225-0435	1-1-07	Adopt	2-1-07
863-025-0010	3-12-07	Amend	4-1-07	918-225-0435	6-15-07	Amend	7-1-07

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918-225-0570	9-1-07	Amend	8-1-07	918-480-0010	4-1-07	Amend	3-1-07
918-225-0580	9-1-07	Repeal	8-1-07	918-690-0400	12-29-06	Repeal	2-1-07
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918-251-0090	4-1-07	Amend	5-1-07	951-002-0020	6-1-07	Amend	7-1-07
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918-400-0260	12-29-06	Repeal	2-1-07	951-004-0003	11-17-06	Adopt	1-1-07
918-400-0455	1-1-07	Amend	2-1-07	951-004-0004	11-17-06	Adopt	1-1-07
918-400-0458	1-1-07	Adopt	2-1-07	951-005-0000	11-16-06	Adopt	1-1-07
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