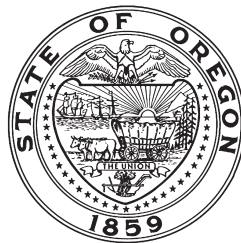


OREGON BULLETIN

Supplements the 2007 *Oregon Administrative Rules Compilation*

Volume 46, No. 2
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For December 18, 2006–January 12, 2007



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Secretary of State
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INFORMATION AND PUBLICATION SCHEDULE

General Information

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

Background on Oregon Administrative Rules

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

How to Cite

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

Understanding an Administrative Rule’s “History”

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

Locating the Most Recent Version of an Administrative Rule

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

Locating Administrative Rules Unit Publications

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

2006–2007 Oregon Bulletin Publication Schedule

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

Submission Deadline — Publishing Date

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

Reminder for Agency Rules Coordinators

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

Publication Authority

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

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PUBLIC NOTICE PROPOSED ALTERNATIVE REMEDY PRINEVILLE WOOD PRODUCTS (FORMER) PRINEVILLE, OREGON

COMMENTS DUE: March 2, 2007

PROJECT LOCATION: Prineville Wood Products, Prineville, OR
PROPOSAL: The Department of Environmental Quality (DEQ) is providing notice for a public opportunity to review and comment on a draft Record of Decision for the former Prineville Wood Products site. The draft Record of Decision details the analysis and selection of preferred and protective remedial options designed to address contaminated environmental media located at the former Prineville Wood Products site located on Lamonta Road in Prineville, Oregon. More information concerning site-specific investigations and proposed remedial actions is available by contacting Katie Robertson, DEQ's project manager for this site.

The Administrative File for this facility is archived at the DEQ's Pendleton office and can be reviewed in person by contacting project manager at the number below to arrange for an appointment.

HOW TO COMMENT: The public comment period will extend from February 1 through March 2, 2007. Please address all comments and/or inquiries to project manager at the following address:

Katie Robertson
Department of Environmental Quality
700 SE Emigrant, Suite 330
Pendleton, OR 97801
(541) 278-4620
robertson.katie@deq.state.or.us

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

THE NEXT STEP: DEQ will consider all public comments received before finalizing the Record of Decision for the former Prineville Wood Products site. DEQ will provide written responses to all received public comments.

A CHANCE TO COMMENT ON PROPOSED APPROVAL OF CLEANUP AT KILLINGSWORTH STATION SITE

COMMENTS DUE: March 2, 2007

PROJECT LOCATION: North Interstate Avenue & Killingsworth Street, 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 Neighborhood Park site.

HIGHLIGHTS: The Killingsworth Station site consists of five properties that were purchased by the Portland Development Commission to facilitate redevelopment along the Light Rail Mass Transit route. The properties had a history of mixed residential and commercial use. Site investigation activities discovered hydrocarbon contamination around a heating oil UST, within several catch basins, and in surface soils at a parking area (a residential garage and driveway where automobiles had leaked motor oil). Approximately twenty tons of soil were removed from these areas and disposed of at Hillsboro Landfill. All contaminants were below detection limits following soil removal. DEQ is therefore proposing a no further action (NFA) determination for the site with no restrictions on future site use.

HOW TO COMMENT: The project file is available for public review. To schedule an appointment, contact Dawn Weinberger at 503-229-6729. The DEQ contact for this project is Mike Greenburg, 503-229-5153. Written comments should be sent to the DEQ contact at the Department of Environmental Quality, Northwest Region, 2020 SW Fourth Avenue, Suite 400, Portland, OR 97201 by March 2, 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>

PROPOSED REMEDIAL ACTION PACIFIC CARBIDE AND ALLOY SITE PORTLAND, OREGON

COMMENTS DUE: March 2, 2007

PROJECT LOCATION: 9901 North Hurst Avenue, Portland, Oregon

PROPOSAL: The Oregon Department of Environmental Quality (DEQ) proposes selection of a Remedial Action (RA) alternative to address hazardous substance releases to the Columbia Slough and site uplands at the Pacific Carbide and Alloy site.

HIGHLIGHTS: The Pacific Carbide and Alloy Site covers approximately 16 acres on the southern bank of the Lower Columbia Slough in North Portland. The site was developed in the 1940s and operated as a calcium carbide manufacturing plant until 1987. Structures associated with the manufacturing process included two electric arc furnaces, air scrubber, process building, warehouse, lime by-product piles and settling ponds, lime kilns and office buildings. Most of these structures have been removed, with the exception of the process building and warehouse, and the northern and southern lime piles, each with an approximate volume of 22,000 cubic yards. The site is currently used as a trans-loading facility (primarily salt products), warehousing of various products and as a storage yard.

The manufacturing process generated calcium hydroxide, generally referred to as lime. The lime material is fine-grained, unconsolidated, relatively dense, and is alkaline in nature with typical pH values > 9. Prior to and during the 1970s significant amounts of the lime material entered the Slough through discharge pipes and from one or more catastrophic failures of the settling ponds that were used to settle the lime from the process water.

A series of investigations conducted from 1998 through 2006 have shown that the lime contains elevated levels of polycyclic aromatic hydrocarbons (PAHs) and metals, and that it comprises a significant portion of the Columbia Slough bank and near shore in-water sediments adjacent to site. Bioassay testing has shown that sediment with significant lime material is toxic to sediment-dwelling organisms.

Pacific Carbide completed a feasibility study to evaluate remedial alternatives. All of the contemplated remedial actions included sediment and bank soil removal, and either removal or capping of the upland lime piles. DEQ selected an alternative that includes removal and disposal of Slough sediment, bank soil, and the northern lime pile located adjacent to the Slough, and leveling and capping of the southern lime pile with clean fill. The proposed cleanup remedy would remove all hotspots of contamination from the site and effectively manage residual lime wastes farther from the Slough through capping to eliminate exposure and allow for redevelopment of the property for continued industrial uses. Maintenance of the cap and an institutional control preventing development of the cap will be documented in an Easement and Servitude (EE&S) between DEQ and Pacific Carbide.

HOW TO COMMENT: The Staff Report other files will be available for public review beginning Thursday, February 1, 2007. To schedule an appointment to review the site files call Dawn Weinberger at (503) 229-6729. The DEQ project manager is Mark Pugh (503) 229-5587. Written comments concerning DEQ's proposed decision should be sent to the project manager at the Department of Environmental Quality, Northwest Region, 2020 SW 4th Ave., Suite 400, Portland, OR 97201, or via e-mail to Pugh.Mark@deq.state.or.us, by Friday, March 2, 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.

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

CHANCE TO COMMENT ON... RECOMMENDED NO FURTHER ACTION FOR THE FORMER MARGOLIS SITE, PORTLAND, OREGON

COMMENTS DUE: March 1, 2007

PROJECT LOCATION: Tax Lot 2N1W33C 00300 — NW Newberry Road, Portland, OR

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 a proposed "No Further Action" cleanup decision for the Former Margolis Property (ECSI #4749) in northwest Portland, Oregon.

HIGHLIGHTS: DEQ has completed an evaluation of the investigation and cleanup conducted at the Former Margolis Property, a 57.58-acre residential property in northwest Portland, Oregon. The work was completed by the Trust for Public Lands (TPL) and reviewed under an agreement with DEQ. The site contained contaminated soils from an above ground heating oil storage tank (AST). Approximately 42 tons of petroleum contaminated soils were removed from the site in July and November of 2006 and disposed of in a solid waste landfill. TPL submitted a Soil Investigation Report and an Independent Environmental Cleanup Report to DEQ in September and December of 2006, respectively. DEQ has concluded that there is no significant risk to human health or the environment from the site following completion of the soil removal actions.

The Former Margolis Property achieved a degree of cleanup that is protective of public health and the environment, and requires no further action under the Oregon Environmental Cleanup Law, ORS 465.200 et seq., unless new or previously undisclosed information becomes available.

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

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 March 1, 2007 deadline and the Regional Administrator will make a final decision after consideration of these public comments.

CHANCE TO COMMENT ON... PROPOSED NO FURTHER ACTION DECISION FOR THE INDUSTRIAL COATINGS SITE

COMMENTS DUE: March 5, 2007

PROJECT LOCATION: The site is located at 17370 SW 63rd Avenue, Lake Oswego, 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 "No Further Action" (NFA) determination for the Industrial Coatings Site and issuance of a Certificate of Completion

for the existing Consent Order. Because institutional controls will be implemented the site will not be removed from the Confirmed Release and Inventory Lists.

HIGHLIGHTS: The Industrial Coatings is located in Lake Oswego within an area zoned for light industrial uses. Industrial Coatings has conducted commercial bakeware resurfacing at the site since 1968 that involves stripping old coating from the bakeware and applying a new silicone release coating. Hazardous substances involved in the processes included caustic solutions containing kerosene (a petroleum hydrocarbon), sodium bichromate, and, chlorine bleach. Horizon Technology is a tenant that occupied a portion of the site prior to 1980 and produced utility pole wraps treated with Pentachlorophenol (PCP) and diesel mixture coating to pole wrapping material. The PCP/diesel mixture was stored in above ground tanks adjacent to their operations building.

Historically, waste water from the Industrial Coatings stripping and rinsing process was discharged to onsite drywells and to a lined lagoon. Historic releases at the site include Industrial Coatings waste water leakage through failure of the lagoon lining in 1984 and overflowing of the drywell in 1993, and leaks and spills prior to 1980 of Horizon Technology's PCP/diesel mixture.

Industrial Coatings began site investigation of the facility in 1993. The site investigation targeted on site and off site potential source areas where surface and subsurface soil, surface water, groundwater and sediment may have been impacted by waste water releases, and leaks or spills. Investigation results indicate that petroleum hydrocarbons constituents, polynuclear aromatic hydrocarbons (PAHs), PCP, and metals are present in soil, groundwater, surface water and sediment on site, and off site in surface water and sediment in a wetland to the northwest, sediments in a drainage ditch to the east, and in groundwater to the southwest. Groundwater contamination with benzene and naphthalene originating from the drywell area in the southwest corner of the site, and PCP and naphthalene originating from the PCP mixing area in the south central portion of the site and have migrated off site to the southwest. Off-site contamination in groundwater is significantly to below drinking water standards.

A risk assessment was performed to evaluate risks to potential human and ecological receptors from exposure to site related chemicals that are present in surface and subsurface soil, surface water, sediment, and groundwater. The human health risk assessment findings indicate soil/sediment conditions at the site do not pose an unacceptable risk to human health based on existing land use, but identified a potential unacceptable risk if groundwater at the site was used as a source of drinking water. The ecological risk assessment evaluated exposure of benthic and aquatic organisms, birds and mammals to surface water and sediment in the east ditch and northeast wetland. The ecological risk assessment identified potential significant risk associated with chromium contamination in ditch sediments.

A removal action to excavate chromium-contaminated sediment in the east ditch to below acceptable concentrations was conducted in September 2006. Follow up sampling of surface water in November 2006 indicated chromium was non detectable in surface water above ecological risk based criteria.

DEQ has concluded that no further actions are warranted for the Industrial Coatings property because risk-based criteria for human and ecological receptors are not exceeded and institutional controls will be implemented to maintain an incomplete exposure pathway for PCP in on site groundwater. Because institutional controls will be required the site will not be removed from the Confirmed Release and Inventory Lists. All work required under the existing Consent Order has been completed and, with no further action required for the site, a Certificate of Completion would be issued and the DEQ Consent Order terminated.

HOW TO COMMENT: You can review the administrative record for the proposed No Further Action at DEQ's Northwest Region east side office located at 1550 NW Eastman Parkway, Suite 290, Gresham, Oregon. For an appointment to review the files call (503) 667-

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8414, extension 55026; toll free at (800)452-4011; or TTY at (503)229-5471. Please send written comments to Mavis D. Kent, Project Manager, DEQ Northwest Region East Side Office, 1550 NW Eastman Parkway, Suite 290, Gresham, Oregon, 97030 or via email at: kent.mavis.d@deq.state.or.us. DEQ must receive written comments by 5:00 p.m. on March 5, 2007. This notice will also be published in the local newspaper The Oregonian.

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

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

THE NEXT STEP: DEQ will consider all public comments received by the March 5, 2007 deadline. In the absence of comments, DEQ will issue the No Further Action.

DEQ RECOMMENDS NO FURTHER ACTION AT THE FORMER ALBANY IRONWORKS SITE IN ALBANY, OREGON

PROJECT: Albany Ironworks Site Redevelopment

PROJECT LOCATION: Approximately 1-acre Site at the corner of First and Montgomery Streets, Albany, Linn County, Oregon

PROJECT ACTION: Oregon Department of Environmental Quality (DEQ) invites public comments from February 1, 2007 through March 2, 2007. DEQ will consider all comments before issuing a no further action determination (NFA). Upon written request by ten or more persons or by a group with a membership of ten or more, a public meeting will be held to receive verbal comments.

HIGHLIGHTS: The former Albany Ironworks Site was an operating foundry and pattern shop from about 1936 to about 1961. More recently, the site has been home to an auto dealer, nursery and bark sales, and a lumber storage yard. The site is being redeveloped for commercial and residential uses. Based on the industrial history of the site, several environmental concerns were identified which have been addressed and are presented in more detail in the supporting Site Summary Report. As part of the redevelopment an NFA determination is being sought by the developer.

The following environmental concerns were identified during assessment activities:

- Petroleum contamination in soil and groundwater
- Lead contamination in soil
- Chlorinated volatile organic compound (VOC) contamination in groundwater

The petroleum contamination was likely associated with a former underground storage tank, but no UST was found during assessment and cleanup activities. Contaminated soil was removed during utility work and disposed at Coffin Butte Landfill in Benton County. Some residual soil contamination remains at concentrations below DEQ's cleanup levels. In addition, volatile organic compounds associated with gasoline, were identified in groundwater beneath the southern property boundary. Based on the sample location and the local groundwater flow direction the contaminants are likely migrating on site from the neighboring Albany cardlock facility which is currently conducting cleanup of gasoline in shallow groundwater. The volatile organic compounds associated with gasoline in groundwater beneath the Albany Ironworks site are below DEQ screening levels.

Lead contamination was likely associated with former foundry operations. A former swale existed on site that appeared to be used for disposal of foundry wastes, most likely casting sand. Lead was the only heavy metal that was identified in soil above cleanup levels. Approximately 134 tons of lead-contaminated soil was removed from the swale area and disposed at Coffin Butte Landfill. Residual lead contamination remains in soil, but concentrations are below DEQ's screening levels.

Chlorinated VOCs were identified in shallow groundwater beneath the central western property boundary and may be associated with past foundry and pattern shop activities. The VOCs that were identified were degradation products of trichlorethene (TCE), which was a commonly used metals-parts degreaser. Additional groundwater data was collected to determine the magnitude and extent of the chlorinated VOCs. The additional assessment work concluded that concentrations of the chlorinated VOCs were below DEQ's screening levels and also shows that degradation is taking place.

A Site Summary Report was prepared by DEQ which supports the recommendation for No Further Action. The Site Summary Report is available at the DEQ Eugene office and electronically by request.

DEQ has concluded that there is no threat to human health and the environment because the soil removals have been effective in reducing contaminants in soil below screening levels and because remaining shallow groundwater contaminants are below DEQ's screening levels.

MORE INFORMATION: Project files containing detailed information for the site and the Site Summary Report are available for review in DEQ's Eugene office located at 1102 Lincoln St., Suite 210, Eugene, Oregon 97401. Questions concerning this site or requests for an electronic copy should be directed to Bryn Thoms at DEQ's Eugene office or by calling him at 541-687-7424, or toll-free in Oregon at 1-800-844-8467 extension 7424.

The TTY number for the hearing impaired is (541) 687-5603. Copies of written material in alternative format such as Braille, large print, or another language are available upon request.

PUBLIC NOTICE FOR WASTE DISPOSAL

PROJECT LOCATION: Rhone-Poulenc, 6200 NW St. Helens Road, Portland, Oregon. The disposal location is the Chemical Waste Management hazardous waste landfill in Arlington, Oregon.

HIGHLIGHTS: The Oregon Department of Environmental Quality (DEQ) proposes that approximately 5 cubic yards of listed hazardous waste be designated a Corrective Action Management Unit (CAMU) eligible waste under CFR 264.552 and disposed of at the Chemical Waste Management (CWM) hazardous waste landfill in Arlington, Oregon. The waste is accumulated sediment from a stormwater collection sump that feeds to the water treatment plant at the former Rhone-Poulenc manufacturing facility. The sediment is generated as part of the implementation of stormwater collection and treatment remedial measures conducted pursuant to Order on Consent DEQ No. WMCSR-NWR-99-07.

BACKGROUND: Starlink Logistics, Inc. (SLLI) has proposed that the Rhone-Poulenc waste be disposed of at the CWM Subtitle C landfill in Arlington. CAMU eligible waste may only be placed in a hazardous waste landfill that is authorized to receive it. The Regional Administrator with regulatory oversight where the cleanup is taking place (the DEQ Northwest Region) may approve placement of CAMU eligible wastes in hazardous waste landfills not located at the site from which the wastes originated. The waste contains organochlorine pesticides and dioxins/furans. Treatment standards may be adjusted as long as the adjusted standards do not present an unacceptable risk. In this case, most of the principle hazardous constituents in the sediment tested below applicable treatment standards. For total tetrachlorodibenzofuran (TCDF) and total pentachlorodibenzofuran (PeCDF), which exceeded treatment standards,

OTHER NOTICES

SLLI demonstrated that these compounds have very low mobility through test results by the toxic characteristic leaching procedure (TCLP). TCLP results were non-detect for TCDF and PeCDF.

HOW TO COMMENT: Under CFR 264.555 (c) DEQ's Northwest Region office must provide a reasonable opportunity for public comment before approving CAMU eligible waste for placement in an off-site permitted hazardous waste landfill. If approved as CAMU eligible waste, the landfill operator will additionally provide an opportunity for public comment prior to accepting the waste for disposal. Comments to DEQ are due by February 15th, no later than 5:00 pm and may be submitted in writing to DEQ's Northwest Region office, 2020 SW Fourth Avenue, Suite 400, Portland, OR 97201, attention Tom Roick, or by email to roick.tom@deq.state.or.us, telephone 503-229-5502.

NOTICES OF PROPOSED RULEMAKING

Notices of Proposed Rulemaking and Proposed Rulemaking Hearings

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

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

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

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

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

Board of Examiners for Engineering and Land Surveying Chapter 820

Rule Caption: Propose and adopt new language to rules located in Division 10 and 20.

| | | |
|--------------|--------------|---|
| Date: | Time: | Location: |
| 3-13-07 | 1-2 p.m. | 670 Hawthorne Ave. SE Suite 220 Salem, OR 97301 |

Hearing Officer: Bob Neathamer

Stat. Auth.: ORS 672.097, 672.105, 672.118, 672.255

Other Auth.: ORS 670.310

Stats. Implemented: ORS 672.002 - 672.325

Proposed Adoptions: OAR 820-010-0621

Proposed Amendments: OAR 820-010-0010, 820-010-0210, 820-010-0230, 820-010-0231, 820-010-0635, 820-010-0720, 820-020-0015

Last Date for Comment: 3-13-07, Close of Hearing

Summary: OAR 820-010-0010 — Defines "Responsible Charge." Housekeeping.

OAR 820-010-0210 — Removes invalid language.

OAR 820-010-0230 — Additional language broadens the rule to accept additional experience from Professional Engineer Applicants at the discretion of the Board.

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

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

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

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

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

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

Rules Coordinator: Mari Lopez

Address: 670 Hawthorne Ave. S.E. Suite 220, Salem, OR 97301

Telephone: (503) 362-2666

Construction Contractors Board Chapter 812

Rule Caption: Division 6 Revisions to Testing Requirements and Training and Testing Period Rules.

| | | |
|--------------|--------------|---|
| Date: | Time: | Location: |
| 2-27-07 | 11 a.m. | West Salem Roth's IGA Santiam Rm. 1130 Wallace Rd. Salem, OR |

Hearing Officer: Tom Skaar

Stat. Auth.: ORS 670.310, 701.072, 701.235

Stats. Implemented: ORS 701.072

Proposed Amendments: 812-006-0300, 812-006-0400

Last Date for Comment: 2-27-07, 11 a.m.

Summary: 812-006-0300 is amended to replace the words "any state certified" and replace them with "the authorized". There is no longer any state certification of interpreters. By contract, the CCB has authorized the testing vendor (PSI) to arrange for the interpreter services. By having the testing vendor arrange for the interpreters rather than the student helps preserve the integrity of the test.

812-006-0400 is amended because the rule had unintended consequences by keeping those individuals who demonstrated competency (by recently passing the test) from becoming licensed. Training providers that did their best to notify students had approximately two weeks to notify the students. It would have been difficult for students to successfully schedule the test, pass the test and complete the application process (including getting the bond and insurance) within a 1-2 week time period. This affects applicants who recently passed the test and now find they cannot become licensed.

Rules Coordinator: Catherine Dixon

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

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

Department of Agriculture Chapter 603

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

Stat. Auth.: ORS 561.190, 561.510, 570.305, 570.405

Stats. Implemented: ORS 570.305

Proposed Amendments: 603-052-0136, 603-054-0027

Last Date for Comment: 2-22-07

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

Rules Coordinator: Sue Gooch

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

Telephone: (503) 986-4583

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

NOTICES OF PROPOSED RULEMAKING

Stat. Auth.: ORS 561.190, 561.560
Stats. Implemented: ORS 561.560
Proposed Amendments: 603-052-1230, 603-052-1250
Last Date for Comment: 2-22-07

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

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

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

Rule Caption: Amend to assess for oilseeds canola and mustard in addition to barley, rye and triticale.

| Date: | Time: | Location: |
|---------|---------|---|
| 2-20-07 | 10 a.m. | Conference Rm. 115 SE 8th St, Pendleton, OR 97801 |

Hearing Officer: Tammy Dennee
Stat. Auth.: ORS 576.044 - 576.595

Stats. Implemented: ORS 576
Proposed Amendments: 679-010-0010
Last Date for Comment: 2-20-07, 5 p.m.

Summary: The amended rules make changes to the documents required for the Oregon Grains Commission to collect assessments for Canola and Mustard harvested in Oregon on or after March 1, 2007.

Rules Coordinator: Tammy L. Dennee
Address: 115 SE 8th St., Pendleton, OR 97801
Telephone: (541) 276-4609

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

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

| Date: | Time: | Location: |
|---------|---------|------------------------------------|
| 2-20-07 | 10 a.m. | 1535 Edgewater St. NW Salem, OR |

Hearing Officer: Celina Patterson
Stat. Auth.: ORS 479.730
Stats. Implemented: ORS 479.540, 479.630
Proposed Amendments: 918-251-0090, 918-261-0040
Last Date for Comment: 2-23-07, 5 p.m.

Summary: This proposed rule expands the exemption from electrical license requirements under ORS 479.540(1) for electrical installations on a person's residential or farm property. The rule adds "spouse" and "domestic partner" to the definition of an owner's immediate family for the purpose of qualifying for the exemption.

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

**Department of Environmental Quality
Chapter 340**

Rule Caption: This proposal increases permit fees by 3% and provides criteria for termination of septic permits.

| Date: | Time: | Location: |
|---------|--------|---|
| 2-15-07 | 7 p.m. | DEQ, large Conference Rm. 1102 Lincoln St., Suite 210 Eugene, OR |
| 2-20-07 | 7 p.m. | Community Justice Center 1101 W. Main, Suite 101 Medford, OR |
| 2-21-07 | 7 p.m. | State Bldg., Health Human Svcs. 1300 SW Wall St, Suite 101 Bend, OR |
| 2-22-07 | 7 p.m. | City Hall, Community Rm., 501 SW Emigrant Ave. Pendleton |
| 2-26-07 | 7 p.m. | DEQ, NWR Office, Rm. A/B 2020 SW 4th Ave. Portland, OR |

Hearing Officer: Sonja Biorn-Hansen
Stat. Auth.: ORS 468.065, 468B.051
Stats. Implemented: ORS 468.065, 468B.035, 468B.051
Proposed Amendments: 340-045-0075, 340-071-0130
Last Date for Comment: 3-2-07

Summary: 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.

For more information or to get a copy of the rulemaking package, contact Alice Kavajecz at DEQ at kavajecz.alice@deq.state.or.us or (503) 229-6962 or call toll free in Oregon 800-452-4011 x 6962. Comments may be submitted to Sonja Biorn-Hansen at the Department of Environmental Quality (DEQ), 811 SW Sixth Avenue, Portland, OR 97204 or at wqfeerule@deq.state.or.us

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 Oregon Coast Coho Conservation Plan.

| Date: | Time: | Location: |
|---------|--------|--|
| 3-16-07 | 8 a.m. | 3406 Cherry Ave. NE Salem, OR 97303 |

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 635-007, 635-500
Proposed Amendments: Rules in 635-007, 635-500
Proposed Repeals: Rules in 635-007, 635-500
Last Date for Comment: 3-16-07

Summary: The rules relating to implementation of the Oregon Coast Coho Conservation Plan 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

NOTICES OF PROPOSED RULEMAKING

Rule Caption: Amendment to repealing Division 300, Wildlife Damage Plans.

Date: 3-16-07 **Time:** 8 a.m. **Location:** 3406 Cherry Avenue NE
Salem, OR 97303

Hearing Officer: Fish & Wildlife Commission
Stat. Auth.: ORS 496.012, 496.138, 496.146, 496.992
Stats. Implemented: ORS 496.012, 496.138, 496.146, 496.992
Proposed Repeals: Rules in 635-300
Last Date for Comment: 3-16-07

Summary: This Amendment is to repeal Division 300, Wildlife Damage plans. On October 6, 2006 Elkhorn Wildlife Area Long Range Management Plan was adopted. The Elkhorn Wildlife Area Long Range Management Plan incorporated the rules contained in division 300 into the goals and objectives creating a redundancy in rule.

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,
Administrative Services Division and Director's Office
Chapter 407**

Rule Caption: Updating and Renumbering Client Civil Rights Rules.

Date: 2-22-07 **Time:** 2-3 p.m. **Location:** Human Services Bldg.
500 Summer St. NE, Rm. 137A
Salem, OR

Hearing Officer: Staff
Stat. Auth.: ORS 409.050, 411.060
Stats. Implemented: ORS 409.050, 411.060
Proposed Ren. & Amends: 410-030-0010 to 407-030-0010, 410-030-0020 to 407-030-0020, 410-030-0030 to 407-030-0030, 410-030-0040 to 407-030-0040
Last Date for Comment: 2-22-07, 5 p.m.
Summary: The Client Civil Rights rules are being moved to the DHS department-wide rule chapter because they are agency-wide in nature. In addition, references to the Department of Human Resources are being changed to the Department of Human Services to reflect the current name of the Department.

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

Rules Coordinator: Jennifer Bittel
Address: Department of Human Services, Administrative Services Division and Director's Office, 500 Summer St. NE, E-03, Salem, OR 97301
Telephone: (503) 947-5250

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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.

Date: 2-28-07 **Time:** 9:30 a.m. **Location:** Rm. 254
500 Summer St. NE
Salem, OR

Hearing Officer: Annette Tesch
Stat. Auth.: ORS 409.050, 418.005, 418.240
Stats. Implemented: ORS 409.010, 418.205 - 418.325, 418.990 - 418.998
Proposed Amendments: 413-210-0806
Last Date for Comment: 3-2-07, 5 p.m.
Summary: OAR 413-210-0806 is being amended to correct a clerical error that omitted the section about bond requirements for out-

door youth programs from the original text filed with the Secretary of State, while this text had been included on the Department website version of this rule. The restored section sets out the bond requirements for outdoor youth programs based on ORS 418.246.

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

Rules Coordinator: Annette Tesch
Address: Department of Human Services, Children, Adults and Families Division: Child Welfare Programs, 550 Summer St. NE, E-48, Salem, OR 97301
Telephone: (503) 945-6067

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

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

Date: 2-28-07 **Time:** 10:30 a.m. **Location:** Rm. 254
500 Summer St. NE
Salem, OR

Hearing Officer: Annette Tesch
Stat. Auth.: ORS 192.430, 409.050, 411.060, 411.070, 411.105, 411.116, 411.300, 411.710, 411.730, 411.816, 414.042, 414.047, 418.040, 418.100, 418.816

Other Auth.: 7 CFR 273.2(f)(1)(v), 7 CFR 273.6, 7 CFR 273.7(k), 7 CFR 273.8(e)(2), 7 CFR 273.9(b), 7 CFR 273.9(c)(7), 7 CFR 273.12(c)(3), 7 CFR 273.13(a)(1), 7 CFR 280.1, 7 USC 2014(c), 7 USC 2014(g), 20 CFR 404.1505, 20 CFR 416.414, 42 CFR 431.211, 42 CFR 431.213(b)(2), 42 CFR 435.541(f), 42 CFR 435.622, 42 CFR 435.725(c)(3), 42 CFR 435.910, 42 CFR 435.920, 42 CFR 435.1005, 42 CFR 435.1009, 42 CFR 457.320(b)(4), 42 USC 405(c)(2)(C), 42 USC 1320b-7, 42 USC 1396a(a)(46), 42 U.S.C. 1396d(p) (Section 1905(p) of the Social Security Act), 42 USC 1396p(d)(4)(B) and (C), 45 CFR 164.508(c)(1)(vi), 45 CFR 164.524(a)(3)(iii), 45 CFR 205.10(a)(4)(i)(A), FNS Western Region Administrative Notice 98-73, Social Security Administration Program Operations Manual System sections SI 00820.102, SI 00820.500, SI 00820.570, SI 01130.501, SI 01130.502, SI 01130.503, SI 01130.675, Executive Order 12673 under the Stafford Disaster Relief and Emergency Assistance Act of 1988, Food Stamp Act of 1977, Section 1818A of the Social Security Act, 42 USC 1395i-2a, Section 1905(s) of the Social Security Act, 42 USC 1396d(s), Section 1917 of the Social Security Act (42 U.S.C. § 1396p(c) as amended by the Deficit Reduction Act of 2005 (DRA) and the Center for Medicare, Section 1924 of the Social Security Act (42 U.S.C. 1396r-5(d)) as amended by the Deficit Reduction Act (DRA) of 2005, section 6012, U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services, State Medicaid Manual Sections 3258.6(J), 3258.9.B., 3258.10, 3259.6(B), 3259.7(C), Section 4107 of the Farm Security and Rural Investment Act of 2002, Consolidated Appropriations Act, 2005, Pub. L. 108-447 (December 8, 2004)

Stats. Implemented: ORS 192.430, 192.440, 192.856, 409.010, 410.150, 411.060, 411.070, 411.095, 411.105, 411.116, 411.117, 411.300, 411.320, 411.335, 411.630, 411.635, 411.640, 411.650, 411.690, 411.700, 411.710, 411.730, 411.816, 411.837, 414.042, 414.047, 414.055, 418.040, 418.070, 418.100, 418.125, 418.130, 418.180, 418.185

Proposed Adoptions: 461-135-0491, 461-135-0492, 461-135-0493, 461-135-0494, 461-135-0495, 461-135-0496, 461-135-0497

Proposed Amendments: 461-001-0000, 461-001-0030, 461-025-0310, 461-105-0010, 461-105-0060, 461-105-0130, 461-105-0150, 461-105-0160, 461-110-0630, 461-115-0030, 461-115-0450, 461-120-0210, 461-125-0255, 461-125-0370, 461-135-0070, 461-135-0730, 461-135-0750, 461-140-0040, 461-140-0120, 461-140-0242, 461-140-0296, 461-145-0005, 461-145-0008, 461-145-0010,

NOTICES OF PROPOSED RULEMAKING

461-145-0020, 461-145-0022, 461-145-0030, 461-145-0050, 461-145-0060, 461-145-0100, 461-145-0120, 461-145-0130, 461-145-0140, 461-145-0250, 461-145-0380, 461-145-0420, 461-145-0433, 461-145-0455, 461-145-0490, 461-145-0510, 461-145-0540, 461-145-0600, 461-145-0920, 461-145-0930, 461-155-0225, 461-155-0250, 461-155-0290, 461-155-0291, 461-155-0295, 461-155-0530, 461-155-0670, 461-160-0580, 461-160-0610, 461-160-0620, 461-165-0120, 461-170-0020, 461-170-0035, 461-175-0050, 461-175-0206, 461-175-0270, 461-180-0010, 461-180-0020, 461-180-0044, 461-190-0195, 461-195-0541

Proposed Repeals: 461-005-0735, 461-120-0230; 461-120-0235, 461-145-0055

Proposed Ren. & Amends: 461-145-0070 to 461-145-0086

Last Date for Comment: 3-1-07, 5 p.m.

Summary: OAR 461-001-0000 is being amended to define terms used in these rules. OAR 461-140-0040 about when income is considered available to clients, OAR 461-145-0120 about the definition of earned income, and OAR 461-145-0130 about the treatment of earned income are being amended to change their language about how the department treats cafeteria plan benefits and flexible spending accounts in the eligibility process for food stamps, public assistance, and medical assistance. As amended, the rules will state that income in flexible spending accounts is considered available and counted in the eligibility process for all programs and that in the Food Stamp program, some other cafeteria plan benefits are also counted (if the employee may take the benefits as cash even if not taken as cash). OAR 461-145-0130 is also being amended to correct the treatment of different types of JOBS Plus income in the Food Stamp program. This rule is also being amended to state that in the Food Stamp program, earned in-kind income is excluded unless it is an expenditure by a business entity that benefits a principal, consistent with OAR 461-145-0088.

OAR 461-001-0030 which defines terms that apply to OSIP (Oregon Supplemental Income Program) and OSIPM (OSIP Medical) long-term care and waived clients is being amended to state that an individual in an acute care hospital may meet the definition of continuous period of care. This rule is also being amended to state that an individual meets the continuous period of care definition if the care is provided until death.

OAR 461-005-0735 about the process for the determination of disability is being repealed and OAR 461-125-0370 is being amended to more clearly reflect the language contained in 42 CFR § 435.541(f) about the current process for determination of disability. OAR 461-125-0370 is also being amended to include in its definition of disability the definition contained in 20 CFR. § 404.1505.

OAR 461-025-0310 about hearing requests is being amended to change its language about how time periods are calculated. As amended, the rule will cross-reference the time period calculation in OAR 461-025-0300.

OAR 461-105-0010 about the rights of clients is being amended to cross-reference rules that state the clients right to a hearing and their right to a timely decision about eligibility instead of restating those rights.

OAR 461-105-0060, 461-105-0150, and 461-105-0160 about public records requests, fees for public records, and client access to records are being amended to be consistent with Department-wide rules that will be adopted on this topic in Chapter 407 of the Oregon Administrative Rules. OAR 461-105-0150 is also being amended to update its requirements about mailing requests and payments.

OAR 461-105-0130 is being amended to expand the requirement for a written authorization from a client's attorney to include any client health or treatment information. The rule currently imposes this requirement only for substance abuse treatment, mental health treatment, or HIV information.

OAR 461-110-0630, which identifies the individuals whose basic and special needs are used in determining eligibility and benefit level in the food stamp, public assistance, and medical assistance programs, is being amended to remain consistent with the social secu-

rity number requirements in OAR 461-120-0210 which is being amended. OAR 461-110-0630 is also being amended to clarify that individuals who do not meet the citizenship documentation requirements of OAR 461-115-0705 are still included in the need group for Medical Assistance Assumed (MAA) and Medical Assistance to Families (MAF). OAR 461-120-0230 and 461-120-0235 are being repealed and OAR 461-120-0210 is being amended so that a single rule will describe the situations in which clients of public assistance, medical assistance, and food stamp programs are required to provide the Department with a valid Social Security number. OAR 461-120-0210 is also being amended to change the requirements and exemptions that are currently in the rules.

OAR 461-115-0030 about dates of request is being amended to address dates of request for current recipients in the General Assistance Medical (GAM), Medical Assistance Assumed (MAA), Medical Assistance to Families (MAF), the Oregon Health Plan (OHP), Oregon Supplemental Income Program Medical (OSIPM), Refugee Medical (REFM) and Substitute Adoptive Care (SAC) programs. Additionally, the rule is being amended to align REFM with the GAM, MAA, MAF, OSIPM and SAC programs regarding the dates of request.

OAR 461-115-0450 is being amended 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. This rule is also being amended to update terminology and add cross-references to other rules.

OAR 461-125-0255 is being amended to specify that when an absent parent joins a household receiving TANF benefits, or another change occurs that could change the basis of deprivation, the filing group remains eligible during a 45-day period following the timely report of the change during which it may establish TANF eligibility based on incapacity or unemployment. Under the current rule, this time period is only 30 days.

OAR 461-135-0070 about specific requirements in the Medical Assistance Assumed (MAA), Medical Assistance to Families (MAF) and Temporary Assistance to Needy Families (TANF) programs is being amended to address situations where a caretaker relative may be eligible for MAA or MAF when there is no eligible dependent child. Additionally, this rule is being amended to clarify that a caretaker relative of a dependent child may be eligible for MAA or MAF when the dependent child is not eligible for MAA or MAF because the child has not met the citizenship documentation requirements of OAR 461-115-0705.

OAR 461-135-0491 to 461-135-0497 are being adopted to allow the Department Food Stamp program to issue temporary emergency food stamp assistance during natural disasters. The Department must adhere to federal guidance before implementing the Disaster Food Stamp Program. The rules are included in the State Disaster Plan that is submitted to the Food and Nutrition Service (FNS) on an annual basis. These rules cover the application process, interviews, verification, eligibility and benefit amount, treatment of households already certified and receiving food stamps, recertifications, promptness of benefits, hearings, and transition from emergency benefits to regular benefits.

OAR 461-135-0730 about specific requirements for the QMB (qualified medicare beneficiaries) program is being amended to clarify that an individual may not receive QMB-DW (Qualified Medicare Beneficiaries — Disabled Worker; payment of the Medicare Part A premium for people under age 65 who have lost eligibility for Social Security disability benefits because they have become substantially gainfully employed) if the individual is eligible for any other medical programs. This rule is also being amended to update language and add cross references.

OAR 461-135-0750 about eligibility for the OSIPM program (Oregon Supplemental Income Program Medical) for individuals in long term care or waived services and OAR 461-165-0120 about payment for a client in an acute care hospital are being amended to

NOTICES OF PROPOSED RULEMAKING

allow the use of the institutionalized income standard of 300 percent of SSI for clients who move from acute care to long term care. OAR 461-135-0750 is also being amended to comply with 42 CFR 435.622 which requires the Department to apply these income standards only to individuals that are institutionalized for a period of not less than 30 consecutive days. OAR 461-135-0750 is also being amended to clarify that the eligibility standards for medically fragile children for the CIIS (Children's Intensive In-Home Services) behavioral program are service eligibility standards.

OAR 461-140-0120 about the availability and treatment of lump-sum income, OAR 461-145-0490 about the treatment of Social Security benefits, and OAR 461-145-0510 about the treatment of SSI payments are being amended to reflect the requirements of Social Security Administration (SSA) Program Operations Manual (POM) SI01130.600 that apply to eligibility for Oregon Supplemental Income Program (OSIP) and Oregon Supplemental Income Program Medical (OSIPM). The POM requires that retroactive Social Security Benefit (SSB) and SSI payments be excluded as a resource for nine calendar months following the month in which the payments are received. The current rules have a six-month exclusion for retroactive SSI payments and there is no exclusion for retroactive SSB payments.

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 restore language to the rule that was inadvertently dropped in the July 1, 2006 amendment. This language was restored by temporary rule effective January 1, 2007 and now the rule is being amended to make the change permanent. The language that is being restored applies to transfers after July 1, 2006 and requires that in order for a transfer of assets from a client to a spouse or child with a disability to not be considered a disqualifying transfer, the transfer must be made for the sole benefit of that child or spouse. This rule is also being amended to make permanent language that was added by temporary rule effective January 1, 2007 to specify that a transfer of assets to a trust under OAR 461-145-0540(10) is not disqualifying only if the trust is established for the sole benefit of an individual with a disability and the transfer is made while the individual is under the age of 65. This rule is also being clarified to specify that transfers to trusts meeting the criteria of OAR 461-145-0540(9)(a) are a disqualifying transfer only as long as the client is age 65 or older. This rule is also being amended to clarify when a transfer of assets is disqualifying if a client has had care provided to them in the past.

OAR 461-140-0296 about the length of disqualification due to an asset transfer in the GA (General Assistance, currently closed), GAM (General Assistance Medical, currently closed), OSIP (Oregon Supplemental Income Program), and OSIPM (Oregon Supplemental Income Program Medical, providing medical coverage to the elderly and individuals with disabilities) programs is being amended to remove a complicated calculation for the disqualification period related to annuities purchased after July 1, 2006 that pay out beyond the annuitant's lifetime. This rule is also being amended for transfer of asset disqualification penalties for transfers by current recipients that occurred on July 1, 2006 or later to clarify that penalty periods cannot overlap and must be served sequentially. This rule is also being amended for disqualifications from any time period to describe how to calculate the disqualification period when both spouses of a couple must serve a penalty for the same disqualifying transfer.

OAR 461-145-0005 about Agent Orange disability benefits, 461-145-0008 about the Alaska Permanent Fund Dividend, and 461-145-0010 about the treatment of income-producing animals are being amended to add cross-references to other rule for non-substantive language changes.

OAR 461-145-0020 and 461-145-0380 are being amended to indicate that if a client uses funds from specific retirement plans author-

ized under the Internal Revenue Service Code of 1986 to purchase an annuity, the annuity is treated as a retirement plan under these rules in the determination of eligibility for public assistance, medical assistance, and food stamp benefits. Previously, the rules did not specify that this provision related to retirement plans only applies to client purchases of annuities, so it could have also been interpreted to apply to community spouse purchases of annuities.

OAR 461-145-0022, which concerns the treatment of annuities for eligibility in the Oregon Supplemental Income Program Medical (OSIPM), is being amended to indicate that if a client uses funds from specific retirement plans authorized under the Internal Revenue Service Code of 1986 to purchase an annuity, the annuity is not treated as an annuity but is instead treated as a retirement plan under OAR 461-145-0380. Previously, the rule did not specify that this only applies to client purchases of annuities from retirements plans, so it could have also been interpreted to apply to community spouse purchases of annuities. This rule is also being amended to change the way annuities purchased by a long-term care client or a community spouse on or after July 1 2006 are treated. These annuities will no longer be counted as resources, but instead will either be treated as disqualifying transfers of assets or as income to the annuitant.

OAR 461-145-0030 about the treatment of bank accounts in the eligibility process for food stamps, medical assistance, and public assistance is being amended to state what is considered a bank account and when funds in a bank account are counted in the eligibility process, including the treatment of interest and dividends earned on these funds.

OAR 461-145-0050 about the treatment of burial spaces and burial merchandise is being amended in the Employment Related Day Care (ERDC), Food Stamp (FS), Medical Assistance Assumed (MAA), Medical Assistance to Families (MAF), Oregon Health Plan (OHP), Medical Coverage for Children in Substitute or Adoptive Care (SAC), Refugee Assistance (REF) and Temporary Assistance to Needy Families (TANF) programs to reduce the amount of burial merchandise excluded in the eligibility decision to only that merchandise designated for a person in the financial group. Previously, burial merchandise designated for persons outside the financial group (adult children, siblings, parents and the spouses of these persons) were also excluded from the eligibility decision. In addition, the rule is being rewritten and reorganized for clarity.

OAR 461-145-0055 about the treatment of capital assets is being repealed. Its text is being moved and amended as part of OAR 461-145-0600 to cover capital assets, work-related equipment, and inventory in a single rule.

OAR 461-145-0060 is being amended to clarify the definition of cash, clarify the relationship of this rule to other rules on this topic, and differentiate between the treatment of cash and checks in the eligibility process for food stamps, medical assistance, and public assistance.

OAR 461-145-0070 is being renumbered to 461-145-0086 and amended to clarify that a contribution does not literally need to be in cash for programs that consider contributions in the eligibility process for food stamps, public assistance, and medical assistance. This rule is also being amended to clarify what is covered by the rules and its relationship to rules on related topics. This rule is being renumbered to maintain alphabetical order in Division 461-145.

OAR 461-145-0100 about the treatment of income received from disaster relief in the eligibility process for food stamps, medical assistance, and public assistance is being amended to specify the various types of disaster relief and the scope of the exclusions.

OAR 461-145-0140 about the treatment of earned income tax credits (EITC) is being amended for the OSIP (Oregon Supplemental Income Program), OSIPM (Oregon Supplemental Income Program Medical, providing medical coverage to the elderly and individuals with disabilities), and QMB (Qualified Medicare Beneficiaries) programs to exclude both monthly advance payments and yearly refunds from being counted in the Medicaid eligibility determination.

NOTICES OF PROPOSED RULEMAKING

OAR 461-145-0250 about the treatment of income producing property in the eligibility process for food stamps, public assistance, and medical assistance is being amended for clients in the GA (General Assistance, currently closed), GAM (General Assistance Medical, currently closed), OSIP (Oregon Supplemental Income Program), OSIPM (Oregon Supplemental Income Program Medical, providing medical coverage to the elderly and individuals with disabilities), and QMB (Qualified Medicare Beneficiaries) programs to clarify when the property qualifies to be considered part of a trade or business. For the properties qualifying as a trade or business, the rule is being amended to no longer require a minimum amount of countable income in order for the equity value of the property to be excluded for eligibility purposes. A property that does not qualify as a trade or business, such as the client's previous home that has been rented out because the client no longer lives there, still must generate annual countable income of at least 6% of its equity value in order to have up to \$6,000 equity value excluded. This rule is also being amended to be consistent with OAR 461-145-0600 about work-related capital assets, equipment, and inventory.

OAR 461-145-0420 is being amended to change how to determine the fair market value of real property in the eligibility process for medical assistance, public assistance, and food stamps. The amendment would allow the Department to determine the fair market value by any reasonable methodology. The current rule determines the fair market value by the lesser of the following amounts: the highest value identified by the county assessor on the most recent property tax statement; or the value established by an appraisal as the current amount the real property would sell for on the open market.

OAR 461-145-0433 about the treatment of recreational vehicles in the eligibility process for public assistance, medical assistance, and food stamps is being amended to update and correct cross-references to other rules.

OAR 461-145-0455 about the treatment of resettlement and placement grants in the eligibility process for public assistance, medical assistance, and food stamps is being amended to update and correct cross-references to other rules. This rule is also being amended to indicate the situations in which the exclusion provided under the rule would expire.

OAR 461-145-0540 about the treatment of a trusts in the eligibility process for medical assistance, public assistance, and food stamps is being amended to change the distributions allowed with an "Income Cap Trust" (that makes clients who receive long-term care services and have income in excess of the income limit, income-eligible) prior to the balance being paid for the client's long-term care costs for clients in the OSIPM program (Oregon Supplemental Income Program Medical, providing medical coverage to the elderly and individuals with disabilities). A distribution for property taxes will no longer be allowed because clients can get property tax payments from the Department to prevent foreclosure under another rule or they can apply for tax deferral. Distributions used to establish an irrevocable burial plan will be limited to a maximum of \$5,000, whereas the current rule has no limit. A distribution to maintain the client's home will only be allowed if the client is eligible for the cost under other Department rules. Also, distributions will be limited to only those items listed in the rule, rather than allowing those distributions but not limiting the distributions to only those specified by the rule. This rule is also being to make permanent temporary rule changes effective January 1, 2007 that clients in the OSIPM and QMB (Qualified Medicare Beneficiary) programs who obtain pooled trusts meeting the criteria of the rule will not have the trust counted as a resource in the Medicaid eligibility decision and that a client who obtains a pooled trust, signed on or after July 1, 2006, when he or she is age 65 or older may have a disqualifying transfer of assets penalty to serve.

OAR 461-145-0600 about the treatment of work-related equipment and inventory is being amended to include capitol assets (previously addressed in OAR 461-145-0055). This rule is also being amended to clarify how capitol assets, work-related equipment, and inventory are treated in the eligibility process for public assistance,

medical assistance, and food stamps, and to include cross-references to other rules. This amendment indicates that capital assets in this rule do not include work-related equipment and inventory. Additionally, this rule is being amended to change the treatment of work-related inventory for self-employed clients participating in the microenterprise component of the JOBS program. The wholesale value of inventory is being changed to reflect the value of the inventory remaining at the end of a semi-annual period.

OAR 461-145-0920 about costs that are excluded to determine countable self-employment income in the eligibility process for food stamps, public assistance, and medical assistance is being amended to clarify the costs which may be excluded from gross sales and receipts. This rule is also being amended to state that reimbursements for a provider's own children are not excluded and that inventory used to make a product is excluded.

OAR 461-145-0930 about the determination of countable self-employment income in the eligibility process for food stamps, public assistance, and medical assistance is being amended so that the rule is not only about exclusions but also covers the determination of countable income and deductions. This rule is also being amended to clarify excluded costs for self-employment income.

OAR 461-155-0225 about income standards for the Oregon Health Plan (OHP) is being amended to state that the \$10,000 income limit for a financial group that contains a principal of a business entity applies to income assigned to the budget month.

OAR 461-155-0250 about income and payment standards for the Oregon Supplemental Income Program (OSIP, serving the elderly and people with disabilities) and Oregon Supplemental Income Program Medical (OSIPM) programs is being amended to change its standards for OSIP-EPD and OSIPM-EPD (Employed Persons with Disabilities) to the 2007 Federal Poverty Level instead of the 2006 Federal Poverty Level. These amendments will make permanent temporary rule changes being adopted by approximately March 1, 2007.

OAR 461-155-0290, 461-155-0291, and 461-155-0295 about the income standards for the QMB-BAS, QMB-DW, and QMB-SMB programs (Qualified Medicare Beneficiaries – Basic, Disabled Worker, Special Medicare Beneficiaries) are being amended to base their income standards on the 2007 Federal Poverty Level. Currently, these rules are based on the 2006 Federal Poverty Level. These amendments will make permanent temporary rule changes being adopted approximately March 1, 2007.

OAR 461-155-0530 about the payment of guide dog or special assistance animal food costs for some clients in the Oregon Supplemental Income Program (OSIP, serving the elderly and people with disabilities) and Oregon Supplemental Income Program Medical (OSIPM) programs is being amended to state a requirement to qualify for the allowance that a special assistance animal must be trained to perform physical tasks that the client is unable to do.

OAR 461-155-0670 about the approval of special diet allowances related to the Extended Medical (EXT), General Assistance (GA, currently closed), General Assistance Medical (GAM, currently closed), Medical Assistance Assumed (MAA), Medical Assistance to Families (MAF), Refugee Assistance (REF), Refugee Assistance Medical (REFM), Medical Coverage for Children in Substitute or Adoptive Care (SAC), Temporary Assistance to Needy Families (TANF), Oregon Supplemental Income Program (OSIP, serving the elderly and people with disabilities) and Oregon Supplemental Income Program Medical (OSIPM) programs is being amended to state that a nutritionist must verify that special diet costs more than a regular diet in order for an allowance to be approved.

OAR 461-160-0580 is being amended to update its cross-references. OAR 461-160-0620 — about income deductions and client liability for long-term care and waived services for clients of the OSIP (Oregon Supplemental Income Program) and OSIPM (OSIP Medical) programs — is being amended to correct the calculation used to determine the dependent care allowance in cases involving single clients. This rule is also being amended to remove policy that is covered in 461-160-0610.

NOTICES OF PROPOSED RULEMAKING

OAR 461-160-0610 about clients in long-term care or receiving waived services is being amended to clarify that an individual in an acute care hospital is exempt from the payment for client liability required by this rule. This rule is also being amended to clarify who is required to make a client liability payment.

OAR 461-170-0020 about changes that must be reported to the Department by clients in the Food Stamp, Medical Assistance Assumed (MAA), Medical Assistance to Families (MAF), SAC (Medical Coverage for Children in Substitute or Adoptive Care), and TANF programs is being amended to state that client must report, within 10 days of occurrence, when the pregnancy ends for a member of the filing group in the MAA, MAF, SAC, and TANF programs.

OAR 461-170-0035 about requirements for clients in the Oregon Health Plan (OHP) program to report changes to the Department is being amended to state that a requirement to report, within 10 days of occurrence, when a pregnancy ends for a member of the benefit group.

OAR 461-175-0050 and 461-175-0206 are being amended to add five days for participants in the DOJ address confidentiality program beyond the current ten-day notice periods prior to the closure, reduction, or suspension of benefits in some situations. OAR 461-175-0050 is also being amended to cross-reference related rules, clarify terms, and clarify how the notice periods are counted.

OAR 461-175-0270 about decision notice provided to clients using Averaging with Periodic Review (APR), the monthly reporting system (MRS), the simplified reporting system (SRS), and the transitional benefit alternative (TBA) is being amended to align the Oregon Supplemental Income Program (OSIP, serving the elderly and people with disabilities), Oregon Supplemental Income Program Medical (OSIPM), and Qualified Medical Beneficiaries (QMB) programs with the other Department Medicaid programs. This amendment requires that a notice be sent when a client sends in a change report which results in a reduction of benefits. This rule is also being amended to cross-reference other rules that describe the terms used.

OAR 461-180-0010 about the effective date for adding a new person to an open case and OAR 461-180-0020 about the effective date for changes in income or income deductions are being amended to align policy between the two rules. These amendments clarify the effective date for a reported change that will increase food stamp program benefits when a person has joined the household and clarify that the change must occur prior to the effective date of the change for food stamps. These rule are also being amended to add cross-references and use more precise language.

OAR 461-180-0044 concerning the Oregon Supplemental Income Program-Medical (OSIPM— providing medical coverage to the elderly and individuals with disabilities) is being amended to make permanent the corrected cross-reference to another rule that was filed as a temporary change effective January 1, 2007.

OAR 461-190-0195 about the Degree Completion Initiative (DCI) in the TANF program is being amended to remove obsolete language describing the selection process used when DCI was implemented in 2005. This obsolete language is replaced with language describing the current selection process. This rule is also being amended to align this rule with federal law requiring attendance to be provided no less than every two weeks.

OAR 461-195-0541 about liability for overpayments and trafficking for public assistance, medical assistance, and food stamps is being amended to specify which parents, caretaker relatives, and spouses of such parents and caretaker relatives are subject to repayment of overpayments.

In addition, the above rules may 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

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

Rule Caption: Medicaid payment in hospitals.

| Date: | Time: | Location: |
|--------------|--------------|--|
| 2-22-07 | 8:30 a.m. | Human Services Bldg. 500 Summer Street NE, HSB-137B Salem, OR 97301 |

Hearing Officer: Christina Hartman

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070, 414.065

Proposed Amendments: 411-070-0130

Last Date for Comment: 2-23-07, 5 p.m.

Summary: The Oregon Department of Human Services, Seniors and People with Disabilities Division is proposing to amend the Medicaid Nursing Facilities rule related to Medicaid payment in hospitals. As of the effective date of the rule revision, the proposed rule allows Critical Access Hospitals not located within a 30 mile geographic radius of a licensed nursing facility to receive Medicaid payment for up to 20 residents at one time; as long as at least five beds or twice the average acute care daily census, whichever is greater, is maintained for exclusive acute care use. The Critical Access Hospitals meeting the preceding criteria will also be allowed Medicaid payment for residents that do not meet the complex medical add-on requirements.

Rules Coordinator: Christina Hartman

Address: Department of Human Services, Seniors and People with Disabilities Division, 500 Summer St. NE, E-13, Salem, OR 97301

Telephone: (503) 945-6398

Department of Justice Chapter 137

Rule Caption: Per ORS 192.820 – 192.868 references, these rules clarify processes related to the Address Confidentiality Program.

| Date: | Time: | Location: |
|--------------|--------------|--|
| 2-20-07 | 9 a.m. | 4035 12th Street SE Salem, OR 97302 |

Hearing Officer: Nancy Greenman

Stat. Auth.: ORS 192.860 (2005 Oregon Laws, Chapter 821 (Senate bill 850))

Stats. Implemented: ORS 192.820 - 192.868 (2005 Oregon Laws, Chapter 821 (Senate bill 850))

Proposed Adoptions: Rules in 137-079

Last Date for Comment: 2-21-07

Summary: The proposed rulemaking set out guidelines for the operation of the Address Confidentiality Program. The proposed rules create a Division (79) within the Department of Justice Chapter 137.

Rules Coordinator: Carol Riches

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

Telephone: (503) 378-6313

Rule Caption: Mandates the payment of support collected by employers be made by Electric Fund Transfer.

| Date: | Time: | Location: |
|--------------|--------------|---|
| 3-7-07 | 4–5 p.m. | 310 E 6th St., 2nd Flr. Conference Rm. Medford OR 97501 |
| 3-7-07 | 4–5 p.m. | 1300 NW Wall St., Suite 100 Lewis & Clark Rm. Bend, OR |
| 3-7-07 | 4–5 p.m. | 2885 Chad Dr. Conference Rm. 1 Eugene, OR |
| 3-7-07 | 4–5 p.m. | 494 State St., Suite 300 Salem OR |

Hearing Officer: Diana DelRio, Ava Hounshell, Regina Agerter, Shawn Brenizer

NOTICES OF PROPOSED RULEMAKING

Stat. Auth.: ORS 180.345, 293.525
Stats. Implemented: ORS 25.372 - 25.424, 293.525
Proposed Adoptions: 137-055-5035

Last Date for Comment: 3-21-07, 5 p.m.

Summary: The Child Support Program is adopting a new rule, 137-055-5035, that mandates the payment of support collected by employers to be made by Electronic Funds Transfer.

Rules Coordinator: Shawn Brenizer

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

Telephone: (503) 986-6240

Rule Caption: Creates Sexual Assault Nurse Examiner (SANE) Certification Commission.

| Date: | Time: | Location: |
|--------------|--------------|--|
| 2-28-07 | 1:30 p.m. | Appellate Conference Rm. 1162 Court St. NE Salem, OR |

Hearing Officer: Elaine Walters

Stat. Auth.: ORS 147.465(3), 2003 OL, ch 789, sec 2 (SB752)

Stats. Implemented: ORS 147.453, 147.468, 2003 OL, ch 789, (SB752)

Proposed Adoptions: 137-084-0500

Last Date for Comment: 2-28-07

Summary: The proposed rule would create a Sexual Assault Nurse Examiner (SANE) Certification Commission, appointed by the Attorney General; specify membership on the SANE Certification Commission; and outline the Commission's duties. Duties include recommending rules to the Attorney General about requirements for SANE certification, evaluating applications for certification, and publishing best practices for sexual assault examinations.

Rules Coordinator: Carol Riches

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

Telephone: (503) 947-4400

Department of Transportation Chapter 731

Rule Caption: Adoption of Simplified Mediation Confidentiality Rules.

Stat. Auth.: ORS 36.224, 184.616, 184.619

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

Proposed Adoptions: 731-001-0720, 731-001-0730

Proposed Repeals: 731-001-0100 – 731-001-0710

Last Date for Comment: 2-21-07

Summary: ORS 36.220 through 36.238 authorize state agencies to make mediation communications confidential. This Act also limits the discovery and admissibility of mediation communications in subsequent proceedings. The Department of Transportation currently has lengthy rules relating to mediation confidentiality. Since ODOT adopted these rules, the Department of Justice has developed simplified language for mediation confidentiality rules. ODOT proposes to adopt this simplified language. One rule will cover mediation confidentiality for all areas of ODOT business except employee disputes. One rule will apply specifically to mediation confidentiality for employee disputes.

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

Rules Coordinator: Brenda Trump

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

Telephone: (503) 945-5278

Department of Transportation, Motor Carrier Transportation Division Chapter 740

Rule Caption: Adoption and amendment of Federal safety and hazardous materials transportation regulations affecting motor carriers.

Stat. Auth.: ORS 153.022, 823.011, 823.061, 825.137, 825.210, 825.232, 825.252, 825.258, 825.990

Stats. Implemented: ORS 825.210, 825.250, 825.252, 825.258, 825.260

Proposed Amendments: 740-100-0010, 740-100-0060, 740-100-0070, 740-100-0080, 740-100-0090, 740-100-0100, 740-110-0010

Last Date for Comment: 2-21-07

Summary: These rules cover the annual adoption of federal motor carrier safety and hazardous materials transportation regulations. In addition, these rules cover the adoption of international standards related to driver, vehicle and hazardous material out-of-service violations. The changes are necessary to ensure Oregon's motor carrier safety; hazardous materials; and driver, vehicle and hazardous materials out-of-service requirements are current with national and international standards. Amendments to the drivers' hours of service regulations are needed because the Federal Motor Carrier Safety Administration has determined that current Oregon rules regarding intrastate hours of service are no longer compatible with federal tolerance guidelines. Oregon stands to lose approximately \$2.4 million of Motor Carrier Safety Assistance Program (MCSAP) funds if it fails to amend the incompatible rules. Proposed changes result in an increase from 8 hours to 10 hours the amount of time a driver transporting property in intrastate service must be off-duty before being allowed to drive. The proposed changes also decrease the on-duty hours from 16-12 for determining if a driver may qualify to use a time card versus a logbook. The Maximum Fine Schedule adopted under OAR 740-100-0100 is readopted to reflect current national standards.

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

Rules Coordinator: Brenda Trump

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

Telephone: (503) 945-5278

Oregon Patient Safety Commission Chapter 325

Rule Caption: Establishes the Oregon Patient Safety Reporting Program for long term care facilities.

| Date: | Time: | Location: |
|--------------|--------------|---|
| 2-21-07 | 1:15 p.m. | Portland State Office Bldg. Portland, OR |

Hearing Officer: Shannon O'Fallon

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

Other Auth.: ORS 182.456 - 182.472

Stats. Implemented: ORS 442.820- 442.835

Proposed Adoptions: 325-020-0001 – 325-020-0055

Last Date for Comment: 2-21-07, 5 p.m.

Summary: These rules establish the Oregon Patient Safety Reporting Program for Long Term Care Facilities as defined in ORS 442.015 and licensed under OAR 411, Division 085. The reporting program will help reduce the risk of adverse events and encourage a culture of patient safety. These rules also establish a long term care fee structure to partially fund the work of the Patient Safety Commission.

Rules Coordinator: James C. Dameron

Address: 1020 SW Taylor St., Suite 375, Portland OR 97205

Telephone: 503-224-9226

NOTICES OF PROPOSED RULEMAKING

Oregon Public Employees Retirement System Chapter 459

Rule Caption: Update OPSRP Pension Program disability rules to reflect consistent use of terminology.

| | | |
|--------------|--------------|---|
| Date: | Time: | Location: |
| 2-27-07 | 2 p.m. | Boardroom PERS Headquarters 11410 SW 68th Parkway Tigard, OR |

Hearing Officer: Daniel Rivas

Stat. Auth.: ORS 238.715, 238A.450, 45 CFR Parts 160 & 164

Stats. Implemented: ORS 238A.235

Proposed Amendments: 459-076-0001, 459-076-0020, 459-076-0050, 459-076-0060

Last Date for Comment: 3-23-07

Summary: These rules currently use the term "allowance," "disability allowance," "disability retirement allowance," and "disability retirement benefit" when referring to an OPSRP Pension Program disability benefit. These terms are being changed for accuracy and consistency in terminology within the Division 76 rules.

Rules Coordinator: Daniel Rivas

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

Telephone: (503) 603-7713

**Oregon State Marine Board
Chapter 250**

Rule Caption: These rules establish the requirements of provides to offer Internet boat safety courses online.

Stat. Auth.: ORS 830.082, 830.084, 830.086, 830.094, 830.110

Stats. Implemented: ORS 830.082 - 830-096

Proposed Adoptions: 250-018-0110

Proposed Amendments: 250-018-0010, 250-018-0020, 250-018-0040, 250-018-0050, 250-018-0060, 250-018-0080, 250-018-0090

Last Date for Comment: 2-21-07

Summary: These rules adopt and amend regulations which temporarily govern the Mandatory Boater Education Program and establish criteria for Internet courses. Housekeeping and technical corrections to the regulations may occur to ensure rule consistency.

Rules Coordinator: June LeTarte

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

Telephone: (503) 378-2617

Rule Caption: This rule identifies specific safety equipment requirements for ocean charter vessels.

Stat. Auth.: ORS 830.110

Stats. Implemented: ORS 830.430 - 830.460

Proposed Amendments: 250-015-0033

Last Date for Comment: 2-21-07

Summary: This rule allows for 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

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

Telephone: (503) 378-2617

Oregon University System, Southern Oregon University Chapter 573

Rule Caption: Special Fees.

| | | |
|--------------|--------------|--|
| Date: | Time: | Location: |
| 3-28-07 | 10 a.m. | Churchill Rm. 220 Southern Oregon University Ashland, OR |

Hearing Officer: Treasa Sprague

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Proposed Amendments: 573-040-0005

Last Date for Comment: 3-28-07

Summary: The proposed rule amendments eliminate fees that are no longer necessary and establish, increase, or decrease fees to more accurately reflect the actual costs of instruction for certain courses and special services not otherwise funded through the institution's operating budget.

Rules Coordinator: Treasa Sprague

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

Telephone: (541) 552-6319

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

Rule Caption: Revisions to special course fees and general services fees.

Stat. Auth.: ORS 351.070, 351.072

Stats. Implemented: ORS 351.070, 351.072

Proposed Amendments: 574-050-0005

Last Date for Comment: 2-23-07

Summary: Amendments will allow for increases, additions, and revisions of special course fees and general services fees.

Rules Coordinator: Debra L. Charlton

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

Telephone: (503) 838-8175

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

Rule Caption: Date given to notary documents received by mail.

Stat. Auth.: ORS 194.335

Stats. Implemented: ORS 194.335

Proposed Amendments: 160-100-0010

Last Date for Comment: 2-28-07

Summary: Changes mailing date from postmark to receipt date to match standard business procedure for submissions to Corporation Division.

Rules Coordinator: Tom Wrosch

Address: Secretary of State, Corporation Division, 255 Capitol St. NE, Suite 151, Salem, OR 97310

Telephone: (503) 986-2371

ADMINISTRATIVE RULES

Board of Accountancy Chapter 801

Rule Caption: Effective date of professional standards adopted by the Board.

Adm. Order No.: BOA 1-2006

Filed with Sec. of State: 12-22-2006

Certified to be Effective: 1-1-07

Notice Publication Date: 11-1-06

Rules Amended: 801-001-0035

Subject: The rule is amended to update the effective date of professional standards to January 1, 2007.

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

801-001-0035

Professional Standards

The professional standards, interpretations, rulings and rules designated and adopted by the Board in OAR chapter 801 are those in effect as of January 1, 2007.

Stat. Auth.: ORS 183.332 & 673.410

Stats. Implemented: ORS 183.337 & 673.410

Hist.: BOA 2-2003, f. 12-23-03 cert. ef. 1-1-04; BOA 2-2005, f. 2-24-05 cert. ef. 3-1-05; BOA 5-2005, f. 11-22-05, cert. ef. 1-1-06; BOA 1-2006, f. 12-22-06, cert. ef. 1-1-07

Rule Caption: Substantial equivalency and supervisor licensee requirements.

Adm. Order No.: BOA 2-2006

Filed with Sec. of State: 12-22-2006

Certified to be Effective: 1-1-07

Notice Publication Date: 11-1-06

Rules Amended: 801-010-0010, 801-010-0050, 801-010-0065, 801-010-0080, 801-010-0100, 801-010-0110, 801-010-0345

Subject: Revisions to OAR 801-010 include technical changes to clarify rules or correct minor errors. 0050 clarifies that the two year experience requirement for eligibility to take the CPA Exam under experience standard is subject to supervision by a qualified supervisor licensee. 0080 clarifies the eligibility standards under substantial equivalency for certified public accountants licensed in another jurisdiction who wish to practice public accountancy in Oregon. Duplicative language in 0100 is replaced with a reference to the rule that includes identical information.

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

801-010-0010

Fees

For the purpose of ORS 673.010 to 673.455 and 297.670 to 297.740, the Board of Accountancy shall charge the following fees:

(1) **Application fees.** All application fees are non-refundable.

(a) CPA Examination:

(A) Initial Examination — \$100;

(B) Re-Examination — \$ 50;

(b) CPA Certificate or PA License — \$150;

(c) Substantial equivalency by notification — \$100.

(2) **Initial permit and registration fees:**

(a) Initial CPA or PA Permit — \$150.

(b) Municipal Auditor — \$100.

(c) Firm Registration — \$100.

(3) **Biennial renewal application fees:**

(a) Active CPA and PA Permits — \$150;

(b) Inactive Permit CPA and PA Permits — \$ 50;

(c) Municipal Auditor — \$100;

(d) Firm Registration — \$100.

(4) **Annual renewal fees:** Substantial equivalency by notification —

\$100

(5) **Late renewal penalty fees:**

(a) Active CPA and PA Permits — \$ 50;

(b) Inactive Permit CPA and PA Permits — \$ 35;

(c) Firm Registration — \$ 35.

(6) **Miscellaneous fees:**

(a) Copies of existing mailing lists shall be provided for a fee equal to the amount necessary to prepare each list, including the cost of materials, if any, and the cost of staff time. Staff time shall be calculated at the hourly rates stated in subsection (d) of this section.

(b) Municipal Auditor lists shall be provided at no charge to municipal entities that are subject to audit law.

(c) Copies of records made on a standard office copy machine shall be charged a minimum fee of \$2.50 for five pages or less, and 25 cents per page thereafter. If certified copies of records are requested, there will be a \$2.50 fee for each document certified in addition to the copy cost.

(d) Staff time required to locate, produce, summarize or otherwise provide records shall be charged as follows:

(A) Secretarial/clerical, \$17 per hour, in quarter hour increments at \$4.25 per quarter hour.

(B) Professional/technical, \$25 per hour, in quarter hour increments at \$6.25 per quarter hour.

(7) **Form of Payment:**

(a) Checks or money orders shall be made payable to "Oregon Board of Accountancy".

(b) Visa and Mastercard payments may be submitted in person, by mail or by fax. Any Visa or Mastercard that is rejected by the bank and requested to be confiscated will be retained and returned to the bank. All payments by Visa or Mastercard that are rejected must be paid in full by a check or money order within ten days from notification of rejection. All payments received after Board deadlines, including, but not limited to payments for renewals, applications and civil penalties, will be considered late and a late penalty will be assessed.

Stat. Auth.: ORS 670.310, 673.040, 673.060, 673.100, 673.150, 673.160, 197.720 & 673.153

Stats. Implemented: ORS 673, 297 & 192.440

Hist.: 1AB 10, f. 2-7-63; 1AB 14, f. 8-15-68; 1AB 20, f. 10-22-71, ef. 11-15-71; 1AB 34, f. 1-29-74, ef. 2-25-74; 1AB 41, f. & ef. 12-2-76; 1AB 44, f. & ef. 3-31-77; 1AB 48, f. & ef. 7-21-77; 1AB 6-1978, f. & ef. 6-22-78; 1AB 7-1981, f. & ef. 7-27-81; 1AB 2-1983, f. & ef. 9-20-83; AB 3-1988, f. & cert. ef. 6-9-88; AB 2-1989, f. & cert. ef. 1-25-89; AB 4-1991, f. & cert. ef. 7-1-91; AB 4-1994, f. & cert. ef. 9-27-94; AB 1-1995, f. & cert. ef. 1-25-95; AB 5-1995, f. & cert. ef. 8-22-95; AB 1-1996, f. & cert. ef. 1-29-96; AB 1-1997, f. & cert. ef. 1-28-97; BOA 5-1998, f. & cert. ef. 7-9-98; BOA 6-1998, f. & cert. ef. 7-29-98; BOA 7-1998(Temp), f. & cert. 7-29-98 thru 1-25-99; BOA 8-1998, f. & cert. ef. 10-22-98; BOA 4-1999, f. & cert. ef. 7-23-99; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 3-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 4-2003, f. 12-23-03 cert. ef. 1-1-04; BOA 4-2004, f. 12-30-04, cert. ef. 1-1-05; BOA 2-2006, f. 12-22-06, cert. ef. 1-1-07

801-010-0050

Application for Uniform CPA Examination

(1) **Definitions:**

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

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

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

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

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

(2) **Applications.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) Candidates who have completed all course requirements and been awarded a baccalaureate or higher degree shall provide an official tran-

script(s) demonstrating successful completion of all courses required under these rules, and that a degree was awarded.

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

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

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

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

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

(b) The candidate completed two years of experience in public accountancy or the equivalent satisfactory to the Board, that meets the requirements of OAR 801-010-0100(2) and 801-010-0065(2).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) Testing.

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

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

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

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

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

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

Stat. Auth.: ORS 670.310, 673.050 & 673.100

Stats. Implemented: ORS 673.050, 673.100 & 673.410

Hist.: IAB 10, f. 2-7-63; IAB 14, f. 8-15-68; IAB 20, f. 10-22-71, ef. 11-15-71; IAB 34, f. 1-29-74, ef. 2-25-74; IAB 41, f. & ef. 12-2-76; IAB 44, f. & ef. 3-31-77; IAB 48, f. & ef. 7-21-77; IAB 6-1978, f. & ef. 6-22-78; IAB 7-1981, f. & ef. 7-27-81; IAB 2-1983, f. & ef. 9-20-83; AB 3-1988, f. & cert. ef. 6-9-88; AB 2-1989, f. & cert. ef. 1-25-89; AB 4-1991, f. & cert. ef. 7-1-91; AB 4-1994, f. & cert. ef. 9-27-94; AB 1-1995, f. & cert. ef. 1-25-95; AB 5-1995, f. & cert. ef. 8-22-95; AB 1-1996, f. & cert. ef. 1-29-96; AB 1-1997, f. & cert. ef. 1-28-97; BOA 5-1998, f. & cert. ef. 7-9-98; BOA 6-1998, f. & cert. ef. 7-29-98; BOA 7-1998(Temp), f. & cert. 7-29-98 thru 1-25-99; BOA 8-1998, f. & cert. ef. 10-22-98; BOA 4-1999, f. & cert. ef. 7-23-99; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 3-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 4-2003, f. 12-23-03 cert. ef. 1-1-04; BOA 1-2004(Temp), f. & cert. ef. 3-15-04 thru 7-1-04; BOA 2-2004(Temp), f. & cert. ef. 7-2-04 thru 12-29-04; BOA 4-2004, f. 12-30-04, cert. ef. 1-1-05; BOA 7-2005, f. 11-22-05, cert. ef. 1-1-06; BOA 2-2006, f. 12-22-06, cert. ef. 1-1-07

801-010-0065

Qualifications for Certification

(1) Requirements. Applicants for the certificate of Certified Public Accountant shall meet the following requirements:

(a) Complete and pass all sections of the CPA exam;

(b) Complete and pass an ethics exam that has been adopted by the Board; and

(c) Meet the experience requirements stated in ORS 673.040 as follows:

(A) Applicants who qualified for the CPA exam by meeting CPA exam requirements under provisions of ORS 673.040 in effect prior to January 1, 2000 are required to have two years of experience and competency in the seven core areas described in this rule, which means at least 24 months of full-time employment, or a total of 4,160 hours of part-time employment. One hundred seventy-three (173) hours of part-time employment is equivalent to one month. Qualifying part-time employment shall be at least 20 hours per week.

(B) Applicants who qualified for the CPA exam by meeting the CPA exam requirements under ORS 673.040 (1999 Edition) in effect after January 1, 2000 are required to have one year of experience and competency in the seven core areas described in this rule, which means at least 12 months of full-time employment, or a total of 2,080 hours of part-time employment. One hundred seventy-three (173) hours of part-time employment is equivalent to one month. Qualifying part-time employment shall be at least 20 hours per week.

(C) Applicants who sat and received grades at the CPA exam prior to January 1, 2000, without the completion of 150 semester hours or 225 quarter hours, may choose to complete the 150 hour requirement under ORS 673.050(1)(a) and meet the experience requirement by completing one year of public accounting experience as described in paragraph (1)(c)(B) of this rule.

(d) The experience and examination requirements shall be obtained and completed within eight years immediately preceding the date of application for a certificate.

(2) Experience Requirements.

(a) Overtime hours worked will not be credited toward the experience requirement.

(b) All experience must be gained under the direct supervision of a supervisor licensee, as defined in this rule.

(A) "Supervisor licensee" is a person who qualifies under this rule as a supervisor for the purpose of verifying the experience requirement of an applicant for a CPA certificate under OAR 801-010-0065 or the experience requirement of an applicant for a public accountant license under OAR 801-010-0100.

(B) To qualify as a supervisor licensee the person providing supervision must have held an active CPA license issued by any state, a PA license issued under ORS 673.100 or a chartered accountant certificate recognized by the Board under OAR 801-010-0085 for at least five consecutive years immediately prior to such supervision and during the period of supervision.

(C) A licensee who provides direct supervision over an applicant shall act as supervisor licensee and shall certify to the Board whether or not the applicant has gained qualifying experience under this rule.

(D) "Direct supervision" as used in this rule means that there is a clear connection between the supervisor licensee and the person being super-

vised in terms of planning, coordinating, guiding, inspecting, controlling, and evaluating activities, and having authority to discharge the employee being supervised. A licensee who acts as a consultant or independent contractor to the applicant's employer will not generally meet the requirement of direct supervision unless prior to commencement of supervision there is a written agreement from the employer delegating sufficient authority to the independent contractor to meet the requirements of direct supervision.

(c) The experience required under ORS 673.040 shall consist solely of experience within activities generally performed by certified public accountants and public accountants licensed in Oregon, including (but not limited to) financial statement audits, financial statement reviews, financial statement compilations, attestation engagements, financial forecasts and projections, pro forma financial information, compliance attestations, management advisory services, tax advisory services, tax return preparation, personal financial planning or reporting on an entity's internal controls.

(3) **Experience portfolio.** The applicant shall develop a portfolio of experience that demonstrates to the satisfaction of the Board that the applicant has achieved experience in all of the following competencies:

(a) Understanding of the Code of Professional Conduct promulgated and adopted by the Board;

(b) Ability to assess the achievement of a client's objectives by demonstrating knowledge of various business organizations, understanding of the objectives and goals of business entities, ability to develop and analyze performance measures and critical success factors, and understanding of the economic and regulatory trends that affect the environment of a business entity.

(c) Experience in preparing working papers that include sufficient relevant data to support the analysis and conclusions required by the applicant's work.

(d) Understanding transaction streams and information systems, including the ability to understand how individual transactions aggregate at the organizational level, to infer how transactions impact the organization as a whole, and to evaluate the integrity and reliability of various client information systems, including relevant computer aspects.

(e) Skills in risk assessment and verification demonstrated by a sufficient understanding of accounting and other information systems to:

(A) Assess the risk of misstatement in an information system;

(B) Obtain sufficient relevant data based on the risk of misstatement and the nature of the engagement to determine the appropriateness of underlying data in terms of its completeness, existence and occurrence, valuation and allocation, rights and obligations, presentation and disclosures.

(f) Skills in decision making, problem solving, critical analytical thinking including the ability to evaluate and interpret sufficient relevant data in a variety of engagements and settings. For example, the candidate must evaluate a client's cash flow, profitability, liquidity, solvency, operating cycle, achievement of management's plans, accomplishment of service efforts and systems reliability.

(g) Ability to express scope of work, findings and conclusions including the ability to determine the appropriateness of reports on financial statements, system reliability, or reports expressing scope of work, findings and conclusions.

(4) **Qualifying experience.** An applicant shall demonstrate to the satisfaction of the Board that the portfolio of experience submitted is of sufficient quality and diversity to meet the requirements of this rule. Qualifying experience may be obtained in the following categories:

(a) **Experience based on attest or assurance.** Experience that demonstrates the competencies prescribed in section (3) of this rule shall be obtained while the applicant is:

(A) Employed in public practice on the staff of a public accountant, a certified public accountant or a firm of public accountants or certified public accountants;

(B) Engaged in employment that is equivalent to that described in paragraph (4)(a)(A) of this rule including internal audit employment; or

(C) Employed in an organization where employment is equivalent to that described in paragraph (4)(a)(A) of this rule if a peer review is conducted or if such employment is with audit agencies, internal audit departments or other organizations where a peer review is conducted. Experience under this subsection shall include:

(i) Conducting attest-oriented functions where third party reliance is an objective of the report;

(ii) Preparing opinions in accordance with professional standards;

(iii) Preparing financial statements with footnotes to generally accepted accounting principles or other comprehensive bases of accounting;

(iv) The audit agency, internal audit department, or other organization is independent of the entity, and

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(v) Accounting and review services.

(D) "Third party reliance" as used in this rule means:

(i) Actual third party reliance, such as takes place with respect to the reader of financial statements upon which an audit opinion has been rendered by a public accountant licensed in Oregon or a certified public accountant;

(ii) Audits performed by government agencies, including tax authorities, on organizations which are not subject to management control by the auditing agency; or

(iii) Financial audits performed by independent working groups where the purpose of the audit is reliance by the board of directors on the fairness of the presentation of internally generated financial statements in accordance with generally accepted accounting principles or other comprehensive bases of accounting.

(b) Experience based on other professional standards. Any other experience that demonstrates the competencies prescribed in section (3) of this rule shall be obtained while the applicant is:

(A) Employed in public practice on the staff of a public accountant, a certified public accountant or a firm of public accountants or certified public accountants; or

(B) Employed in Board approved equivalent experience programs in industry, government or other settings.

(C) Experience described in paragraph (4)(b)(B) of this rule shall be performed in accordance with the standards of the profession. For example, other experience may be performed in accordance with the established standards for:

(i) Consulting services,

(ii) Tax practice;

(iii) Personal financial planning;

(iv) Internal audits;

(v) Government finance manager; or

(vi) Regulatory agencies.

(D) Experience obtained in accordance with other professional standards shall meet guidelines established by the Board.

(c) Experience based on industry, government, and other. Qualifying experience that demonstrates the competencies described in section (3) of this rule may also be obtained while the applicant is employed in industry, government, or other settings under the direct supervision of a public accountant or certified public accountant as provided under this rule.

(A) Industry, government or other experience related to subsection (3)(b) of this rule, assessing the achievement of an entity's objectives, will include obtaining an understanding of the industry in which the entity operates, including the employer's competition (or other similar service providers in the case of government) and key competitiveness factors that affect the industry.

(B) Industry, government or other experience related to subsection (3)(d) of this rule, understanding transaction streams and information systems, will include assessing the adequacy of an entity's internal controls.

(C) Experience, other than experience described in subsections (4)(a) and (b) of this rule will be evaluated by the Board on a case-by-case basis to ensure that experience is equivalent to subsection (4)(a) or (b) of this rule.

(5) Submitting applications to the Board.

(a) An applicant's file must be complete in every particular within three months of the date of application or the file will be closed and the permit fee will be refunded. The application fee is not refundable.

(b) An applicant's file may be included on the agenda of any meeting of the Board if the file is complete in every particular no less than seven days prior to the date of a scheduled Board meeting.

Stat. Auth.: ORS 670.310 & 673.040

Stats. Implemented: ORS 673.040

Hist.: IAB 3-1984, f. 12-19-84, ef. 1-1-85; AB 2-1988, f. 3-31-88, cert. ef. 3-30-88; AB 7-1989, f. & cert. ef. 9-11-89; AB 1-1991, f. & cert. ef. 1-2-91; AB 4-1991, f. & cert. ef. 7-1-91; AB 2-1993, f. 1-14-93, cert. ef. 1-15-93; AB 4-1994, f. & cert. ef. 9-27-94; AB 1-1995, f. & cert. ef. 1-25-95; AB 5-1995, f. & cert. ef. 8-22-95; AB 3-1997, f. & cert. ef. 6-5-97; BOA 1-1998, f. & cert. ef. 1-26-98; BOA 3-1998, f. & cert. ef. 6-16-98; BOA 5-1998, f. & cert. ef. 7-9-98; BOA 9-1998, f. & cert. ef. 11-10-98; BOA 1-1999, f. & cert. ef. 1-20-99; BOA 3-1999, f. & cert. ef. 3-26-99; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 4-2000, f. 8-30-00, cert. ef. 9-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 3-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 4-2004, f. 12-30-04, cert. ef. 1-1-05; BOA 2-2006, f. 12-22-06, cert. ef. 1-1-07

801-010-0080

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

(1) **Substantial equivalency applications by notification.** An individual whose principal place of business is not in this state, who has an active license in good standing as a certified public accountant issued by

another jurisdiction, and who meets the standards of substantial equivalency, may receive authorization to practice public accountancy in this state, upon application. An applicant may meet one of the following two standards to establish eligibility under this rule:

(a) The jurisdiction that issued the license on which the application is based is verified to be of substantial equivalency as determined by the National Qualification Appraisal Service; or

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

(2) Notification requirements.

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

(b) Upon request from the Board applicants shall:

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

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

(i) Is in good standing in that jurisdiction;

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

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

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

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

(b) Delivering a lecture;

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

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

(4) Renewal of application by notification. Every authorization to practice by notification shall expire on December 31 of each year and may be renewed thereafter by submitting the renewal application with payment of the fee designated in OAR 801-010-0010.

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

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

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

(A) Successful completion of the CPA exam;

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

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

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

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

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

(C) Successfully completed the CPA exam.

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

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

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- (b) Pay the fees specified in OAR 801-010-0010;
- (c) Provide a written statement from the jurisdiction on which the application is based confirming that the applicant:
 - (A) Is in good standing in that jurisdiction;
 - (B) Has not been disciplined for violations of that jurisdiction's standards of conduct or practice;
 - (C) Has no pending actions alleging violations of that jurisdiction's standards of conduct of practice; and
 - (D) Is in compliance with continuing education requirements and peer review requirements of the licensing jurisdiction.
- (7) Verification of National Qualification Appraisal Service comparable licensing standards. The Board shall review the licensing requirements of other jurisdictions on an annual basis to verify substantial equivalency eligibility. The Board may use information developed by NASBA to make this determination.

Stat. Auth.: ORS 670.310, 673.410 & 673.153
Stats. Implemented: ORS 673.040 & 673.153
Hist.: 1AB 14, f. 8-15-68; 1AB 22, f. 3-2-72, ef. 3-15-72; 1AB 34, f. 1-29-74, ef. 2-25-74; 1AB 3-1982, f. & ef. 4-20-82; 1AB 1-1986, f. & ef. 10-1-86; AB 5-1990, f. & cert. ef. 8-16-90; AB 5-1993, f. & cert. ef. 8-16-93; AB 1-1994, f. & cert. ef. 1-21-94; AB 4-1994, f. & cert. ef. 9-27-94; AB 1-1997, f. & cert. ef. 1-28-97; AB 4-1997, f. & cert. ef. 7-25-97; BOA 5-1998, f. & cert. ef. 7-9-98; BOA 9-1998, f. & cert. ef. 11-10-98; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 3-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 4-2003, f. 12-23-03 cert. ef. 1-1-04; BOA 7-2005, f. 11-22-05, cert. ef. 1-1-06; BOA 2-2006, f. 12-22-06, cert. ef. 1-1-07

801-010-0100

Public Accountant Licenses

- (1) Application requirements. Applicants for the license of public accountant shall meet the following requirements:
 - (a) Complete and pass the required sections of the CPA exam as described in ORS 673.100 and OAR 801-010-0060;
 - (b) Complete and pass an ethics exam that has been adopted by the Board; and
 - (c) Meet the experience requirements stated in ORS 673.100 as follows:
 - (A) Obtain one year of experience, which means at least 12 months of full-time employment or a total of 2,080 hours of part-time employment. One hundred seventy-three (173) hours of part-time employment is equivalent to one month. Qualifying part-time employment shall be at least 20 hours per week.
 - (d) The experience and examination requirements shall be obtained and completed within eight years immediately preceding the date of application for license.
 - (2) Experience requirements.
 - (a) Applicants shall meet the experience requirements described in OAR 801-010-0065(2)
 - (b) The experience required under ORS 673.100 shall be as follows:
 - (A) For applicants who qualified for the CPA exam before January 1, 2002, the experience requirement shall consist solely of experience within activities generally performed by certified public accountants and public accountants, including (but not limited to) financial statement audits, financial statement reviews, financial statement compilations, attestation engagements, financial forecasts and projections, pro forma financial information, compliance attestation, management advisory services, tax advisory services, tax return preparation or personal financial planning and reporting on an entity's internal controls.
 - (B) For applicants who qualified for the CPA exam after January 1, 2002, the experience requirement shall consist solely of experience within activities generally performed by certified public accountants and public accountants, including (but not limited to) financial statement reviews, financial statement compilations, attestation engagements, financial forecasts and projections, pro forma financial information, compliance attestation, management advisory services, tax advisory services, tax return preparation or personal financial planning and reporting on an entity's internal controls.
 - (3) Experience portfolio. The applicant's experience portfolio shall meet the requirements stated in OAR 801-010-0065.
 - (4) Public Accountant practice restrictions. Licensed public accountants who qualified for the CPA exam after January 1, 2002 shall not perform audits.

Stat. Auth.: ORS 670.310, 673.410 & 673.100
Stats. Implemented: ORS 673.100, 673.150 & 673.103
Hist.: 1AB 9, f. 6-24-60; 1AB 41, f. & ef. 12-2-76; 1AB 4-1982, f. & ef. 5-21-82; 1AB 3-1984, f. 12-19-84, ef. 1-1-85; AB 4-1994, f. & cert. ef. 9-27-94; BOA 1-1998, f. & cert. ef. 1-26-98; BOA 1-1999, f. & cert. ef. 1-20-99; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 3-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 2-2006, f. 12-22-06, cert. ef. 1-1-07

801-010-0110

Renewal of Permits

- (1) Unless properly renewed, permits issued under ORS 673.150 that end in even numbers shall expire on June 30 of even-numbered years and permits that end in odd numbers shall expire on June 30 of odd-numbered years. To renew an active or inactive permit, the certificate or license holder shall:
 - (a) Submit the current renewal form provided by the Board, fully completed and postmarked by the US Post Office or other delivery service no later than June 30 of the year in which the permit shall expire;
 - (b) Pay the renewal fee specified in OAR 801-010-0010; and
 - (c) If applying for renewal of an active permit, provide evidence that the applicant has satisfied continuing education and peer review requirements.
 - (d) If the renewal application is postmarked by the US Post Office or other delivery service after June 30, the licensee shall submit the late fee described in OAR 801-010-0010.
- (2) The Board may waive a licensee's first renewal fee if the licensee's initial permit is issued in May or June of the year in which the permit is due for renewal.

Stat. Auth.: ORS 670.310 & 673.410
Stats. Implemented: ORS 673.150
Hist.: 1AB 4-1981, f. & ef. 6-17-81; AB 3-1991, f. & cert. ef. 4-10-91; AB 4-1991, f. & cert. ef. 7-1-91; AB 5-1993, f. & cert. ef. 8-16-93; AB 3-1994, f. & cert. ef. 8-10-94; AB 4-1994, f. & cert. ef. 9-27-94; AB 1-1995, f. & cert. ef. 1-25-95; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 3-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 4-2003, f. 12-23-03 cert. ef. 1-1-04; BOA 2-2006, f. 12-22-06, cert. ef. 1-1-07

801-010-0345

Registration of Business Organizations

- (1) Requirement to register as a firm. A business organization organized for the practice of public accountancy shall register with the Board as a firm if the business organization engages in any of the following activities in this state:
 - (a) Uses the terms "certified public accountant", "CPA", "public accountant" or "PA", or any derivation of such terms;
 - (b) Holds out to clients or to the public that the business organization is in any way engaged in the practice of public accountancy; or
 - (c) Performs attestation or compilation services, as defined by these rules.
- (2) Registration of sole proprietorships. A business organization organized as a sole proprietorship and comprised of a single permit holder under ORS 673.150 is required to register as a firm if the business organization engages in any of the following activities in this state:
 - (a) Holds out to clients or to the public that it is composed of more than one licensee; or
 - (b) Performs attestation or compilation services.
- (3) Application requirements. Application by a business organization to be registered as a firm to practice as Certified Public Accountant(s) or Public Accountant(s) shall be made to the Board in writing on a form provided by the Board and shall be accompanied by the appropriate fee, stated in OAR 801-010-0010. The application and each renewal application shall provide the following information in writing:
 - (a) Name of the firm;
 - (b) Identification by name and by certificate or license number of each CPA and PA in this state who is associated with or employed by the business organization;
 - (c) The physical address of every office and branch office in this state;
 - (d) Notice of every denial, revocation, lapse or suspension of authority to perform public accountancy services that is or has been issued by any jurisdiction against any licensee associated with the business organization;
 - (e) Notice of the filing of any lawsuit relating to the professional services of the business organization, if an essential element of such lawsuit involves fraud, dishonesty or misrepresentation; and
 - (f) Notice of any criminal action filed against the business organization or against any owner or manager and notice of any conviction against any owner or manager of the business organization. Notice of a conviction under this rule includes the initial plea, verdict or finding of guilt, pleas of no contest or pronouncement of sentence by a trial court even though that conviction may not be final and sentence may not be actually imposed until appeals are exhausted. The notice provided shall be signed by the person to whom the conviction or criminal action applies, and shall state the facts that constitute the reportable event and identify the event by the name of the agency or court, the title of the matter, the docket number and the date of occurrence of the event.
- (4) Application requirements for firms with non-CPA and non-PA ownership. In addition to the information required under section (3) of this

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rule for firm registrations, business organizations with non-CPA or non-PA owners that are required to register as a firm shall provide the following information with the application for initial registration and with each registration renewal.

(a) The name of the firm and a list of the states in which the business organization has applied, or is currently authorized to practice public accountancy;

(b) Evidence to the satisfaction of the Board that the business organization satisfies the requirements of OAR 801-010-0340;

(c) The identities of all owners or managers of the business organization who work regularly in this state;

(d) The physical address of every office maintained in this state;

(e) The identity of every person with management responsibility for each office in this state;

(f) Notice of every denial, revocation, lapse, or suspension of authority to perform accounting services or other services issued against any owner or manager of the business organization in any jurisdiction;

(5) Issuance of firm registration. The Board shall, upon receipt of an application that satisfies all the requirements of these rules and payment of the registration fee, issue a certificate of registration which shall remain in effect until December 31 of the odd-numbered year following the date of such registration. The business organization shall:

(a) Renew the firm registration on or before December 31 of each odd-numbered year by submitting the renewal form provided by the Board, together with the appropriate registration renewal fee. The Board may waive the renewal fee if an initial firm registration is issued in November or December of the year in which the registration is due for renewal. Business organizations that fail to renew a registration by the close of the renewal period are required to pay the renewal fee plus a late fee;

(b) Notify the Board in writing of any change in the firm name within 30 days of such change;

(c) In addition to the notice that is required upon application and for each renewal of the firm registration under section (3) of this rule, business organizations are required to provide written notice to the Board within 45 days of the filing of any lawsuit, settlement or arbitration relating to the professional services of the business organization if an essential element of such lawsuit involves fraud, dishonesty or misrepresentation;

(d) Display the letter of registration issued by the Board in a conspicuous place at the principal office of the firm.

(6) Form of practice. A licensee may practice public accountancy in a business organization as defined in ORS 673.010 that is organized in accordance with statutory provisions.

(a) Non-CPA or non-PA ownership. A licensee may form a business organization with a non-licensee for the purpose of engaging in the practice of public accountancy in accordance with the provisions of ORS 673.160 and OAR 801-010-0340.

(b) Notwithstanding subsection (6)(a) of this rule, any certified public accountant or public accountant previously licensed in any state whose license to practice public accountancy has been revoked by any state, may not participate as a non-licensee owner in a business organization required to be registered under ORS 673.160.

(c) Branch offices.

(A) Every branch office located in this state shall be managed by a licensee holding a permit issued under ORS 673.150 who shall be in residence at the branch office, on a full-time basis, during the time the branch office is open to the public. A licensee operating a branch office is responsible for managing the office, staff and services rendered to the public.

(B) The Board may, at its discretion, approve the operation of a branch office that does not meet the supervision requirements of paragraph A of this subsection. Licensees seeking approval under this paragraph shall submit in advance a written proposal describing how the licensee will provide adequate supervision of the branch office. The proposal shall specify the minimum number of hours each week that a named licensee will provide physical supervision at the branch office.

(C) Any licensee operating a branch office under approval authorized by paragraph (B) of this subsection shall notify the Board in writing of any deviation from an approved plan within 30 days of the deviation.

(D) The location of each branch office in Oregon shall be reported to the Board at the time of application for registration as a firm and with each renewal application, together with a statement that each branch office meets the requirements of OAR 801-010-0345(6)(c)

(d) Internet Practice. Licensees using the CPA or PA title to perform or solicit services via a website, are required to include information on the website naming the state(s) in which each CPA or PA is licensed to perform public accounting services, or provide a name and contact information for

an individual who will respond within seven business days to inquiries regarding individual licensee information. Information required to be posted by this rule must be clearly visible and prominently displayed.

Stat. Auth.: ORS 670.310, 673.410 & 673.160

Stats. Implemented: ; ORS 673.160

Hist.: AB 6-1993(Temp), f. 11-2-93, cert. ef. 11-4-93; AB 1-1994, f. & cert. ef. 1-21-94; BOA 2-1998, f. & cert. ef. 3-30-98; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 4-2003, f. 12-23-03 cert. ef. 1-1-04; BOA 2-2006, f. 12-22-06, cert. ef. 1-1-07

Rule Caption: AICPA Interpretations to rules 101, 102 and 201.

Adm. Order No.: BOA 3-2006

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Subject: Revisions include the adoption of the AICPA Interpretations to AICPA Rules 101, 102 and 201 to provide additional guidance for licensees, the Board and the public with regard to public accounting services performed under these standards. Revisions to clarify requirements of the Professional Code of Conduct were also made.

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

801-030-0005

Independence, Integrity, and Objectivity

(1) Independence. The Board adopts the Independence Rule established by the AICPA, ET Section Rule 101 Independence. The AICPA Interpretations and Ethics rulings relating to AICPA Rule 101 are adopted by the Board as a non-exclusive list to provide guidance to licensees, prospective licensees, the Board and members of the public.

(a) Licensees who perform services that are subject to independence standards promulgated by other regulatory or professional standard setting bodies, agencies and organizations, including but not limited to the Securities and Exchange Commission, the General Accounting Office and the US Department of Labor, must also comply with those standards applicable to the services provided.

(2) Integrity and objectivity.

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

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

(c) When accepting new employment or a new engagement, a licensee shall not use confidential client information in a manner that is adverse to a former client or employer. Confidential client information is any information communicated to or obtained by the licensee from a client or employer that relates to services rendered by the licensee to the client or employer.

(d) The Board adopts the AICPA Interpretations and Ethical Rulings relating to AICPA Rule 102 as a non-exclusive list to provide guidance to licensees, prospective licensees, the Board and members of the public.

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

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

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

(A) Oregon Department of Consumer and Business Services;

(B) National Association of Securities Dealers;

(C) Oregon Real Estate Agency; and

(D) Oregon Appraiser Certification and Licensure Board.

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

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when the certified public accountant, public accountant or firm also performs any of the following listed services for that client:

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

(B) An examination of prospective financial information; and

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

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

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

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

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

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

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

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

(D) Disclosures under this rule shall:

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

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

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

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

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

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

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

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

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

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

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

(b) Prohibited contingent fees.

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

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

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

(iii) Examination of prospective financial information.

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

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

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

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

(B) Agreements under this rule shall:

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

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

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

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

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

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

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

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

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

(c) Non-licensee owners.

(A) A non-licensee owner of a business organization registered in Oregon under the provisions of ORS 673.160(4) shall not use any name or title that indicates or suggests that such owner is a certified public accountant or public accountant. This does not preclude a non-licensee owner from using the title "principal," "partner," "officer," "member" or "shareholder" to describe the ownership interest in the business organization.

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

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

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

Hist.: AB 1-1978, f. & ef. 1-11-78; AB 4-1994, f. & cert. ef. 9-27-94; AB 2-1995, f. & cert. ef. 3-22-95; AB 2-1996, f. & cert. ef. 9-25-96; BOA 6-1998, f. & cert. ef. 7-29-98; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 1-2001(Temp), f. & cert. ef. 7-9-01 thru 1-1-02; BOA 5-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 6-2003, f. 12-23-03 cert. ef. 1-1-04; BOA 9-2005, f. 11-22-05, cert. ef. 1-1-06; BOA 3-2006, f. 12-22-06, cert. ef. 1-1-07

801-030-0010

Competence and Technical Standards

(1) **General Standards.** Licensees shall comply with the following general standards.

(a) **Professional Competence.** Licensees shall undertake only those professional services that the licensee or the licensee's firm can reasonably expect to be completed with professional competence.

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(b) **Due Professional Care.** Licensees shall exercise due professional care in the performance of professional services.

(c) **Planning and Supervision.** Licensees shall plan and supervise the performance of professional services.

(d) **Sufficient Relevant Data.** Licensees shall obtain sufficient relevant data to afford a reasonable basis for conclusions or recommendations in relation to any professional services performed.

(e) The Board adopts the AICPA Interpretations under AICPA rule 201 as a non-exclusive list to provide guidance to licensees, prospective licensees, the board and members of the public.

(2) **Auditing standards.** A licensee shall not permit the licensee's name to be associated with financial statements in such a manner as to imply that the licensee is independent with respect to such financial statements unless the licensee has complied with applicable generally accepted auditing standards. Statements on Auditing Standards issued by the AICPA, and other pronouncements having similar generally recognized authority, are considered to be interpretations of generally accepted auditing standards, and departures therefrom must be justified when such standards are not followed.

(3) **Accounting principles.**

(a) **Responsibility of Licensees in Public Accounting.** A licensee shall not express an opinion that financial statements are presented in conformity with generally accepted accounting principles if such financial statements contain any departure from such accounting principles which has a material effect on the financial statements taken as a whole, unless the licensee can demonstrate that by reason of unusual circumstances, the financial statements would otherwise have been misleading. In such a case, the licensee's report must describe the departure, the approximate effects thereof, if practicable, and the reasons why compliance with the principle would result in a misleading statement. For purposes of this rule, generally accepted accounting principles are defined by pronouncements issued by the Financial Accounting Standards Board and its predecessor entities and similar pronouncements issued by other entities having similar generally recognized authority.

(b) **Responsibility for the preparation of financial statements in conformity with GAAP.** A person who holds an active, inactive or lapsed license shall not state affirmatively that financial statements or other financial data of an entity are presented in conformity with generally accepted accounting principles (GAAP) if such statements or data contain any departure from an accounting principle promulgated by the Financial Accounting Standards Board and its predecessor entities and similar generally recognized authority that has a material effect on the statements or data taken as a whole.

(c) **Departures from Established Accounting Principles.** There is a strong presumption that adherence to officially established accounting principles would in nearly all instances result in financial statements that are not misleading. There may be unusual circumstances where literal application of pronouncements on accounting principles would have the effect of rendering financial statements misleading. In such cases the proper accounting treatment is that which will render the financial statements not misleading. The question of what constitutes unusual circumstances is a matter of professional judgment involving the ability to support the position that adherence to a promulgated principle would be regarded by a reasonable person as producing a misleading result.

(4) **Tax standards.** Licensees shall not perform tax planning services, recommend tax return positions or prepare or sign tax returns (including amended returns, claims for refund and information returns) filed with any taxing authority unless the licensee has complied with Statements on Standards for Tax Services issued by the Tax Executive Committee of the American Institute of Certified Public Accountants and with United States Department of Treasury Circular No. 230.

(5) **Other professional standards.** Licensees, in the performance of management advisory services or accounting and review services, shall conform to the professional standards applicable to such services. For purposes of this rule such professional standards are considered to be defined by Statements on Management Advisory Services and Statements for Accounting and Review Services, respectively, in each instance issued by the AICPA, and by similar pronouncements by other entities having generally recognized authority.

Stat. Auth.: ORS 670.310, 673.410 & 673.445

Stats. Implemented: ORS 673.445

Hist.: AB 1-1978, f. & ef. 1-11-78; AB 3-1989, f. & cert. ef. 1-25-89; AB 4-1994, f. & cert. ef. 9-27-94; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 5-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 3-2006, f. 12-22-06, cert. ef. 1-1-07

801-030-0015

Responsibilities to Clients

(1) **Confidential client information.**

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

(A) No licensee or any partner, officer, shareholder, member, manager, owner or employee of a licensee, shall voluntarily disclose information communicated to or obtained by the licensee from a client or on behalf of a client if such information relates to services that the licensee rendered for the client.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) Custody and disposition of working papers.

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

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

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

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

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

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

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

Stat. Auth.: ORS 670.310 & 673.410

Stats. Implemented: ORS 673.445

Hist.: AB 1-1978, f. & ef. 1-11-78; IAB 2-1984, f. & ef. 5-21-84; AB 4-1994, f. & cert. ef. 9-27-94; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 5-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 6-2003, f. 12-23-03 cert. ef. 1-1-04; BOA 1-2005, f. 1-26-05, cert. ef. 2-1-05; BOA 9-2005, f. 11-22-05, cert. ef. 1-1-06; BOA 3-2006, f. 12-22-06, cert. ef. 1-1-07

801-030-0020

Other Responsibilities and Practices

(1) **Professional misconduct.**

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

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

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

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

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

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

(2) **Verification of experience for CPA or PA applicants.**

(a) Licensees who supervise the work experience of CPA or PA applicants for the purpose of verifying the applicant's eligibility under ORS 673.040 shall provide to the Board an accurate and complete certificate of experience for the applicant. Licensees who provide any certificate of experience for an applicant shall not:

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

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

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

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

(a) Includes a misrepresentation of fact;

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

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

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

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

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

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

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

(6) **Firm names.**

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

(A) Licensees shall not practice public accountancy under a firm name which is misleading in any way as to the legal entity or organization of the firm, or as to the persons who are owners or employees of the firm who are licensed under ORS 673.150, or as to any matter restricted by section (4) of this rule.

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

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

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

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

(c) **Plural firm names.**

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

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

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

(ii) Notify the Board in writing within 30 days of non-compliance.

Such firm shall have 90 days in which to employ a licensed staff person as

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required under paragraph (A) of this subsection. The firm shall provide written notice to the Board when the firm has employed the required licensed staff person.

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

(d) Assumed business names.

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

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

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

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

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

(7) Board communications and investigations.

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

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

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

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

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

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

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

(8) Business transactions with clients.

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

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

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

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

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

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

(10) **Child support defaults.** In accordance with ORS 25.750 to 25.783, the Board shall provide the Support Enforcement Division of the Department of Justice with certification and licensing information which

may be electronically cross-matched with Support Enforcement Division's records for persons under order of judgment to pay monthly child support and who are in arrears according to ORS 25.750(a), (b) and/or (c).

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

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

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

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

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

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

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

Stat. Auth.: ORS 670.310 & 673.410

Stats. Implemented: ORS 673.160, 673.410 & 673.445

Hist.: AB 1-1978, f. & ef. 1-11-78; 1AB 1-1981, f. 1-6-81, ef. 6-1-81; 1AB 3-1981, f. & ef. 1-6-81; 1AB 2-1984, f. & ef. 5-21-84; 1AB 3-1986, f. & ef. 11-17-86; AB 3-1989, f. & cert. ef. 10-3-89; AB 6-1993(Temp), f. 11-2-93, cert. ef. 11-4-93; AB 1-1994, f. & cert. ef. 1-21-94; AB 3-1994, f. & cert. ef. 8-10-94; AB 4-1994, f. & cert. ef. 9-27-94; AB 3-1996, f. & cert. ef. 9-25-96; BOA 6-1998, f. & cert. ef. 7-29-98; BOA 1-1999, f. & cert. ef. 1-20-99; BOA 5-1999, f. & cert. ef. 7-23-99; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 5-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 5-2002 f. 12-27-02, cert. ef. 1-1-03; BOA 6-2003, f. 12-23-03, cert. ef. 1-1-04; BOA 4-2005, f. & cert. ef. 8-12-05; BOA 9-2005, f. 11-22-05, cert. ef. 1-1-06; BOA 3-2006, f. 12-22-06, cert. ef. 1-1-07

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Rule Caption: Requirements for ethics continuing education content.

Adm. Order No.: BOA 4-2006

Filed with Sec. of State: 12-22-2006

Certified to be Effective: 1-1-07

Notice Publication Date: 11-1-06

Rules Amended: 801-040-0010

Subject: The rules are being modified to clarify that ethics course content must include information that pertains to licensees in all practice areas.

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

801-040-0010

Basic Requirements

(1) **Biennial CPE requirement.** Each biennial renewal period, certified public accountants and public accountants shall report satisfactory evidence of having completed 80 hours of continuing professional education (CPE) unless such requirement is waived by the Board under ORS 673.165 and OAR 801-040-0150. The 80-hour CPE requirement shall be completed as follows:

(a) At least 24 of the required 80 CPE hours shall be completed in each year of the renewal period. Hours carried forward from the previous

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reporting period (carry-forward hours) may not be used to meet the minimum annual requirement.

(b) CPE hours must be completed during the two-year period immediately preceding the renewal date, except for carry-forward hours described in subsection (c) of this rule.

(c) A maximum of 20 CPE hours in technical subjects may be carried forward from one reporting period to the next and may be used in partial fulfillment of the 80 hour requirement.

(2) **Ethics requirement.** Active licensees are required to successfully complete and report at least four hours of CPE in professional conduct and ethics (ethics requirement) every four years. All licensees holding even numbered permits shall complete and report the ethics requirement beginning with the reporting period in 2004, and every fourth year thereafter. All licensees holding odd-numbered permits shall complete and report the ethics requirement beginning with the reporting period in 2005, and every fourth year thereafter. Licensees may report the four hour Ethics CPE requirement in either of the two renewal periods that fall within each four year period.

(a) Hours earned in professional conduct and ethics are included in the 80 hour requirement for each renewal period.

(b) If a licensee's principal place of business is located in another jurisdiction and the other jurisdiction has established a professional conduct and ethics CPE requirement, the licensee may meet the ethics requirement by demonstrating compliance with the other jurisdiction's professional conduct and ethics CPE requirement. The number of CPE hours and the ethics course that meet the CPE requirement of such other jurisdiction will be accepted in Oregon, except that the ethics requirement of the other jurisdiction must provide for an ethics program to be reported at least once every four years. The licensee shall report such classes as provided in these rules.

(c) If a licensee has a principal place of business in another jurisdiction that does not have a professional conduct and ethics CPE requirement, the licensee must complete the ethics requirement from a sponsor registered with the Board.

(3) **CPE ethics programs.** CPE programs in professional conduct and ethics shall qualify for CPE credit under this section if such programs are offered by a sponsor registered with the Board and include information pertaining to each of the following topics:

(a) Oregon Administrative Rules and Oregon Revised Statutes pertaining to the practice of public accountancy;

(b) Examples of issues or situations that require an understanding of statutes, rules and case law relevant to all licensees.

(c) The Code of Professional Conduct adopted by the Board and set forth in OAR chapter 801, division 030; and

(d) Review of recent case law pertaining to ethics and professional responsibilities for the accounting profession.

(4) **Substantial equivalency.** Licensees who are authorized to practice public accountancy in this state under the provisions of substantial equivalency under ORS 673.153 may satisfy the CPE requirements under this section by demonstrating to the satisfaction of the Board that the licensee is in compliance with CPE requirements of the jurisdiction in which the licensee's principal place of business is located.

(a) If such jurisdiction has no CPE requirement the licensee shall complete and report the CPE requirements under these rules. The requirement to complete four hours of CPE in ethics and professional conduct may also be satisfied by meeting the ethics requirement of the other jurisdiction, and if none, by completing ethics programs offered by a sponsor registered with the Board.

(b) Licensees described in this section are required to comply with the continuing education requirement from the date such permit is issued. The number of CPE hours required for a partial licensing period shall be calculated in the manner described in OAR 801-040-0090(7).

(c) Licensees described in this section are required to:

(A) Submit a signed statement that the licensee is in compliance with the CPE requirements of the jurisdiction in which the licensee's principal place of business is located or, if such jurisdiction has no CPE requirements, the licensee shall complete and report CPE programs as described in OAR 801-040-0010; and

(B) Submit a signed statement that the licensee is in compliance with CPE requirements in professional conduct and ethics of the jurisdiction in which the licensee's principal place of business is located or, if such jurisdiction has no CPE requirements in professional conduct and ethics, the licensee shall report Ethics CPE programs as described in OAR 801-040-0010(3).

Stat. Auth.: ORS 670.310, 673.040, 673.050 & 673.410
Stats. Implemented: ORS 673.165

Hist.: AB 1-1985, f. & ef. 3-21-85; AB 5-1991, f. & cert. ef. 7-1-91; AB 1-1994, f. & cert. ef. 1-21-94; AB 4-1994, f. & cert. ef. 9-27-94; BOA 5-1999, f. & cert. ef. 7-23-99; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 5-2000, f. 12-7-00, cert. ef. 1-1-01; BOA 7-2001, f. 12-31-01, cert. ef. 1-1-02; BOA 6-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 6-2004, f. 12-30-04, cert. ef. 1-1-05; BOA 10-2005, f. 11-22-05, cert. ef. 1-1-06; BOA 4-2006, f. 12-22-06, cert. ef. 1-1-07

Rule Caption: Definitions for Substantial Equivalency, Uniform Accountancy Act and Valid.

Adm. Order No.: BOA 5-2006

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Notice Publication Date: 11-1-06

Rules Amended: 801-005-0010

Subject: Substantial Equivalency definition is being amended to clarify the requirements for qualifications for authorization. In addition, the definition for 'valid' is clarified to include chartered accountants and the definitions for supervisor licensee has been removed and placed in Division 010.

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

801-005-0010

Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(22) **Inactive status:** permit status that may be granted to a licensee who is not holding out as a CPA or PA and otherwise not engaged in the practice of public accountancy, if the license is not suspended, on probation or revoked.

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

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

(25) **License:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(47) **Substantial equivalency:** eligibility for substantial equivalency under ORS 673.153 may be determined under either of the following two standards:

(a) Determination by the National Qualification Appraisal Service of the National Association of State Boards of Accountancy that the education, examination and experience requirements contained in the statutes and administrative rules of another jurisdiction are equivalent to or exceed the education, examination and experience requirements of the Uniform Accountancy Act; or

(b) An individual's personal education, examination and experience qualifications are verified by the Board to be of substantial equivalence to or exceed the education, examination and experience requirements of ORS Chapter 673 and OAR chapter 801.

(48) **Uniform Accountancy Act (UAA):** A model bill and set of regulations designed by the AICPA and NASBA to provide a uniform approach to regulation of the accounting profession, provisions of which may or may not be adopted by state boards of accountancy.

(49) **Valid:** Describes a certified public accountant certificate or permit, a public accountant license or permit, municipal roster authority, firm registration or chartered accountant certificate that is in active status and in good standing with the appropriate licensing authority. A license or certificate in active status is one that is not revoked, suspended, subject to probation, lapsed or inactive.

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

Stat. Auth.: ORS 670.310

Stats. Implemented: ORS 670.310

Hist.: 1 AB 2-1982, f. & ef. 10-15-86 AB 1-1989, f. & cert. ef. 1-25-89; AB 2-1990, f. & cert. ef. 4-9-90; AB 1-1992, f. & cert. ef. 2-18-92; AB 1-1993, f. 1-14-93, cert. ef. 1-15-93; AB 6-1993(Temp), f. 11-2-93, cert. ef. 11-4-93; AB 1-1994, f. & cert. ef. 1-21-94; AB 4-1994, f. & cert. ef. 9-27-94; AB 5-1994, f. & cert. ef. 11-10-94; AB 2-1995, f. & cert. ef. 3-22-95; AB

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3-1995, f. & cert. ef. 5-19-95; AB 4-1995, f. & cert. ef. 8-8-95; AB 1-1996, f. & cert. ef. 1-29-96; AB 2-1996, f. & cert. ef. 9-25-96; AB 2-1997, f. & cert. ef. 3-10-97; BOA 1-1998, f. & cert. ef. 1-26-98; BOA 6-1998, f. & cert. ef. 7-29-98; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 3-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 2-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 3-2003, f. 12-23-03, cert. ef. 1-1-04; BOA 3-2005, f. 2-24-05, cert. ef. 3-1-05; BOA 6-2005, f. 11-22-05, cert. ef. 1-1-06; BOA 5-2006, f. 12-22-06, cert. ef. 1-1-07

Rule Caption: Eligibility to bid on municipal audits.

Adm. Order No.: BOA 6-2006

Filed with Sec. of State: 12-22-2006

Certified to be Effective: 1-1-07

Notice Publication Date: 11-1-06

Rules Amended: 801-020-0620, 801-020-0690

Subject: Division 020 is being modified to clarify circumstances when a firm is authorized to bid and contract for municipal audits and to allow individuals with an active CPA license authorized by substantial equivalency to apply for a municipal auditor license.

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

801-020-0620

Bidding and Contracting for Municipal Audits

(1) Municipal Roster. The Oregon Board of Accountancy is authorized by ORS 297.670 to prepare and maintain the Municipal Roster of licensees who are authorized to conduct municipal audits required by ORS 297.425.

(2) Requirement for firm registration. Municipal audits required by ORS 297.425 may only be conducted through a Firm registered under the provisions of ORS 673.160.

(3) Licensees authorized to bid and contract for municipal audits. The following licensees who are admitted to the Municipal Roster may bid and contract for municipal audits in accordance with ORS 297.465:

(a) A licensed CPA who is a sole proprietor and registered under ORS 673.160;

(b) A licensed PA under ORS 673.100 who passed the audit section of the CPA Exam as a requirement for licensing and who is registered under ORS 673.160;

(4) Firms authorized to bid and contract for municipal audits. Bids, contracts and municipal audits may be issued in the name of a Firm under the following circumstances:

(a) A licensee who is a member of a Firm, and who is on the Municipal Roster, may bid, contract or issue municipal audits in accordance with ORS 297.465 under the name of such Firm if all owners of the Firm are on the municipal roster; or

(b) A Firm that has at least one member who is on the Municipal Roster may bid, contract or issue municipal audits in the name of the Firm only if the contract and the related audit report are both signed in the name of the Firm by the member who is on the Municipal Roster.

(c) For purposes of this rule, "member" means a partner, shareholder, or owner of the firm. Any other licensee, including an independent contractor, office sharer or licensee working for or with a firm on a limited basis is not a member.

(5) Except as provided in this rule, no person may bid, contract or otherwise offer to issue or issue an audit under ORS 297.405 to 297.555.

Stat. Auth.: ORS 297.670, 297.680 & 297.740

Stats. Implemented: ORS 297.680

Hist.: 1AB 8, f. 8-17-54; 1AB 15, f. 4-23-69; AB 1-1988(Temp), f. 2-17-88, cert. ef. 2-22-88; AB 2-1991, f. & cert. ef. 2-28-91; AB 3-1992, f. & cert. ef. 2-18-92; AB 3-1993, f. 1-14-93, cert. ef. 1-15-93; AB 6-1993(Temp), f. 11-2-93, cert. ef. 11-4-93; AB 1-1994, f. & cert. ef. 1-21-94; BOA 5-2000, f. 12-7-00, cert. ef. 1-1-01; BOA 4-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 5-2004, f. 12-30-04, cert. ef. 1-1-05; BOA 6-2006, f. 12-22-06, cert. ef. 1-1-07

801-020-0690

Qualifications for Admission to Municipal Roster

(1) The following licensees are eligible to apply for admission to the municipal roster:

(a) Individuals holding an active CPA permit issued under ORS 673.150,

(b) Individuals holding an active PA license issued under ORS 673.100 prior to January 1, 2002,

(c) Individuals holding an active PA license issued under ORS 673.100 who were licensed after January 1, 2002 and who passed the audit section of the CPA Exam as a requirement of licensing, and

(d) Individuals with an active CPA license issued by another jurisdiction that is recognized by the Board and who have received authority to practice public accountancy in Oregon under ORS 673.153.

(2) Application Requirements. Qualified applicants for admission to the municipal roster must meet the following requirements:

(a) The applicant must be a licensee in good standing with the Board of Accountancy;

(b) Every application shall be on a form provided by the Board and shall be accompanied by a fee prescribed by OAR 801-010-0010; and

(c) The application, signed by the applicant, shall constitute an agreement between the applicant and the Board that the applicant will comply with the provisions of the Municipal Audit Law, ORS 297.405 through 297.555, and OAR chapter 801 division 020.

(3) Grounds for Denial. In addition to the specific grounds stated in ORS 673.170(2), the Board may deny admission or reinstatement to the municipal roster if:

(a) The applicant has not complied with the requirements of OAR 801-020-0620;

(b) The applicant has committed any act or engaged in conduct that reflects adversely on the licensee's fitness to practice public accountancy; or

(c) The applicant has committed any act or engaged in conduct that would cause a reasonable person to have substantial doubts about the applicant's honesty, fairness and respect for the rights of others or for any law.

(d) Any act or conduct that resulted in a criminal conviction, other than a crime described in ORS 673.170(2)(h) or (i), will not be used to deny admission to the municipal roster unless such act or conduct is rationally connected to the applicant's fitness to practice public accountancy.

(4) Initial CPE Requirements. The applicant shall demonstrate to the satisfaction of the Board that, within the two year period immediately preceding the date of application to the municipal roster, the applicant completed 40 CPE hours of Level 1 (basic) or Level 2 (intermediate) education in the following subjects, including at least 4 hours in each subject:

(a) Audits of state and local governmental units;

(b) Governmental accounting and financial reporting standards;

(c) Generally Accepted Governmental Auditing Standards;

(d) Single Audit Act and related circulars and supplements published by the United States Government Accountability Office, Office of Management and Budget;

(e) Oregon Local Budget Law; and

(f) Minimum standards of audits and reviews of Oregon municipal corporations.

(5) CPE Credit. The 40 hours of education required for admission to the municipal roster may be included in the 80 hours of CPE required for renewal of the CPA/PA permit.

(6) Approval. When an application to the municipal roster is approved, the Board shall:

(a) Notify the applicant in writing that the application is approved;

(b) Enter the applicant's name on the municipal roster; and

(c) Notify the Secretary of State that the applicant is authorized to conduct municipal audits.

Stat. Auth.: ORS 297.670, 297.680 & 297.740

Stats. Implemented: ORS 297.680

Hist.: AB 8, f. 8-17-54; 1AB 32, f. 9-18-73, ef. 10-1-73; AB 1-1988(Temp), f. 2-17-88, cert. ef. 2-22-88; AB 4-1988, f. & cert. ef. 10-28-88; AB 3-1992, f. & cert. ef. 2-18-92; AB 5-1992, f. & cert. ef. 8-10-92; AB 6-1993(Temp), f. 11-2-93, cert. ef. 11-4-93; AB 1-1994, f. & cert. ef. 1-21-94; AB 4-1994, f. & cert. ef. 9-27-94; AB 1-1996, f. & cert. ef. 1-29-96; AB 2-1997, f. & cert. ef. 3-10-97; BOA 5-1999, f. & cert. ef. 7-23-99; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 5-2000, f. 12-7-00, cert. ef. 1-1-01; BOA 4-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 5-2004, f. 12-30-04, cert. ef. 1-1-05; BOA 6-2006, f. 12-22-06, cert. ef. 1-1-07

Board of Pharmacy

Chapter 855

Rule Caption: Adds two common decongestants to the list of drugs excluded from the scheduled list.

Adm. Order No.: BP 8-2006

Filed with Sec. of State: 12-19-2006

Certified to be Effective: 12-19-06

Notice Publication Date: 10-1-06

Rules Amended: 855-080-0028

Subject: This rule adds two common proprietary brands of decongestant inhaler back onto the list of drugs that are excepted from the schedule of controlled drugs. These products were originally deleted from this list in the process of removing exceptions associated with pseudoephedrine, ephedrine and phenylpropanolamine. However, it has been concluded that these products can not be reformulated into methamphetamine and therefore do not pose a threat to the public.

Rules Coordinator: Karen Maclean—(971) 673-0001

ADMINISTRATIVE RULES

855-080-0028

Excluded Substances

The following drugs and their generic equivalents are excepted from the schedules in OAR 855-080-0021 through 855-080-0026:

- (1) Benzhexedrine inhaler (Propylhexedrine).
- (2) Estratest.
- (3) Estratest HS.
- (4) Estradiol Cypionate Injection.
- (5) Estradiol Valerate Injection.
- (6) Premarin with Methyltestosterone.
- (7) Vicks — Vapor inhaler (Levmetamfetamine).

Stat. Auth.: 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; PB 4-1987, f. & ef. 3-30-87; Renumbered from 855-080-0025; PB 5-1991, f. & cert. ef. 9-19-91; PB 1-1995, f. & cert. ef. 4-27-95; BP 4-2006, f. 6-9-06, cert. ef. 7-1-06; BP 6-2006(Temp), f. & cert. ef. 8-25-06 thru 1-31-07; BP 8-2006, f. & cert. ef. 12-19-06

Rule Caption: Revises license fee for certified pharmacy technicians to include delinquent renewal fee.

Adm. Order No.: BP 9-2006

Filed with Sec. of State: 12-19-2006

Certified to be Effective: 12-19-06

Notice Publication Date: 10-1-06

Rules Amended: 855-110-0005

Subject: This rule adds a provision for a delinquent renewal fee of \$20 to the fee schedule for certified pharmacy technicians. It was omitted from the original filing in error.

Rules Coordinator: Karen Maclean—(971) 673-0001

855-110-0005

Licensing Fees

- (1) Pharmacist license examination and re-examination fee — \$50.
 - (2) Pharmacist jurisprudence re-examination fee — \$25.
 - (3) Pharmacist licensing by reciprocity fee — \$200.
 - (4) Pharmacist licensing by score transfer fee — \$200.
 - (5) Intern License fee. Expires May 31 every four years — \$30.
 - (6) Pharmacist license fee. Expires June 30 annually — \$120
- Delinquent renewal fee, (postmarked after May 31) — \$50.
- (7) Certification of approved providers of continuing education course fee, none at this time.
 - (8) Technician license fee. Expires September 30 annually — \$35.
- Delinquent renewal fee, (postmarked after August 31) — \$20.
- (9) Certified Pharmacy Technician license fee. Expires September 30 annually — \$35. Delinquent renewal fee, (postmarked after August 31) — \$20.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.135

Hist.: 1PB 2-1979(Temp), f. & ef. 10-3-79; 1PB 2-1980, f. & ef. 4-3-80; 1PB 3-1980, f. 5-3-80, ef. 5-3-80 & 7-1-80; 1PB 2-1982, f. 3-8-82, ef. 4-1-82; 1PB 1-1984, f. & ef. 2-16-84; 1PB 3-1985, f. & ef. 12-2-85; PB 3-1988, f. & cert. ef. 5-23-88; PB 7-1989, f. & cert. ef. 5-1-89; PB 15-1989, f. & cert. ef. 12-26-89; PB 10-1990, f. & cert. ef. 12-5-90; PB 3-1991, f. & cert. ef. 9-19-91; PB 1-1992, f. & cert. ef. 1-31-92 (and corrected 2-7-92); PB 4-1992, f. & cert. ef. 8-25-92; PB 1-1994, f. & cert. ef. 2-2-94; PB 1-1996, f. & cert. ef. 4-5-96; PB 2-1997(Temp), f. 10-2-97, cert. ef. 10-4-97; BP 2-1998, f. & cert. ef. 3-23-98; BP 1-2001, f. & cert. ef. 3-5-01; BP 2-2001(Temp), f. & cert. ef. 7-26-01 thru 1-22-02; BP 1-2002, f. & cert. ef. 1-8-02; BP 1-2003, f. & cert. ef. 1-14-03; BP 1-2006, f. & cert. ef. 6-9-06; BP 5-2006(Temp), f. & cert. ef. 8-25-06 thru 1-20-07; BP 9-2006, f. & cert. ef. 12-19-06

Rule Caption: Delete requirement for manufacturers and wholesalers to submit device samples each year.

Adm. Order No.: BP 10-2006

Filed with Sec. of State: 12-19-2006

Certified to be Effective: 12-19-06

Notice Publication Date: 10-1-06

Rules Amended: 855-070-0005

Subject: Amends rule to delete requirement for manufacturers and wholesalers of prophylactics and contraceptives to submit samples each year.

Rules Coordinator: Karen Maclean—(971) 673-0001

855-070-0005

Applications, Fees, and Licenses to Sell Prophylactics and Contraceptives

(1) Every wholesaler or manufacturer of prophylactics or contraceptives who distributes in Oregon goods of the class specified in ORS

435.010 shall annually submit an application for a license issued by the Board of Pharmacy:

(a) The application shall be made in writing on a form prepared by the Board and be accompanied by the fee listed in division 110;

(b) One such application shall be submitted and license obtained for each location or separate address from which goods are distributed;

(c) Licenses shall be issued upon receipt of the fee listed in division 110 and shall be in effect for one year from January 1 of each year. Licenses are not transferable;

(d) Licenses shall be publicly or conspicuously displayed and the wholesaler or manufacturer to whom they are issued shall be open to inspection by the Board or other authorized persons designated by the Board;

(e) Each application for a license shall include a list of all products or brands of prophylactics and contraceptives the applicant wishes to have approved for sale in the state.

(2) Before any condom product can be distributed in Oregon, it must be approved by the Oregon Board of Pharmacy. Every manufacturer or wholesaler that intends to distribute either male or female condoms shall furnish to the Board the names of such products.

(3) The Board may require proof to be furnished by the manufacturer or wholesaler that these products have received approval in accordance with the Federal Food, Drug and Cosmetic Act and regulations thereunder (Title 21 U.S.C. and CFR);

(4) The requirements under the Federal Food, Drug and Cosmetic Act and regulations thereunder (Title 21 U.S.C. and CFR) relating to prophylactics and contraceptives are adopted by reference and made a part hereof.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 435.010, 435.080, 435.100 & 689.155

Hist.: 1PB 18, f. & ef. 10-14-64; 1PB 29(Temp), f. & ef. 9-6-73; 1PB 32, f. 1-31-74, ef. 2-25-74; 1PB 35(Temp), f. & ef. 3-26-74; 1PB 36, f. 7-1-74, ef. 7-25-74; 1PB 39, f. & ef. 1-8-76; PB 10-1987, f. & ef. 12-8-87; PB 1-1995, f. & cert. ef. 4-27-95; BP 10-2006, f. & cert. ef. 12-19-06

Rule Caption: Implements 2005 legislation by defining required pain management continuing education for pharmacists.

Adm. Order No.: BP 11-2006

Filed with Sec. of State: 12-19-2006

Certified to be Effective: 12-19-06

Notice Publication Date: 10-1-06

Rules Adopted: 855-021-0016

Subject: Pharmacists are required by statute to complete pain management continuing education. This rule specifies the acceptable content, number of hours and the timetable for completion. Rule also permits this continuing education to count as part of the existing annual requirement for pharmacists. This is a one time requirement.

Rules Coordinator: Karen Maclean—(971) 673-0001

855-021-0016

Continuing Education in Pain Management

(1) A pharmacist licensed under these rules must complete seven hours of continuing education in pain management as detailed in the following sub-sections. This is a one-time requirement:

(a) A one-hour pain management course, specific to Oregon, provided by the Pain Management Commission of the Oregon Department of Human Services; and

(b) A minimum of six hours of continuing education in pain management. This requirement may be fulfilled by any combination of continuing education coursework focusing on pain management including but not limited to the treatment of terminally ill and dying patients, and those with chronic, non-malignant pain.

(2) A licensee must complete the required continuing education within 24 months of their first license renewal after January 2, 2006.

(3) A licensee must retain for three years, documentation showing they have met the requirement of this rule, and must provide this documentation if requested by the Board.

(4) The pain management continuing education required under this rule shall count towards the 1.5 continuing pharmacy education units required under OAR 855-021-0005, in the license cycle in which the pain management continuing education is completed. Any portion of this continuing education may count towards the requirement in OAR 855-021-0010(1)(a) for 11 hours continuing education in therapeutics.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.285, 409.560 & 409.565

Hist.: BP 7-2006(Temp) f. & cert. ef. 8-25-06 thru 1-20-07; BP 11-2006, f. & cert. ef. 12-19-06

ADMINISTRATIVE RULES

Rule Caption: Regarding rules for drug manufacturers and wholesalers. Amends definitions, registration, record keeping, and storage requirements.

Adm. Order No.: BP 12-2006

Filed with Sec. of State: 12-19-2006

Certified to be Effective: 12-19-06

Notice Publication Date: 10-1-06

Rules Adopted: 855-065-0006, 855-065-0012, 855-065-0013

Rules Amended: 855-006-0005, 855-060-0001, 855-065-0001, 855-065-0005, 855-065-0007, 855-065-0009, 855-065-0010

Subject: Amends rules regulating drug wholesalers by specifying more detailed application and registration requirements and by requiring greater accountability and record keeping in the supply chain of prescription drugs. Creates a list of prohibited practices. Amends definitions and rules for manufacturers to allow certain specified normal business practices to be exempt from more stringent regulations. Provides exemption from certain registration procedures for small businesses that meet specific criteria.

Rules Coordinator: Karen Maclean—(971) 673-0001

855-006-0005

Definitions

As used in ORS Chapter 689 and OAR chapter 855:

(1) "Certified Pharmacy Technician" means a person licensed by the State Board of Pharmacy who assists the pharmacist in the practice of pharmacy pursuant to rules of the Board and has completed the specialized education program pursuant to OAR 855-025-0005. Persons used solely for clerical duties, such as record keeping, cashiering, bookkeeping and delivery of medications released by the pharmacist are not considered pharmacy technicians.

(2) "Collaborative Drug Therapy Management" means the participation by a pharmacist in the management of drug therapy pursuant to a written protocol that includes information specific to the dosage, frequency, duration and route of administration of the drug, authorized by a practitioner and initiated upon a prescription order for an individual patient and:

(a) Is agreed to by one pharmacist and one practitioner; or

(b) Is agreed to by one or more pharmacists at a single pharmacy registered by the board and one or more practitioners in a single organized medical group, such as a hospital medical staff, clinic or group practice, including but not limited to organized medical groups using a pharmacy and therapeutics committee.

(3) "Compounding" means the preparation, mixing, assembling, packaging, or labeling of a drug or device:

(a) As the result of a practitioner's prescription drug order, or initiative based on the relationship between the practitioner, the pharmacist and the patient, in the course of professional practice; or

(b) For the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale or dispensing; or

(c) The preparation of drugs or devices in anticipation of prescription drug orders based on routine, regularly observed prescribing patterns; or

(d) As a component of a Shared Pharmacy Service agreement as defined in section (20) of this rule.

(4) "Confidential Information" means any patient information obtained by a pharmacist or pharmacy.

(5) The "Container" is the device that holds the drug and that is or may be in direct contact with the drug.

(6) "Dispensing" means the preparation and delivery of a prescription drug pursuant to a lawful order of a practitioner in a suitable container appropriately labeled for subsequent administration to or use by a patient or other individual entitled to receive the prescription drug.

(7) "Interpretation and evaluation of prescription orders" means the review of the order for therapeutic and legal correctness. Therapeutic review includes identification of the prescription drug ordered, its applicability and its relationship to the other known medications used by the patient and determination of whether or not the dose and time interval of administration are within accepted limits of safety. The legal review for correctness of the prescription order includes a determination that the order is valid and has not been altered, is not a forgery, is prescribed for a legitimate medical purpose, contains all information required by federal and state law, and is within the practitioner's scope of practice.

(8) "Labeling" means the process of preparing and affixing of a label to any drug container exclusive, however, of the labeling by a manufacturer, packer or distributor of a non-prescription drug or commercially packaged legend drug or device.

(9) "Monitoring of therapeutic response or adverse effect of drug therapy" means the follow up of the therapeutic or adverse effect of medication upon a patient, including direct consultation with the patient or his agent and review of patient records, as to result and side effect, and the analysis of possible interactions with other medications that may be in the medication regimen of the patient. This section shall not be construed to prohibit monitoring by practitioners or their agents.

(10) "Nationally Certified Exam" means an exam that is approved by the Board which demonstrates successful completion of a Specialized Education Program. The exam must be reliable, psychometrically sound, legally defensible and valid.

(11) "Non-legend drug" means a drug which does not require dispensing by prescription and which is not restricted to use by practitioners only.

(12) "Offering or performing of those acts, services, operations or transactions necessary in the conduct, operation, management and control of pharmacy" means, among other things:

(a) The creation and retention of accurate and complete patient records;

(b) Assuming authority and responsibility for product selection of drugs and devices;

(c) Developing and maintaining a safe practice setting for the pharmacist, for pharmacy staff and for the general public;

(d) Maintaining confidentiality of patient information.

(13) "Oral Counseling" means an oral communication process between a pharmacist and a patient or a patient's agent in which the pharmacist obtains information from the patient (or agent) and the patient's pharmacy records, assesses that information and provides the patient (or agent) with professional advice regarding the safe and effective use of the prescription drug for the purpose of assuring therapeutic appropriateness.

(14) Participation in Drug Selection and Drug Utilization Review:

(a) "Participation in drug selection" means the consultation with the practitioner in the selection of the best possible drug for a particular patient.

(b) "Drug utilization review" means evaluating a prescription drug order in light of the information currently provided to the pharmacist by the patient or the patient's agent and in light of the information contained in the patient's record for the purpose of promoting therapeutic appropriateness by identifying potential problems and consulting with the prescriber, when appropriate. Problems subject to identification during drug utilization review include, but are not limited to:

(A) Over-utilization or under-utilization;

(B) Therapeutic duplication;

(C) Drug-disease contraindications;

(D) Drug-drug interactions;

(E) Incorrect drug dosage;

(F) Incorrect duration of treatment;

(G) Drug-allergy interactions; and

(H) Clinical drug abuse or misuse.

(15) "Pharmaceutical Care" means the responsible provision of drug therapy for the purpose of achieving definite outcomes that improve a patient's quality of life. These outcomes include:

(a) Cure of a disease;

(b) Elimination or reduction of a patient's symptomatology;

(c) Arrest or slowing of a disease process; or

(d) Prevention of a disease or symptomatology.

(16) "Pharmacy Technician" means a person licensed by the State Board of Pharmacy who assists the pharmacist in the practice of pharmacy pursuant to rules of the Board but has not completed the specialized education program pursuant to OAR 855-025-0005.

(17) "Prescription released by the pharmacist" means, a prescription which has been reviewed by the pharmacist that does not require further pharmacist intervention such as reconstitution or counseling.

(18) "Proper and safe storage of drugs and devices and maintenance of proper records therefore" means housing drugs and devices under conditions and circumstances that:

(a) Assure retention of their purity and potency;

(b) Avoid confusion due to similarity of appearance, packaging, labeling or for any other reason;

(c) Assure security and minimize the risk of their loss through accident or theft;

(d) Accurately account for and record their receipt, retention, dispensing, distribution or destruction;

(e) Protect the health, safety and welfare of the pharmacist, pharmacy staff and the general public from harmful exposure to hazardous substances.

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(19) "Responsibility for advising, when necessary or when regulated, of therapeutic values, content, hazards and use of drugs and devices" means advice directly to the patient, either verbally or in writing as required by these rules or federal regulation, of the possible therapeutic response to the medication, the names of the chemicals in the medication, the possible side effects of major importance, and the methods of use or administration of a medication.

(20) "Shared Pharmacy Service" means a written agreement, that has been approved in writing by the board, that exists for the processing by a pharmacy of a request from another pharmacy or a practitioner licensed to prescribe the drug, to fill or refill a prescription or a drug order, or to perform processing functions including but not limited to:

- (a) Dispensing;
- (b) Drug utilization review;
- (c) Claims adjudication;
- (d) Refill authorizations;
- (e) Compounding; and
- (f) Therapeutic interventions.

(21) "Specialized Education Program" means;

(a) A program providing education for persons desiring licensure as pharmacy technicians that is approved by the board and offered by an accredited college or university that grants a two-year degree upon successful completion of the program; or

(b) A structured program approved by the board and designed to educate pharmacy technicians in one or more specific issues of patient health and safety that is offered by:

- (A) An organization recognized by the board as representing pharmacists or pharmacy technicians;
- (B) An employer recognized by the board as representing pharmacists or pharmacy technicians; or
- (C) A trade association recognized by the board as representing pharmacies.

(22) "Supervision by a pharmacist" means being stationed within the same work area as the pharmacy technician or certified pharmacy technician being supervised, coupled with the ability to control and be responsible for the pharmacy technician or certified pharmacy technician's action.

(23) "Therapeutic substitution" means the act of dispensing a drug product with a different chemical structure for the drug product prescribed under circumstances where the prescriber has not given clear and conscious direction for substitution of the particular drug for the one which may later be ordered.

(24) "Unprofessional conduct" means;

- (a) Repeated or gross negligence in the practice of pharmacy; or
- (b) Fraud or misrepresentation in dealings relating to pharmacy practice with:
 - (A) Customers, patients or the public;
 - (B) Practitioners authorized to prescribe drugs, medications or devices;
 - (C) Insurance companies;
 - (D) Wholesalers, manufacturers or distributors of drugs, medications or devices;
 - (E) Health care facilities;
 - (F) Government agencies; or
- (c) Illegal use of drugs, medications or devices without a practitioner's prescription, or otherwise contrary to federal or state law or regulation;
- (d) Theft of drugs, medications or devices, or theft of any other property or services under circumstances which bear a demonstrable relationship to the practice of pharmacy;
- (e) Dispensing a drug, medication or device where the pharmacist knows or should know due to the apparent circumstances that the purported prescription is bogus or that the prescription is issued for other than a legitimate medical purpose, including circumstances such as:
 - (A) Type of drug prescribed;
 - (B) Amount prescribed; or
 - (C) When prescribed out of context of dose.
- (f) Any act or practice relating to the practice of pharmacy which is prohibited by state or federal law or regulation.
- (g) The disclosure of confidential information in violation of Board rule.
- (h) Engaging in collaborative drug therapy management in violation of ORS Chapter 689 and the rules of the Board.

(25) "Verification" means the confirmation by the pharmacist of the correctness, exactness, accuracy and completeness of the acts, tasks, or functions performed by a pharmacy technician and certified pharmacy technician.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.155, 689.305

Hist.: 1PB 2-1979(Temp), f. & ef. 10-3-79; 1PB 2-1980, f. & ef. 4-3-80; 1PB 3-1984, f. & ef. 4-16-84; PB 2-1988, f. & cert. ef. 5-3-88; PB 2-1989, f. & cert. ef. 1-30-89; PB 4-1992, f. & cert. ef. 8-25-92; PB 1-1994, f. & cert. ef. 2-2-94; BP 4-1998, f. & cert. ef. 8-14-98; BP 1-2006, f. & cert. ef. 6-9-06; BP 12-2006, f. & cert. ef. 12-19-06

855-060-0001

Application

No place of manufacturing, wholesaling or repackaging of drugs or medicines, as defined in ORS 689.005(20), (35), and (36) shall be conducted or operated until it has been registered by the State Board of Pharmacy, except that compounding or repackaging, as a part of a Shared Pharmacy Services agreement as defined in OAR 855-006-0005(20), does not constitute manufacturing. Manufacturing registration expires September 30th annually:

(1) All applications for registration of a new or relocated manufacturer shall be accompanied by the required fees as set forth in 855-110-0007(3).

(2) Application shall specify the location of the manufacturer premises. When the applicant is not the owner of the business, the application shall indicate the owner and the applicant's affiliation with the owner;

(a) If the owner is a partnership or other multiple owner, the names of the partners or person holding the five largest interests shall be indicated on the application.

(b) If the owner is a corporation, the name filed shall be the same as filed with the Corporation Commissioner. The name of the corporation, the names of the corporation officers and the names of the stockholders who own the five largest interests shall be indicated on the application.

(c) Upon request by the Board, the applicant shall furnish such information as required by the Board regarding the partners, stockholders, or other persons not named in the application.

(3) All registration renewal applications shall be accompanied by the annual fee and contain the same information required in subsection (2)(a), (b), and (c) of this rule.

(4) A change of ownership or location requires a new application, fee and registration within 15 days.

(5) The registration certificate is issued to a person or firm and is non-transferable. Additions or deletions of a partner/partners shall be considered as a change of ownership.

(6) The registration cannot be prorated.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.155, 689.305, 689.315 & 689.325

Hist.: 1PB 2-1980, f. & ef. 4-3-80; PB 1-1994, f. & cert. ef. 2-2-94; Administrative correction 5-23-00; BP 1-2002, f. & cert. ef. 1-8-02; BP 12-2006, f. & cert. ef. 12-19-06

855-065-0001

Application

These rules (OAR 855-065-0001 to 855-065-0013) apply to any person, including any business entity, located in or outside Oregon that engages in the wholesale distribution of prescription or non-prescription drugs in Oregon except that a manufacturer that is registered under OAR 855-060-0001 does not also need to register as a wholesale distributor under these rules if they only distribute their own products or those manufactured by a Co-Manufacturing Partner as defined in OAR 855-065-0005(6).

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689

Hist.: 1PB 2-1979(Temp), f. & ef. 10-3-79; 1PB 2-1980, f. & ef. 4-3-80; PB 3-1992, f. & cert. ef. 3-26-92 (and corrected 4-8-92); PB 1-1994, f. & cert. ef. 2-2-94; BP 4-2002, f. 6-27-02, cert. ef. 7-1-02; BP 12-2006, f. & cert. ef. 12-19-06

855-065-0005

Definitions

(1) "Authenticate" means to verify that each transaction listed on the pedigree and other accompanying documentation has occurred and is accurately recorded.

(2) "Authorized Distributor of Record" means a wholesale distributor with whom a manufacturer has established an ongoing relationship to distribute the manufacturer's prescription drug. An ongoing relationship is deemed to exist between such wholesale distributor and a manufacturer when the wholesale distributor, including any affiliated group of the wholesale distributor, as defined in Section 1504 of the Internal Revenue Code, complies with either or both of the following:

(a) The wholesale distributor has a written agreement currently in effect with the manufacturer evidencing such ongoing relationship; or

(b) The wholesale distributor is listed on the manufacturer's current list of authorized distributors of record, which is updated by the manufacturer no less than monthly.

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(3) “Broker” means a person engaged in the marketing, offering, or contracting for wholesale distribution and sale of a drug into, within, or out of Oregon and who does not take physical possession of the brokered substance.

(4) “Chain Pharmacy Warehouse” means a physical location for drugs that acts as a central warehouse and performs intra company sales or transfers of drugs to a group of chain pharmacies that have the same common ownership and control.

(5) “Closed Door Pharmacy” means a pharmacy that provides pharmaceutical services to a defined and exclusive group of patients and is not open for dispensing to the general patient population and cannot be registered as a wholesale distributor.

(6) “Co-Manufacturing Partner” means a pharmaceutical manufacturer that has entered into an agreement with another pharmaceutical manufacturer to engage in a business activity or occupation related to the manufacture or distribution of a prescription drug.

(7) “Common Carrier” means an organization that is available to the public to transport a product or service using its facilities, or those of other carriers.

(8) “Contraband Drug” means a drug that is counterfeit, stolen, misbranded, obtained by fraud, or purchased by an entity for its own use and placed in commerce in violation of an own-use agreement for that drug.

(9) “Cooperative Pharmacy Warehouse” means a physical location for drugs that acts as a central warehouse and is owned, operated or affiliated with a group purchasing organization or pharmacy buying cooperative and distributes drugs exclusively to its members. To be considered part of the Normal Chain of Distribution as defined in section (16) of this rule, a Cooperative Pharmacy Warehouse must also be listed as an Authorized Distributor of Record for that manufacturer.

(10) “Designated Representative” means an individual designated by each wholesale distributor registered by the Board who will serve as the primary contact person for the wholesale distributor with the Board and who is responsible for managing the company’s operations at that registered location.

(11) “Drop Shipment” means a drug transaction whereby the manufacturer, that manufacturer’s co-manufacturing partner, that manufacturer’s third-party logistics provider, or that manufacturer’s exclusive distributor delivers a drug directly to a chain pharmacy warehouse, a cooperative pharmacy warehouse, a pharmacy, or other person authorized to administer or dispense prescription drugs to a patient, but transfers title to the drug to a wholesale distributor. A drop shipment shall be considered as part of a normal chain of distribution as defined in section (16) of this rule.

(12) “Drug Sample” means a unit of a drug that is intended to promote the sale of the drug, but which is not itself for sale.

(13) “Intra Company Transfer” means the transfer of any drug between a division, subsidiary, parent, and an affiliated or related company under the common ownership and control of a corporate entity.

(14) “Manufacturer” means anyone, including a manufacturer’s co-manufacturing partner, who is engaged in manufacturing, preparing, propagating, compounding, processing, packaging, repackaging, or labeling of a drug, except when the process is part of a shared pharmacy service agreement as defined in OAR 855-006-0005(20).

(15) “Manufacturer’s Exclusive Distributor” means an entity, including a manufacturer’s wholly owned distributor, that contracts with a manufacturer who is registered under OAR 855-060-0001, to provide or coordinate warehousing, distribution, or other services on behalf of a manufacturer and takes title to that manufacturer’s drug, but does not have general responsibility to direct the drug’s sale or disposition. To be considered part of the Normal Chain of Distribution as defined in section (16) of this rule, a Manufacturer’s Exclusive Distributor must also be listed as an Authorized Distributor of Record for that manufacturer.

(16) “Normal Chain of Distribution” means a chain of distribution, including a drop-shipment, for a prescription drug that goes from: a manufacturer; a manufacturer’s co-manufacturing partner; a manufacturer’s exclusive distributor; or a manufacturer’s third-party logistics provider to:

(a) A pharmacy or a person authorized to administer or dispense a prescription drug to a patient; or

(b) A manufacturer’s authorized distributor of record, to a pharmacy or a person authorized to administer or dispense a prescription drug to a patient; or

(c) A manufacturer’s authorized distributor of record, to a chain pharmacy warehouse, to that chain pharmacy warehouse’s intra company pharmacy, to a patient or a person authorized to administer or dispense a prescription drug to a patient; or

(d) A chain pharmacy warehouse, to that chain pharmacy warehouse’s intra company pharmacy, to a patient or a person authorized to administer or dispense a prescription drug to a patient; or

(e) A manufacturer’s authorized distributor of record, to a specialty wholesaler, to a pharmacy or a person authorized to administer or dispense a prescription drug to a patient; or

(f) A manufacturer’s authorized distributor of record to a cooperative pharmacy warehouse, to a member of the affiliated group purchasing organization or pharmacy buying cooperative, to a patient or a person authorized to administer or dispense a prescription drug to a patient.

(17) “Pedigree” means a statement or record in a written or electronic form that accurately records each wholesale distribution of a prescription drug from the sale by a manufacturer through acquisition and sale by any wholesale distributor or repackager until final sale to a pharmacy or other person authorized to administer or dispense the drug. The pedigree must include, but not be limited to, the following information for each transaction:

(a) The source of the prescription drug, including the name and principal address of the seller;

(b) The proprietary and established name of the prescription drug, the National Drug Code number, the amount of the prescription drug, its dosage form and dosage strength, the date of the purchase, the sales invoice number or other unique shipping document number that identifies the transaction, container size, number of containers, expiration date, and lot number or control number of the prescription drug;

(c) The business name and address of each owner of the prescription drug and its shipping information, including the name and address of the facility of each person certifying delivery or receipt of the prescription drug.

(18) “Prescription Drug” means any drug required by law to be dispensed only by a prescription.

(19) “Repackage” means repackaging or otherwise changing the container, wrapper, or labeling to further the distribution of a prescription drug excluding that completed by the pharmacist responsible for dispensing the product to a patient.

(20) “Specialty Wholesale Distributor” means an entity that exclusively distributes a limited product line of drugs to a specific group of pharmacies or registered practitioners as approved in writing by the Board. To be considered part of the Normal Chain of Distribution as defined in section (16) of this rule, a Specialty Wholesale Distributor must also be listed as an Authorized Distributor of Record for that manufacturer.

(21) “Third-Party Logistics Provider” means an entity that contracts with a manufacturer who is registered under these rules to provide or coordinate warehousing, distribution, or other services on behalf of the manufacturer, but does not take title to the drug or have general responsibility to direct the sale or disposition of the drug. To be considered part of the Normal Chain of Distribution as defined in section (16) of this rule, a Third-Party Logistics Provider must also be listed as an Authorized Distributor of Record for that manufacturer.

(22) “Wholesale Distribution” means distribution of a drug to a person other than a consumer or patient, but does not include:

(a) Delivery by a retail pharmacy of a prescription drug to a patient or patient’s agent pursuant to the lawful order of a licensed practitioner.

(b) The sale of minimal quantities of a prescription drug by retail pharmacies to licensed practitioners for office use.

(c) The sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug for emergency medical reasons, including but not limited to transfer of a drug by a pharmacy to another pharmacy to alleviate a temporary shortage.

(d) Intra company transfer of drugs as defined in these rules.

(e) The lawful distribution of a drug sample by a manufacturer’s or a distributor’s representative.

(f) The sale of a drug by a charitable organization described under 501(c)(3) of the Internal Revenue Code to a non-profit affiliate of the organization to the extent permitted by law.

(g) The purchase or acquisition of a drug by a hospital or other health care entity that is a member of a group purchasing organization, for the hospital’s or health care entity’s own use, from the group purchasing organization or from other hospitals or health care entities that are members of the organization or under common control.

(h) The transfer of a prescription drug between pharmacies pursuant to a shared pharmacy service agreement as defined in OAR 855-006-0005.

(i) The distribution by a manufacturer, as part of a prescription assistance program, of a drug intended for a specific patient, to a person authorized to prescribe, administer or dispense prescription drugs.

ADMINISTRATIVE RULES

(j) The sale, purchase, or trade of blood and blood components intended for transfusion.

(k) Drug returns, when conducted in accordance with state and federal laws and regulations. A drug return includes the sale or transfer from a retail pharmacy or chain pharmacy warehouse of expired, damaged, returned or recalled drugs to the original manufacturer, wholesale distributor, or to a third-party returns processor or reverse wholesaler, and the returns of saleable drugs to the original manufacturer or wholesaler.

(L) The transporting of a drug by common carrier where the common carrier does not take title to the drug and does not have responsibility to direct the drug's sale or distribution.

(m) The sale, transfer, merger or consolidation of all or part of the business of a pharmacy from or with another pharmacy.

(n) The distribution of drugs by a manufacturer registered under OAR 855-060-0001 of that manufacturer's own products to a person other than a patient.

(23) "Wholesale Distributor" means any entity engaged in the wholesale distribution of drugs, including any entity whose business name appears on any invoice or other type of shipping document indicating possession or title. The term "Wholesale Distributor" includes but is not limited to, repackagers; own-label distributors; private-label distributors; jobbers; brokers; warehouses, including manufacturers' and distributors' warehouses; drug wholesalers or distributors; independent wholesale drug traders; third-party logistics providers; cooperative pharmacy warehouses; retail pharmacies that conduct wholesale distribution; and chain pharmacy warehouses that conduct wholesale distribution. To be considered part of the Normal Chain of Distribution as defined in section (16) of this rule, a Wholesale Distributor must also be listed as an Authorized Distributor of Record for that manufacturer.

(24) "Wholesaler" means any wholesale distributor:

(a) "Class I Wholesaler" means any person operating or maintaining a wholesale distribution center, wholesale business or any other business in which prescription drugs, medicinal chemicals, or poisons are sold, dispensed, stocked, exposed or offered for sale at wholesale to a pharmacy or other legally licensed drug outlets or persons;

(b) "Class II Wholesaler" means any person operating or maintaining a wholesale distribution center, wholesale business or any other business in which nonprescription drugs are offered for sale at wholesale to a drug outlet legally authorized to resell.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.155, 689.305, 689.315, 689.325 & 689.765

Hist.: 1PB 2-1979(Temp), f. & ef. 10-3-79; 1PB 2-1980, f. & ef. 4-3-80; PB 3-1992, f. & cert. ef. 3-26-92 (and corrected 4-8-92); BP 12-2006, f. & cert. ef. 12-19-06

855-065-0006

Registration Requirements

(1) Every wholesale distributor, wherever located, that engages in wholesale distribution into, out of, or within Oregon must be registered with the Board in accordance with the laws and regulations of Oregon before engaging in wholesale distribution of drugs. Every applicant for registration or renewal of registration must pay the appropriate fee in accordance with OAR 855-110-0007 and 855-110-0010

(2) Application for registration must be on a form approved by the Board and must include, but not be limited to, the following information:

(a) The name, business address, social security number and federal tax identification number of each owner, officer, and stockholder owning more than 10 per cent of the stock of the company, unless the stock of the company is publicly traded;

(b) All trade or business names used by the applicant including any businesses outside Oregon;

(c) The names, addresses and telephone numbers of the designated representatives for all facilities used by the applicant that engage in wholesale distribution into, out of, or within Oregon;

(d) The normal business hours for the applicant; and

(e) Any disciplinary action taken by any state or federal authority against the applicant or any other wholesale distributor under common ownership or control, or any owner, principal or designated representative of the applicant, in connection with the drug laws or regulations of any state or the federal government.

(3) The Board may require a criminal history and financial background check of each principal, owner, officer and designated representative of the applicant prior to initial registration and prior to any renewal. Any such checks shall be at the applicant's expense.

(4) The Board may require a physical inspection of each facility prior to initial registration and prior to any renewal.

(5) Any wholesale distributor located outside the boundaries of Oregon, applying for registration or re-registration, as a Class 1 Wholesaler, after January 1, 2008 must provide evidence of one of the following:

(a) A current license or registration as a wholesale distributor in a state that has a license or registration procedure approved by the Board that included a physical inspection within the past three years; or

(b) A current accreditation by a process approved by the Board such as The National Association of Boards of Pharmacy's Verified Accredited Wholesale Distributor (VAWD) program or other nationally recognized accreditation program or contract inspection service.

(6) Any wholesale distributor located inside the boundaries of Oregon, applying for registration or re-registration, as a Class 1 Wholesaler, after January 1, 2008 must provide evidence of one of the following:

(a) A current accreditation by a process approved by the Board such as The National Association of Boards of Pharmacy's Verified Accredited Wholesale Distributor (VAWD) program or other nationally recognized accreditation program or contract inspection service; or

(b) That it is a small business as defined in ORS 183.310(10); and

(A) The applicant has no affiliation with any out-of-state pharmaceutical company; and

(B) All owners and principals of the applicant are Oregon residents; and

(C) No owner or principal, or close family member of an owner or principal, has a controlling or business interest in any other pharmaceutical company; and

(D) Neither the applicant, nor any of its owners or principals, has ever been found to be in violation of any drug law or regulation in this or any other state.

(7) Notwithstanding the requirements of sections (5) and (6) of this rule, upon written request, the Board may waive any of the requirements of this rule if a waiver will further public health or safety. A waiver granted under this section shall only be effective when it is issued in writing.

(8) In addition to the above registration requirements, an applicant for registration as a Class 1 wholesaler under this rule must provide evidence that it has obtained a bond or equivalent means of security of at least \$100,000 that provides direct access to the Oregon Board of Pharmacy as a beneficiary to secure payment of any administrative penalties that may be imposed by the Board and any fees and costs that may be incurred by the Board and that:

(a) Are related to a registration held by the wholesale distributor; and

(b) Are authorized under Oregon law; and

(c) The wholesale distributor fails to pay less than thirty days after the penalties, fees, or costs become final.

(9) The Board may make a claim against a bond or security posted under section (8) of this rule within one year after the wholesale distributor's registration is no longer valid or sixty days after the conclusion of whichever occurs later:

(a) An administrative or legal proceeding before or on behalf of the Board that involves the wholesale distributor and results in penalties, fees or costs; or

(b) An appeal of such a proceeding.

(10) Where operations are conducted at more than one location by a single wholesale drug outlet, each such location that does business in Oregon must be registered by the Board.

(11) The registrant must notify the Board, within 15 days, of any substantial change to the information provided on the registration application. Substantial change shall include but not be limited to: change of ownership; change of business address; change of normal business hours; any disciplinary action taken or pending by any state or federal authority against the registrant, or any of its principals, owners, directors, officers, or designated representatives.

(12) The registration certificate is issued to a specific person and is non-transferable. Additions or deletions of an owner or partner shall be considered as a change of ownership.

(13) A new registration form is required for a change of ownership or location and must be submitted to the Board with the fees as specified in OAR 855-110-0007 within 15 days of the change.

(14) The registration fee cannot be prorated.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 475.125, 689.155, 689.305, 689.315 & 689.325

Hist.: BP 12-2006, f. & cert. ef. 12-19-06

ADMINISTRATIVE RULES

855-065-0007

Minimum Qualifications

The Board may deny an application for an initial registration or renewal of registration as a wholesale distributor on any of the following grounds:

- (1) The applicant has been found by the Board or by a court to have violated the pharmacy or drug laws or rules of this state or of any other state or of the federal government.
- (2) The applicant has been convicted of any offence under federal, state, or local laws.
- (3) The applicant has a history of non-compliance with state or federal rules or laws regulating the manufacture, distribution, or dispensing of drugs.
- (4) The applicant has made a material misrepresentation to the Board in the course of applying for an initial.
- (5) Disciplinary action has been taken by the federal government or by any state, or local government regarding any license or registration currently or previously held by the applicant for the manufacture, distribution or dispensing of any drugs.
- (6) The applicant has engaged in any conduct involving moral turpitude.
- (7) The Board determines that granting the registration is not consistent with the public health or safety or is otherwise not in the public interest.

Stat. Auth.: ORS 689.205
Stats. Implemented: ORS 475.135, 689.155, 689.305, 689.315 & 689.405
Hist.: PB 3-1992, f. & cert. ef. 3-26-92 (and corrected 4-8-92); BP 12-2006, f. & cert. ef. 12-19-06

855-065-0009

Personnel

As a part of the registration or re-registration application, an applicant for registration as a Class I Wholesaler must name a Designated Representative (DR) for each wholesale distributor registered under these rules. The DR must:

- (1) Be employed in a full-time managerial position by the wholesale distributor and may not be listed as the DR for more than one registrant without the specific written authority of the Board.
- (2) Have at least two years verifiable full-time managerial or supervisory experience in a pharmacy or with a wholesale distributor registered under these rules or with another state.
- (3) Have verifiable experience in record keeping and storage of prescription drugs.
- (4) Be actively involved in and aware of the daily operations of the wholesale distributor.
- (5) Be knowledgeable about all policies and procedures of the wholesale distributor.
- (6) Be physically present at the wholesale distributor during normal business hours, which must be posted to be visible to the public, except when absent due to emergency, authorized absence or legitimate business reason (as used in this rule, "normal business hours" means at least six hours between 6.00 am and 7.00 pm on at least five days between Monday and Saturday every week, excluding national and local holidays). Class I wholesalers located within Oregon must designate a replacement DR and notify the Board accordingly, when any absence of the DR exceeds 15 days.
- (7) The DR must conduct a self-inspection of the facility by September 1 each year, and document the results of this self-inspection on Oregon Wholesaler Self-Inspection Form provided by the Board. The DR must certify in writing, under penalties of perjury, that the information recorded on the Oregon Wholesaler Self-Inspection Form is correct. This form must be retained for three years and must be made available to the Board within two days upon request.
- (8) The DR must ensure that the wholesale drug outlet has policies and procedures in effect and implemented to ensure that the outlet employs adequate personnel with the education and experience necessary to engage in the wholesale distribution of drugs safely and lawfully.

Stat. Auth.: ORS 689.205
Stats. Implemented: ORS 689.155 & 689.315, 689.325
Hist.: PB 3-1992, f. & cert. ef. 3-26-92 (and corrected 4-8-92); BP 12-2006, f. & cert. ef. 12-19-06

855-065-0010

Minimum Requirements for Record Keeping and Inventory Management

(1) A Wholesale distributor must establish and maintain inventories and records of all transactions regarding the receipt and distribution or

other disposition of drugs. These records must comply with all federal drug laws and regulations and must include the following information:

- (a) The source of the drugs, including the name and physical address of the seller or transferor and any broker or other person involved in the transaction, the address of the location from which the drugs were shipped and the address of the location the drugs were shipped to;
 - (b) The identity and quantity of the drugs received and distributed or disposed of;
 - (c) The dates of receipt and distribution or other disposition of the drugs; and
 - (d) A pedigree as defined in OAR 855-065-0005(17) for any prescription drug that leaves the normal chain of distribution as defined by OAR 855-065-0005(16). All pedigrees initiated after January 1, 2009 must be in electronic form except that the Board may extend this date if it appears that the necessary technology is not adequately deployed across the pharmaceutical supply chain.
- (2) Inventories and records required by this rule must be made available for inspection and copying by any authorized official of the Drug Enforcement Agency, the Food and Drug Administration, the Department of Agriculture, law enforcement agencies, and this Board.
- (3) Inventories and records required under these rules must be maintained for three years following disposition of the drugs.
- (4) Records described in this section that are less than 13 months old must be kept at the inspection site or be immediately retrievable by computer or other electronic means, and must be immediately available for inspection. All other records required by this rule must be made available for inspection within three business days of a request.

(5) A wholesale distributor must establish, maintain, and adhere to written policies and procedures for the receipt, security, storage, inventory, transport, shipping and distribution of drugs, including policies and procedures for identifying, recording, and reporting any loss, theft, counterfeiting or diversion of any drug and for correcting all errors and inaccuracies in inventories. A wholesale distributor must include in its written policies and procedures the following:

- (a) A procedure whereby the oldest approved stock of a drug is distributed first. The procedure may permit deviation from this requirement if such deviation is temporary and appropriate.
- (b) A procedure to be followed for handling a recall or withdrawal of a drug. Such procedure must be adequate to deal with a recall or withdrawal due to:
 - (A) Any action initiated at the request of the Food and Drug Administration or other federal, state, or local law enforcement or other government agency, including the Board;
 - (B) Any voluntary action by the manufacturer to remove a defective or potentially defective drug from the market; or
 - (C) Any action undertaken to promote public health and safety by replacing an existing drug with an improved product or new package design.
- (c) A procedure to prepare for, protect against, and handle any crisis that affects the security or operation of the facility in the event of strike, fire, flood, or other natural disaster, or other local, state, or national emergencies.
- (d) A procedure to ensure that any outdated drug is segregated from other drugs and either returned to the manufacturer or destroyed. This procedure must provide for written documentation of the disposition of an outdated drug. This documentation must be maintained for three years after disposition of the outdated drug.
- (e) Disposition and destruction of containers, labels, and packaging to ensure that the containers, labels, and packaging are not used in counterfeiting activities, including necessary documentation and witnessing in accordance with state and federal law.
- (f) Investigation of discrepancies in the inventory involving counterfeit, suspected counterfeit, contraband, or suspected contraband drugs and reporting of discrepancies within three business days to the Board and any other appropriate state or federal agency.
- (g) Reporting of criminal or suspected criminal activities involving the inventory of drugs to the Board within three business days.
- (h) Conducting for cause authentication as required under section (7) of this rule.
 - (i) Procedures for accurately documenting the temperature and humidity conditions of the storage facility.
- (6) A wholesale distributor must maintain and adhere to written policies and procedures for all incoming and outgoing product shipments, including but not limited to the following:

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(a) Upon receipt, visual examination of each shipping container sufficient to identify the drugs in the container and to determine whether the drugs may be outdated, adulterated, misbranded, contaminated, contraband, counterfeit, damaged, or otherwise unfit for distribution.

(b) Upon receipt, review of records for accuracy and completeness, considering the:

(A) Total facts and circumstances surrounding each transaction involving the drugs; and

(B) Wholesale distributors involved.

(c) Quarantine of a drug considered to be outdated, adulterated, misbranded, contaminated, contraband, counterfeit, damaged, or otherwise unfit for distribution until:

(A) Examination and a determination is made that the drug is fit for distribution; or

(B) The drug is destroyed or returned to the manufacturer or wholesale distributor from which the drug was acquired.

(d) If the wholesale distributor determines that a drug is adulterated, misbranded, counterfeit, the wholesale distributor must provide notice of the adulteration, misbranding or counterfeiting to the Board, the Food and Drug Administration, and the manufacturer or wholesale drug distributor from which the drug was acquired, within three business days.

(e) If the immediate or sealed outer or secondary container or labeling of a drug is adulterated, misbranded, counterfeit, or suspected counterfeit, the wholesale distributor must:

(A) Quarantine the drug until the drug is destroyed or returned to the manufacturer or wholesale distributor from which the drug was acquired; and

(B) Provide notice of the adulteration, misbranding, counterfeiting, or suspected counterfeiting to the Board, the Food and Drug Administration, and the manufacturer or wholesale distributor from which the drug was acquired, within three business days.

(f) A drug that is not adulterated, misbranded, counterfeit, or suspected counterfeit, but has been opened or used, is identified as such and quarantined until the drug is destroyed or returned to the manufacturer or wholesale distributor from which the drug was acquired.

(g) A drug that will be returned to a manufacturer or wholesale distributor is stored, handled and transported under proper conditions before the return, and documentation showing that proper conditions were maintained must be provided to the manufacturer or wholesale distributor to which the drug is returned.

(h) Inspection of each outgoing shipment to verify the identity of each drug and to ensure that each drug has not been damaged in storage or held under improper conditions.

(i) Contraband, counterfeit, or suspected counterfeit drugs, other evidence of criminal activity, and accompanying documentation are retained until a disposition is authorized by the Board or the Food and Drug Administration.

(j) Any sealed outer or secondary shipping container or labeling, and accompanying documentation, for a drug that is suspected to be counterfeit or fraudulent, is retained until a disposition is authorized by the Board and the Food and Drug Administration.

(k) Operations comply with all state and federal laws, rules and regulations applicable to wholesale drug distribution.

(l) All confidential information is stored in an area with restricted access and in such a way as to protect the integrity and confidentiality of the information.

(7) A wholesale distributor that has reason to suspect that a drug may be adulterated, misbranded, contaminated, contraband, counterfeit or otherwise unfit for distribution must conduct a "for cause" authentication of each distribution of the drug back to the manufacturer.

(8) A wholesale distributor that has engaged in the distribution of a drug for which a purchasing wholesale distributor conducts a "for cause" authentication must provide, upon request, detailed information regarding the distribution of the drug, including:

(a) The date of purchase of the prescription drug;

(b) The lot number of the prescription drug;

(c) The sales invoice number of the prescription drug; and

(d) Contact information, including name, address, telephone number, and electronic mail address of the wholesale distributor that sold the prescription drug.

(9) A wholesale distributor that purchases prescription drugs from another wholesale distributor must conduct a random authentication of at least 10 per cent of the pedigrees required under section (1)(d) of this rule, at least annually.

(10) If a wholesale distributor conducts an authentication of a drug pedigree, the wholesale distributor must maintain such records for three years and must produce the records for the Board and the Food and Drug Administration upon request.

(11) If a wholesale distributor conducts an authentication and is unable to authenticate each distribution of the prescription drug, the wholesale distributor must immediately quarantine the prescription drug and report the circumstances to the Board, and the Food and Drug Administration if applicable, not more than 10 business days after completing the attempted authentication.

(12) If the wholesale distributor is involved in the distribution of controlled substances, the distributor must register with the Drug Enforcement Administration and the Board, and comply with all laws related to the storage, handling, transport, shipment, and distribution of controlled substances including, but not limited to, the isolation of controlled substances from non-controlled substances and storage of the controlled substances in a secure area in accordance with Drug Enforcement Administration security requirements and standards.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.155, 689.315, 689.325 & 689.765

Hist.: 1PB 2-1979(Temp), f. & ef. 10-3-79; 1PB 2-1980, f. & ef. 4-3-80; PB 3-1992, f. & cert. ef. 3-26-92 (and corrected 4-8-92); BP 12-2006, f. & cert. ef. 12-19-06

855-065-0012

Storage of Drugs

(1) As a condition for receiving and retaining a wholesale distributor registration issued under these rules, an applicant must satisfy the Board that the applicant has and will continuously maintain acceptable storage and handling conditions and facilities standards for each facility at which drugs are received, stored, warehoused, handled, held, offered, marketed, or displayed, or from which drugs are transported, including:

(a) Suitable construction of the facility and appropriate monitoring equipment to ensure that drugs in the facility are maintained in accordance with labeling or in compliance with official compendium standards.

(b) Suitable size and construction to facilitate cleaning, maintenance, and proper wholesale distribution operations.

(c) Adequate storage areas to provide appropriate lighting, ventilation, temperature, sanitation, humidity, space, equipment, and security conditions.

(d) A quarantine area for the separate storage of drugs that are outdated, damaged, deteriorated, misbranded, adulterated, counterfeit, suspected counterfeit, otherwise unfit for distribution, or contained in immediate or sealed secondary containers that have been opened.

(e) Maintenance of the facility in a clean and orderly condition.

(f) Maintenance of the facility in a commercial, nonresidential building.

(g) Freedom of the facility from infestation by insects, rodents, birds or vermin of any kind.

(2) The facility must be equipped with appropriate manual, electro-mechanical, or electronic temperature and humidity recording equipment, devices, and logs to document proper storage of drugs.

(3) The facility must meet security standards including but not limited to:

(a) Access controls that restrict access to areas where drugs are held, to authorized personnel.

(b) An after hours central alarm or a comparable entry detection system.

(c) Adequate outside perimeter lighting.

(d) Safeguards against theft and diversion, including employee theft and theft or diversion facilitated or hidden by tampering with computers or electronic records.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.155 & 689.305

Hist.: BP 12-2006, f. & cert. ef. 12-19-06

855-065-0013

Prohibited Practices

(1) The following practices are expressly prohibited:

(a) A wholesale distributor may not purchase drugs from a closed-door pharmacy.

(b) A wholesale distributor may not sell, distribute or transfer a drug to a person who is required by the laws and rules of Oregon to be registered with the Oregon Board of Pharmacy and who is not appropriately registered by the Board. Before furnishing a drug to any person not known to the wholesale distributor, the wholesale distributor must verify that the person is legally authorized to receive the drug.

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(c) A wholesale distributor may not purchase any drug from a person who is required by the laws and rules of Oregon to be registered with the Oregon Board of Pharmacy and who is not appropriately registered by the Board. Before purchasing a drug from any person not known to the wholesale distributor, the wholesale distributor must verify that the person is legally authorized to sell the drug.

(d) A Class 1 wholesaler may not purchase any prescription drug from outside the normal chain of distribution, as defined by section 855-065-0005(16) without receiving an accompanying pedigree.

(e) A Class 1 wholesaler may not sell, distribute or transfer a prescription drug to another wholesale distributor, outside the normal chain of distribution as defined by section 855-065-0005(16), without providing a complete pedigree for the prescription drug.

(f) A Class 1 wholesaler who is classified as a "Specialty Wholesaler Distributor" as defined in OAR 855-065-005(20) may not:

(A) Sell, distribute or transfer a prescription drug to a pharmacy or to a practitioner who is licensed to prescribe the prescription drug, without providing a complete pedigree for the prescription drug, unless the prescription drug was purchased directly from the manufacturer or from the manufacturer's authorized distributor of record.

(B) Sell, distribute or transfer a prescription drug to a wholesale distributor, without providing a complete pedigree for the prescription drug.

(2) A wholesaler may not perform, cause the performance of, or aid the performance of any of the following:

(a) The manufacture, repackaging, sale, delivery, holding, or offering for sale of a drug that is adulterated, misbranded, counterfeit, suspected counterfeit, or is otherwise unfit for distribution.

(b) The adulteration, misbranding, or counterfeiting of a drug.

(c) The receipt of a drug that is adulterated, misbranded, stolen, obtained by fraud or deceit, counterfeit, or suspected counterfeit, and the delivery or proffered delivery of the drug for pay or otherwise.

(d) The alteration, mutilation, destruction, obliteration, or removal of the whole or a part of the labeling of a drug or the commission of another act with respect to a drug that results in the drug being misbranded.

(e) The forging, counterfeiting, simulating, or falsely representing a drug using a mark, stamp, tag, label, or other identification device without the authorization of the manufacturer.

(f) The purchase or receipt of a drug from a person that is not registered to distribute drugs to the purchaser or recipient.

(g) The sale or transfer of a drug to a person that is not authorized under the law of the jurisdiction in which the person receives the drug, to purchase or receive drugs from the person selling or transferring the drug.

(h) The failure to maintain or provide records as required under these rules.

(i) Providing the Board, a representative of the Board, or a state or federal official with false or fraudulent records or making false or fraudulent statements regarding a matter related to these rules.

(j) Participating in the wholesale distribution of a drug that was:

(A) Purchased by a public or private hospital or other health care entity under the terms of an "own-use" contract; or

(B) Donated or supplied at a reduced price to a charitable organization; or

(C) Stolen or obtained by fraud or deceit; or

(D) Illegally imported into the USA.

(k) Obtaining or attempting to obtain a drug by fraud, deceit, misrepresentation, or engaging in fraud, deceit, or misrepresentation in the distribution of a drug.

(l) Failing to obtain, authenticate, or provide a required pedigree for a prescription drug.

(m) Receiving a prescription drug through wholesale distribution without receiving a required pedigree attested to as accurate and complete by the wholesale distributor.

(n) Distributing a drug that was previously dispensed by a retail pharmacy or a practitioner.

(o) Failing to report an act prohibited by any of the rules in OAR 855.065 to the appropriate state or federal authorities.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.155, 689.305, 689.315 & 689.765

Hist.: BP 12-2006, f. & cert. ef. 12-19-06

Rule Caption: Update rule to reflect the new Model Rules of Procedure promulgated by the Attorney General.

Adm. Order No.: BP 13-2006

Filed with Sec. of State: 12-19-2006

Certified to be Effective: 12-19-06

Notice Publication Date:

Rules Amended: 855-001-0005

Subject: Housekeeping change to update the rule to reflect the new Model Rules of Procedure promulgated by the Attorney General.

Rules Coordinator: Karen Maclean—(971) 673-0001

855-001-0005

Model Rules of Procedure

The following Model Rules of Procedure promulgated by the Attorney General of the State of Oregon in effect on January 01, 2006, are adopted by the Board by reference. These rules apply to rule making and to the conduct of contested cases, respectively.

(1) OAR 137-001-0005; 137-001-0007; 137-001-0008; 137-001-0009; 137-001-0011; 137-001-0018; 137-001-0030; 137-001-0040; 137-001-0050; 137-001-0060; 137-001-0070; 137-001-0080 and 137-001-0085.

(2) OAR 137-003-0501 to 137-003-0700.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the office of the Attorney General or Board of Pharmacy.]

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.205

Hist.: 1PB 25, f. 3-20-72, ef. 4-15-72; 1PB 31, f. 11-20-73, ef. 12-11-73; 1PB 42, f. & ef. 4-6-76; Renumbered from 855-010-0030; 1PB 7-1978(Temp), f. & ef. 7-1-78; 1PB 9-1978, f. & ef. 10-23-78; 1PB 1-1980, f. & ef. 1-21-80; 1PB 3-1981, f. & ef. 12-15-81; 1PB 2-1987, f. & ef. 3-30-87; PB 5-1988, f. & cert. ef. 10-17-88; PB 4-1992, f. & cert. ef. 8-25-92; PB 1-1996, f. & cert. ef. 4-5-96; BP 1-2001, f. & cert. ef. 3-5-01; BP 4-2002, f. 6-27-02, cert. ef. 7-1-02; BP 5-2004, f. & cert. ef. 10-1-04; BP 13-2006, f. & cert. ef. 12-19-06

Rule Caption: Possession of prescription drugs.

Adm. Order No.: BP 14-2006(Temp)

Filed with Sec. of State: 12-29-2006

Certified to be Effective: 1-1-07 thru 6-29-07

Notice Publication Date:

Rules Amended: 855-050-0070

Subject: Clarify exemptions for restriction on retail sale of prescription drugs. This rule is necessary to assist public officials seeking to enforce the prevention of street sales of illicitly-obtained prescription drugs through prosecution.

Rules Coordinator: Karen Maclean—(971) 673-0001

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

ADMINISTRATIVE RULES

Board of Tax Practitioners Chapter 800

Rule Caption: OAR 800-015-0020 — Continuing Education Program Requirements.

Adm. Order No.: BTP 1-2007

Filed with Sec. of State: 1-12-2007

Certified to be Effective: 2-1-07

Notice Publication Date: 11-1-06

Rules Amended: 800-015-0020

Subject: The proposed amendments to OAR 800-015-0020 were reviewed by the Board's Rules Advisory Committee. These proposed changes will allow licensees continuing education credit for courses relating to computer technology and are for general "housekeeping" & "maintenance" as well as to change language to better reflect the "norm" in industry standards and the practices of other state agencies.

Rules Coordinator: Monica J. Walker—(503) 378-4034

800-015-0020

Continuing Education Program Requirements

(1) Acceptable continuing education is that which contributes directly to the expertise of the individual in the preparation of income tax returns, and is presented by a sponsor who meets the requirements of all Rules. It is the obligation of each licensee to select a course of study which will contribute to his or her competence in the preparation of income tax returns.

(2) The following general subject matters are acceptable to the extent they contribute directly to the expertise of income tax preparation:

- (a) Taxation.
- (b) Practitioner Ethics.
- (c) Accounting and payroll theory.
- (d) Estate, tax or investment planning.
- (e) Computer technology.
- (f) Others, if the licensee can demonstrate a direct relationship to the preparation of a client's income tax returns.

(3) Programs primarily directed towards the licensee's personal benefit, rather than that of his or her clients, and programs relating primarily to general business management, are unacceptable. Some examples of unacceptable subjects are:

- (a) Memory improvement.
- (b) Buying or selling a tax practice.
- (c) Setting fee schedules.
- (d) Character development.
- (e) Behavior modification.
- (f) Business management
- (g) Labor law.
- (h) Economic forecasts.
- (i) Learning to operate office equipment.

(4) Programs must be at least one hour in length, including reasonable breaks, with credit given in whole hours only.

(5) Programs must be conducted by a qualified instructor whose background, training, education or experience make it appropriate for the person to lead a discussion on the subject matter of the particular program.

(6) Licensees may not receive credit for repeat of courses taken within the same continuing education reporting period.

Stat. Auth.: ORS 673.645 - 673.667

Stats. Implemented: ORS 673.645 - 673.667

Hist.: TSE 9, f. & ef. 6-28-76; TSE 1-1979, f. 6-14-79, ef. 6-15-79; TSE 2-1979, f. 9-28-79, ef. 10-1-79; TSE 3-1979, f. 11-28-79, ef. 11-30-79; TSE 2-1980, f. & ef. 5-30-80, Renumbered from OAR 800-020-0045; TSE 1-1985, f. & ef. 1-15-85; TSE 3-1985, f. & ef. 12-5-85; TSE 2-1989, f. & cert. ef. 10-27-89; TSE 8-1992, f. & cert. ef. 12-22-92; TSE 2-1997, f. & cert. ef. 7-2-97; BTSE 1-2001, f. & cert. ef. 4-19-01; BTP 1-2003, f. & cert. ef. 9-23-03; BTP 1-2007, f. 1-12-07, cert. ef. 2-1-07

Rule Caption: 2006 Overhaul of OAR's based on recommendations made by the Rules Advisory Committee and voted on by the Board.

Adm. Order No.: BTP 2-2007

Filed with Sec. of State: 1-12-2007

Certified to be Effective: 2-1-07

Notice Publication Date: 12-1-06

Rules Amended: 800-010-0015, 800-010-0030, 800-010-0040, 800-010-0041, 800-010-0050, 800-015-0005, 800-015-0010, 800-020-0015, 800-020-0030, 800-020-0031, 800-020-0035, 800-020-0065,

800-025-0023, 800-025-0027, 800-025-0040, 800-025-0050, 800-025-0060, 800-025-0070

Subject: The amendments to the OARs were recommended by the Board's Rules Advisory Committee and are for general "housekeeping" & "maintenance" as well as to change language to better reflect the "norm" in industry standards and the practices of other state agencies. In addition, the proposed amendments will provide better clarification to constituents as well as continue to conform to the current standards the Board is operating under.

Rules Coordinator: Monica J. Walker—(503) 378-4034

800-010-0015

Definitions

As used in these rules, unless the context requires otherwise:

(1) "Board" means the State Board of Tax Practitioners.

(2) "Client" means a person for whom a licensee performs or agrees to perform professional services for a fee and the services are related directly or indirectly to the client's personal income taxes.

(3) "Confidential Information" means information furnished to a licensee for, or in connection with, the preparation of a client's income tax return.

(4) "Designated Consultant" means a Licensed Tax Consultant who is the responsible individual for the preparation of all personal income tax returns prepared for the public for each registered business.

(5) "Licensee" means a Licensed Tax Consultant, Licensed Tax Preparer, or any person, corporation, firm or partnership falling within the purview of ORS 673.605 to 673.735.

(6) "Resident Consultant" means the Licensed Tax Consultant who is physically present to conduct and carryout his/her duties in the principal or branch office.

(7) "Tax Consultant or Tax Preparer Practice" and a licensee's "professional practice" means any service performed or supervised by the licensee for a client, including any advice or recommendation made by the licensee to the client, when it is related directly or indirectly to the client's personal income tax return, if the licensee also prepares the client's personal income tax returns.

(8) "Tax Preparation Business" means a sole proprietorship, partnership, corporation or other entity that offers personal income tax preparation services to the public, for a fee, whether operated under an individual's own name or under an assumed business or corporate name, and including tax preparation businesses operated on a full- or part-time basis.

(9) "Valuable Consideration", as used in ORS 673.615 and OAR chapter 800, means a benefit that accrues to a person as a result of preparing, advising or assisting in the preparation of personal tax returns for others, or offering to perform such services. Valuable consideration need not be translatable into dollars and cents.

Stat. Auth.: ORS 673

Stats. Implemented:

Hist.: TSE 6, f. & ef. 1-5-76; TSE 2-1982, f. & ef. 5-10-82; TSE 1-1985, f. & ef. 1-15-85; TSE 6-1986, f. & ef. 12-31-86; TSE 3-1987, f. & ef. 10-2-87; TSE 1-1990, f. & cert. ef. 1-25-90; TSE 4-1991, f. & cert. ef. 10-28-91; BTP 3-2005, f. 8-31-05, cert. ef. 9-1-05; BTP 2-2007, f. 1-12-07, cert. ef. 2-1-07

800-010-0030

Accountability

(1) A Licensed Tax Consultant or registered business shall only allow persons to practice in the consultant's or business' name who are licensed as tax consultants, tax preparers, or described in ORS 673.610.

(2) A Licensed Tax Consultant shall not permit the use of the consultant's license to enable others to establish and carry on a business for the preparation of personal income tax returns wherein the consultant's only interest is the receipt of a fee for use of the consultant's license and the Licensed Tax Consultant does not provide supervision of the tax preparation activities as defined in OAR 800-025-0050.

(3) A Licensed Tax Consultant or a Licensed Tax Preparer shall not state or imply that a Licensed Tax Preparer preparing tax returns to which the consultant's license number or business information is affixed is not:

- (a) Fully subject to the supervision of the Licensed Tax Consultant or registered business; as defined in OAR 800-025-0050; or
- (b) Acting as agent of the Licensed Tax Consultant or registered business.

(4) A Licensed Tax Preparer shall not engage in the preparation of tax returns, assist in such preparation, gather tax information, or provide tax advice unless the Licensed Tax Preparer is under the supervision of a Licensed Tax Consultant as defined in OAR 800-025-0050.(5) A licensee shall not maintain a financial interest in or hold an employment position

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with any business entity that offers personal income tax preparation services, if any other person maintains a financial interest in the entity, or holds a management position involving authority over the business operations of the entity, and:

(a) That person's tax consultant's or tax preparer's license has been permanently revoked; or

(b) The Board has refused to issue or renew a license to that person; or

(c) Another state regulatory agency or the Internal Revenue Service has revoked or refused to issue or renew an occupational license, registration or permit held or requested by that person, for conduct involving tax preparation or dishonesty.

(6) If required to do so under section (5) of this rule, a licensee shall be allowed a reasonable time, not to exceed 180 days, to sever an existing relationship with a person whose license is revoked or refused.

(7) Section (5) of this rule does not apply to a licensee or a person described in subsections (5)(a) through (c) of this rule, whose only financial interest in a tax preparation business is the ownership of ten percent or less of the stock in a publicly-held corporation.

Stat. Auth.: ORS 673
Stats. Implemented:
Hist.: TSE 6, f. & ef. 1-5-76; TSE 1-1979, f. 6-14-79, ef. 6-15-79; TSE 1-1985, f. & ef. 1-15-85; TSE 8-1987, f. & ef. 12-21-87; BTSE 1-2001, f. & cert. ef. 4-19-01; BTP 2-2007, f. 1-12-07, cert. ef. 2-1-07

800-010-0040 Identification

(1) A licensee shall include the business name, permanent address, and signature on the original and all copies of federal and state personal income tax returns or electronic filing documents prepared by the licensee, together with all other data required of by the Internal Revenue Service, Department of Revenue, and State Board of Tax Practitioners. Office copies are exempt from this requirement.

(2) Where the licensee's signature appears on the tax return, there shall be included the State license number of the Licensed Tax Consultant responsible for the preparation and the State license number of the Licensed Tax Preparer preparing the return.

(3) In addition to the original copies of returns provided to or filed on behalf of a client, at least one duplicate copy of the complete set of the returns, including all accompanying forms and schedules, shall be supplied to the client. A licensee is not required to provide duplicate records to a client more than once. However, in the case of a joint return, each spouse is entitled, upon request, to a copy of the return.

Stat. Auth.: ORS 673.730(5)
Stats. Implemented:
Hist.: TSE 6, f. & ef. 1-5-76; TSE 12, f. & ef. 9-20-77; TSE 1-1978, f. & ef. 2-3-78; TSE 2-1982, f. & ef. 5-10-82; TSE 1-1985, f. & ef. 1-15-85; TSE 2-1995, f. & cert. ef. 5-5-95; BTSE 1-2001, f. & cert. ef. 4-19-01; BTP 2-2007, f. 1-12-07, cert. ef. 2-1-07

800-010-0041 Address and Telephone

Licenses shall file with the Board their current residence address, email address and telephone number. Licensees shall also file with the Board their current business address, telephone number and a year-round address and telephone number where clients and the Board may contact the licensee. Whenever any of the information required in this section changes, the licensee shall immediately notify the Board.

Stat. Auth.: ORS 673
Stats. Implemented:
Hist.: TSE 1-1985, f. & ef. 1-15-85; BTP 2-2007, f. 1-12-07, cert. ef. 2-1-07

800-010-0050 Advertising and Solicitation

(1) As used in this rule, "advertise" and "advertising" means any form of printed, broadcast or electronic material that makes known professional tax services. This includes, but is not limited to, business cards and business stationery of an individual or business that offers such services.

(2) No licensee or tax preparation business shall advertise or solicit clients in a false, fraudulent, deceptive or misleading manner.

(3) All advertising must be in the name of a firm that has complied with ORS 673.643 or in the name of a Licensed Tax Consultant.

(a) Only a person holding a valid Tax Consultant's License may use the designation "L.T.C." or the titles "Licensed Tax Consultant" or "Tax Consultant."

(b) Only a person holding a valid Tax Preparer's License may use the designation "L.T.P." or the title "Licensed Tax Preparer."

(4) All advertising must be reviewed and approved in advance by the designated Licensed Tax Consultant. The designated Licensed Tax

Consultant and the designating business shall each be responsible for the business's compliance with the provisions of this rule.

(5) No licensee shall give or offer to give a discount unless:

(a) The discount is based upon a conspicuously posted basic fee schedule at the licensee's place of business; and

(b) The fees on the posted basic fee schedule are the usual and customary charges of the business; and

(c) The posted basic fee schedule is made available to the general public.

Stat. Auth.: ORS 673.663

Stats. Implemented:

Hist.: TSE 6, f. & ef. 1-5-76; TSE 2-1981(Temp), f. 2-18-81, ef. 2-19-81; TSE 3-1981, f. 7-22-81, ef. 7-23-81; TSE 4-1981, f. & ef. 8-13-81; TSE 3-1982, f. & ef. 11-19-82; TSE 1-1985, f. & ef. 1-15-85; TSE 3-1986, f. & ef. 7-14-86; TSE 2-1990, f. & cert. ef. 1-25-90; TSE 2-1992, f. & cert. ef. 5-15-92; BTSE 1-2001, f. & cert. ef. 4-19-01; BTP 2-2007, f. 1-12-07, cert. ef. 2-1-07

800-015-0005

Basic Education

(1) An accredited college/university, educational service district (ESD), or a private firm that has met or is exempt from the registration requirements of the Oregon Department of Education or a private firm offering classes only to its own employees and is exempt from the Oregon Department of Education requirements may act as a sponsor for the basic income tax course.

(2) Sponsors shall apply for course certification on a form provided by the Board.

(3) A basic course shall include:

(a) At least 80 classroom hours of basic tax preparation instruction. If the course is offered through correspondence, it must be the equivalent of 80 classroom hours of instruction;

(b) Instruction in each of the subject areas specified in the Preparer Examination Index maintained by the Board;

(c) Sufficient working problems to instruct in the use of appropriate forms and schedules; and

(d) A midterm and final examination.

(4) The Board may require that a sponsor applicant submit evidence that course materials and lesson plans comply with section (3) of this rule.

(5) Basic course sponsors shall employ only instructors to teach basic courses who are actively licensed or who fall within the exemptions of ORS 673.610(2)(4) and who prepared taxes for at least two (2) tax seasons immediately prior to teaching the course.

(a) The Board may grant a specific waiver to instructor qualifications when unusual or extenuating circumstances exist.

(b) Sponsors shall submit to the Board the names and qualifications of instructors teaching each basic course.

(c) Repeated low passage rates of an instructor's students on the tax preparers' examination is evidence that the instructor may not be qualified to teach a basic tax preparation course.

(d) The instructor's approval to teach Basic Tax Preparation courses may be revoked at the option of the Board.

(6) Evidence of successful course completion shall be furnished to students by course instructors on a Board-approved session attendance certification form. Forms may be reproduced by course sponsors. If a student misses a portion of the class sessions, the instructor may provide makeup work.

(7) Applications for course certification shall be submitted annually at least 60 days prior to the course starting. Certification shall be for the subsequent 12 months.

(8) The Board may refuse to issue or withdraw a course certification for failure to meet any of the course or instructor requirements contained in this rule.

Stat. Auth.: ORS 673.625(1)

Stats. Implemented:

Hist.: TSE 9, f. & ef. 6-28-76; TSE 1-1979, f. 6-14-79, ef. 6-15-79; TSE 2-1979, f. 9-28-79, ef. 10-1-79; TSE 3-1979, f. 11-28-79, ef. 11-30-79; Renumbered from OAR 800-020-0040 by TSE 2-1980, f. & ef. 5-30-80; TSE 3-1982, f. & ef. 11-19-82; TSE 1-1985, f. & ef. 1-15-85; TSE 3-1990, f. & cert. ef. 1-25-90; TSE 7-1992, f. & cert. ef. 12-22-92; BTSE 1-2001, f. & cert. ef. 4-19-01; BTP 1-2003, f. & cert. ef. 9-23-03; BTP 3-2005, f. 8-31-05, cert. ef. 9-1-05; BTP 2-2007, f. 1-12-07, cert. ef. 2-1-07

800-015-0010

Continuing Education

(1) Except for renewal of an initial license, a Licensed Tax Consultant or Licensed Tax Preparer renewing a license shall submit evidence of attending at least 30 hours of acceptable continuing education since the last renewal date.

(2) Continuing education credit will be accepted only for courses and seminars that comply with all Board rules regarding continuing education.

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(3) The Board may verify continuing education information submitted by licensees.

(4) Education hours earned in excess of 30 hours annually cannot be carried over from one renewal period to the next, except extra hours earned during the month of renewal may be withheld by the licensee and submitted with the following year's renewal.

(5) Continuing education credit shall be granted only once during a license year for attendance at or instruction of duplicate seminars offered by the same sponsor.

(6) Continuing education credit for courses at accredited universities and colleges will be 15 hours for each semester hour credit and 10 hours for each quarter hour credit. For all other courses and seminars, one hour of continuing education credit will be allowed for each hour of classroom attendance.

(7) Continuing education credit may be accepted for instructors of basic or advanced courses or seminars. The credit allowed will be two hours for each hour of teaching, which includes preparation time. No more than 1/2 of total required continuing education credit can be in teaching.

(8) Correspondence study courses may be accepted if the program and sponsor comply with all Board rules regarding continuing education and:

(a) The sponsor requires evidence of satisfactory completion of workbooks or examinations before certificates are issued.

(b) The hours credited do not exceed the credit that would be allowed in a resident course covering the same material; and

(c) A course outline with accompanying workbooks or exams is submitted to the Board, prior to offering the material, for approval of course content and hours of credit claimed.

(9) "In-Company" instruction may be accepted if the course or seminar is

presented to ten or more people and all other requirements for continuing education sponsors are met. Portions of such educational sessions devoted to administrative and firm matters shall not be accepted.

(10) If a licensee claims credit for a course or seminar in the reasonable belief the instruction qualifies as acceptable continuing education, but the Board finds all or part of the hours claimed to be unacceptable, the licensee may be granted an additional period of time, not to exceed 60 days, to make up the rejected hours.

(11) Licensed Tax Consultants and Licensed Tax Preparers who have extenuating circumstances and are unable to obtain all their continuing education by their license due dates may make application, by completing a form prescribed by the Board, for a waiver of continuing education hours.

Stat. Auth.: ORS 673.645 - 673.667

Stats. Implemented: ORS 673.645 - 673.667

Hist.: TSE 9, f. & ef. 6-28-76; TSE 1-1979, f. 6-14-79, ef. 6-15-79; TSE 2-1979, f. 9-28-79, ef. 10-1-79; TSE 3-1979, f. 11-28-79, ef. 11-30-79; TSE 2-1980, f. & ef. 5-30-80, Renumbered from OAR 800-020-0045; TSE 3-1980, f. & ef. 8-22-80; TSE 2-1982, f. & ef. 5-10-82; TSE 3-1982, f. & ef. 11-19-82; TSE 1-1985, f. & ef. 1-15-85; TSE 3-1985, f. & ef. 12-5-85; TSE 9-1987, f. & ef. 12-21-87; TSE 1-1997, f. & cert. ef. 7-2-97; BTSE 1-2001, f. & cert. ef. 4-19-01; BTP 1-2003, f. & cert. ef. 9-23-03; BTP 3-2005, f. 8-31-05, cert. ef. 9-1-05; BTP 2-2007, f. 1-12-07, cert. ef. 2-1-07

800-020-0015

Application for Examination

(1) Application to take the examination for a tax preparer or tax consultant must be filed with the Board on forms prescribed and furnished by the Board, together with the examination fee. The application must be signed.

(2) The application and examination fee shall be filed with the Board no later than one month prior to the examination date, except when the Board sets tighter deadlines due to extenuating circumstances.

(3) Completed basic course certification forms as required under OAR 800-015-0005(6) shall be submitted to the Board by the student with the application for a Tax Preparer License. The preparer applicant may file an application to take the examination before completing the basic tax course. Applicants shall furnish the Board a brief outline of courses completed, together with a transcript from the educational institution if the course(s) they completed has/have not received prior approval from the Board. If the agency determines the course(s) completed is/are comparable to those described in OAR 800-015-0005, the applicant shall be eligible to take the examination.

(4) A tax consultant applicant who is a Licensed Tax Preparer shall submit verification by the applicant's employer or employers, on forms prescribed and furnished by the Board, that the applicant has worked in the capacity as a Licensed Tax Preparer for not less than a cumulative total of 780 hours during at least two of the last five years.

(5) A tax consultant applicant who is claiming equivalent tax preparer experience shall submit on forms prescribed and furnished by the Board:

(a) Verification by the applicant's employer or employers that the applicant has worked in the capacity as a Licensed Tax Preparer for not less than a cumulative total of 780 hours during at least two of the last five years.

(i) The Board will accept employment as an income tax auditor or taxpayer service representative with the Internal Revenue Service or State Department of Revenue as being equivalent experience.

(ii) For the purpose of meeting the work experience requirement for tax consultants, one hour of experience gained through volunteer tax preparation programs such as VITA and AARP-TCE will be accepted for each five hours spent preparing, advising or assisting in the preparation of tax returns through the volunteer program, up to a maximum of 150 hours credited. To qualify for the one to five hour experience credit, total hours worked in the volunteer program must be verified in writing by a supervisor.

(b) To claim experience under this section, the applicant must submit a petition signed under penalty of perjury that the work experience claimed is true, correct and complete.

(6) Applicants for the tax consultant examination must have completed, within a year prior to submitting application, a minimum of 15 hours of acceptable continuing education in personal income taxation to meet the requirements of OAR 800-015-0010 to 800-015-0030. This requirement is in addition to the required 780 hours of work experience earned during at least two of the last five years.

(7) A tax consultant applicant claiming tax consulting experience in another state shall:

(a) Submit, on a form prescribed and furnished by the Board, a petition signed under penalty of perjury, claiming self-employment as a tax consultant for no less than two of the last five years; and

(b) Furnish documented proof of self-employment as a tax consultant.

(8) A tax preparer or tax consultant applicant who has worked in the capacity as a tax practitioner in another state or in an exempt status may request Board approval to substitute work experience for up to two-thirds of the classroom hours of basic income tax education otherwise required to qualify as a tax preparer or tax consultant. Approval may be granted to substitute experience for education only if:

(a) The applicant was actively engaged in a tax preparation business within two years prior to the date of application;

(b) The applicant has at least three years experience in a tax preparation business;

(c) In the opinion of the Board, the applicant has gained a competency level through work experience that is equal to those applicants who have successfully completed the basic income tax course; and

(d) The applicant submits verification by the applicant's employer(s) or evidence of self-employment regarding the work experience.

(9) The Board may accept education credit for courses completed by a tax consultant applicant to substitute for up to 260 hours of work experience at the rate of one classroom hour of education for five hours of experience if:

(a) The subject matter of the course was related to taxation;

(b) The applicant completed the course within one year of applying to become a Licensed Tax Consultant; and

(c) Credit for the course is not claimed to fulfill continuing education requirements.

(10) Information required of the applicant and on the application forms shall be completed before an applicant may be admitted to an examination.

Stat. Auth.: ORS 673.625

Stats. Implemented:

Hist.: TSE 8, f. & ef. 5-19-76; TSE 1-1979, f. 6-14-79, ef. 6-15-79; TSE 2-1979, f. 9-28-79, ef. 10-1-79; TSE 2-1980, f. & ef. 5-30-80; TSE 2-1982, f. & ef. 5-10-82; TSE 3-1982, f. & ef. 11-19-82; TSE 1-1985, f. & ef. 1-15-85; TSE 3-1985, f. & ef. 12-5-85; TSE 4-1988, f. & cert. ef. 11-2-88; TSE 5-1990, f. & cert. ef. 5-3-90; TSE 9-1992, f. & cert. ef. 12-22-92; BTSE 1-2001, f. & cert. ef. 4-19-01; BTP 1-2003, f. & cert. ef. 9-23-03; BTP 1-2005, f. & cert. ef. 1-5-05; BTP 3-2005, f. 8-31-05, cert. ef. 9-1-05; BTP 2-2007, f. 1-12-07, cert. ef. 2-1-07

800-020-0030

Licenses – Renewals and Reactivation

(1) Applicants who pass the required examination and meet all other requirements shall be issued a license upon request and payment of the license fee. The licensee shall be assigned a permanent license number.

(2) Tax preparers' licenses shall expire annually on September 30.

(3) Tax consultants' licenses shall expire annually on May 31.

(4) Renewal licenses shall be issued upon receipt of a signed renewal application notice, proof of required continuing education and the appropriate fee.

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(5) If a tax preparer's or tax consultant's license is suspended or revoked, the individual's license and pocket identification card become the property of the Board and shall, on demand, be delivered by the holder to the Board of Tax Practitioners.

(6) Licenses that have become inactive or lapsed may be reactivated upon receipt of a completed reactivation application form prescribed by the board, proof of required continuing education and the appropriate fee.

Stat. Auth.: ORS 673.730

Hist.: TSE 8, f. & ef. 5-19-76; TSE 1-1979, f. 6-14-79, ef. 6-15-79; TSE 2-1982, f. & ef. 5-10-82; TSE 1-1985, f. & ef. 1-15-85; TSE 2-1986, f. & ef. 7-14-86; TSE 2-1993, f. & cert. ef. 2-23-93; BTP 3-2005, f. 8-31-05, cert. ef. 9-1-05; BTP 2-2007, f. 1-12-07, cert. ef. 2-1-07

800-020-0031

Certificates

(1) A Licensed Tax Consultant's certificate issued by the Board may be displayed by the licensee so long as the licensee holds a current valid license as a Licensed Tax Consultant. If a Licensed Tax Consultant's license has become inactive or lapsed, the holder shall no longer display the certificate.

(2) If a Tax Consultant's license is suspended or revoked, the certificate becomes the property of the Board and shall on demand be delivered by the holder to the Board of Tax Practitioners.

Stat. Auth.: ORS 673.730

Hist.: TSE 13, f. & ef. 9-20-77; TSE 1-1985, f. & ef. 1-15-85; TSE 2-1993, f. & cert. ef. 2-23-93; BTP 2-2007, f. 1-12-07, cert. ef. 2-1-07

800-020-0035

Inactive and Lapsed Status

(1) Except as provided in section (3) of this rule, a license that has become inactive may be reactivated upon payment of the fee for an active license and proof of compliance with all past continuing education requirements the same as if the licensee had held an active license.

(2) Except as provided in section (3) of this rule, a license that has become lapsed may be reactivated to active status upon payment of all past unpaid fees and proof of compliance with all past continuing education requirements the same as if the licensee had held an active license. A license that has become lapsed shall not be placed in inactive status.

(3) A license that has become inactive or lapsed, or a combination thereof, for three consecutive years, shall not be reactivated to active status.

(4) The Board may refuse to reactivate a license that has become inactive or lapsed for the same reasons it may refuse to issue, renew, suspend, or revoke a license.

Stat. Auth.: ORS 673.645, 673.667 & 673.730

Hist.: TSE 8, f. & ef. 5-19-76; TSE 3-1985, f. & ef. 12-5-85; TSE 2-1991, f. & cert. ef. 1-30-91; TSE 6-1992, f. 8-13-92, cert. ef. 8-1-93; TSE 2-1993, f. & cert. ef. 2-23-93; BTSE 1-2001, f. & cert. ef. 4-19-01; BTP 2-2007, f. 1-12-07, cert. ef. 2-1-07

800-020-0065

Displaying of Licenses

Licensed Tax Consultants and Licensed Tax Preparers shall display their licenses in a conspicuous place in their place of business.

Stat. Auth.: ORS 673

Hist.: TSE 8, f. & ef. 5-19-76; TSE 2-1982, f. & ef. 5-10-82; TSE 1-1985, f. & ef. 1-15-85; BTP 2-2007, f. 1-12-07, cert. ef. 2-1-07

800-025-0023

Reporting Closing of Business; Address and Phone Changes

A tax preparation business shall notify the Board within ten days of:

(1) Termination of the tax preparation business;

(2) A change in the address, email address or telephone number of the business.

Stat. Auth.: ORS 673.730(5)

Stats. Implemented:

Hist.: TSE 7-1991, f. & cert. ef. 10-28-91; BTP 2-2007, f. 1-12-07, cert. ef. 2-1-07

800-025-0027

Eligibility for Combined Business Registration and Tax Consultant/Preparer License

(1) A tax preparation business is not eligible for a combined license and registration under OAR 800-020-0025(15) unless at least one of the owners of the business is a Licensed Tax Consultant or Licensed Tax Preparer. As used in this section, "owner" means an individual who owns at least ten percent of the business.

(2) A tax preparation business, including a business that must file a new registration due to a change of name or ownership, is not eligible for a combined license and registration under OAR 800-020-0025(15) unless the registration is submitted:

(a) If a new registration, at the time of application for the owner's tax consultant's or tax preparer's license;

(b) If a renewal registration, before the expiration date of the current registration.

(3) A licensee who owns more than one tax preparation business is eligible for a combined license and business registration under OAR 800-020-0025(15) for only one of the businesses and must pay the business registration fee specified in OAR 800-020-0025(14) for the second and additional businesses.

Stat. Auth.:

Stats. Implemented:

Hist.: TSE 9-1991, f. & cert. ef. 10-28-91; BTP 3-2005, f. 8-31-05, cert. ef. 9-1-05; BTP 2-2007, f. 1-12-07, cert. ef. 2-1-07

800-025-0040

Designated Consultants

(1) A tax preparation business shall not engage in the preparation of personal income tax returns for the public, or offer such services, until the business has designated a Licensed Tax Consultant or other authorized person ("Designated Consultant") as the responsible individual. A form prescribed by the Board shall be signed by the Designated Consultant and signed by the owner or authorized representative of the tax preparation business.

(2) The license number of the Designated Consultant shall be placed on all tax returns prepared by the tax preparation business.

(3) The Designated Consultant shall be responsible for all tax preparation activities of the business, and the Designated Consultant and the designating business shall each be responsible for the business's compliance with laws and rules of the Board.

(4) A Designated Consultant will cease to be responsible for a business's tax preparation services upon receipt by the Board of written notice from the consultant or business.

(5) A Licensed Tax Consultant may act as the Designated Consultant for only one tax preparation business, except by written application for waiver.

(6) An application for waiver to serve as a Designated Consultant for more than one tax preparation business shall set forth the following:

(a) The name and address of the tax preparation business for which the Licensed Tax Consultant is presently serving as the Designated Consultant;

(b) The name and address of the additional tax preparation business for which the Licensed Tax Consultant is requesting approval to serve as the Designated Consultant;

(c) A detailed plan how each tax preparation business will be supervised in carrying out the duties as a Designated Consultant;

(d) The financial relationship of the proposed Designated Consultant and the tax preparation businesses; and

(e) Unusual or extenuating circumstances why approval should be granted.

(7) In determining whether a Licensed Tax Consultant will be approved to act as a Designated Consultant for more than one tax preparation business, the Board:

(a) May approve an application for waiver only wherein the Licensed Tax Consultant has an ownership interest in the tax preparation businesses, or unusual or extenuating circumstances exist, such as the death of a Designated Consultant, resulting in undue hardship. The Board may limit the Licensed Tax Consultant designation period; and

(b) Shall consider the Licensed Tax Consultant's past record of compliance with ORS 673.605 to 673.735, rules of the Board, statutes of the State of Oregon together with information set forth in the application for waiver, particularly the feasibility of the plan in supervising the corporation, firm or partnership.

(8) A tax preparation business shall notify the Board within ten days of any change in status of its Designated Consultant.

Stat. Auth.: ORS 673.730(5)

Stats. Implemented:

Hist.: TSE 8, f. & ef. 5-19-76; TSE 3-1980, f. & ef. 8-22-80; TSE 2-1982, f. & ef. 5-10-82; TSE 3-1982, f. & ef. 11-19-82; TSE 1-1985, f. & ef. 1-15-85; Renumbered from 800-020-0050; TSE 4-1989, f. & cert. ef. 12-20-89; TSE 11-1991, f. & cert. ef. 10-28-91; TSE 10-1992, f. & cert. ef. 12-22-92; BTP 3-2005, f. 8-31-05, cert. ef. 9-1-05; BTP 1-2006, f. & cert. ef. 9-5-06; BTP 2-2007, f. 1-12-07, cert. ef. 2-1-07

800-025-0050

Management and Supervision of Tax Preparation Business

(1) Each principal and branch office must be under the management and supervision of a Licensed Tax Consultant. Supervision means:

(a) The direct and immediate control of the Licensed Tax Preparer by the Licensed Tax Consultant in such manner that the Licensed Tax Consultant is aware of the line of questioning and the reasoning applied by the Licensed Tax Preparer in the preparation of each return, and that the

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Licensed Tax Consultant has adequate opportunity to correct or add to the reasoning applied by the Licensed Tax Preparer; and

(b) A system of selecting, training and controlling the Licensed Tax Preparer, including a set of procedures by which the Licensed Tax Consultant is assured that the Licensed Tax Preparer is providing competent workmanship and abiding by the statutes and Board rules. Such procedures shall include:

(A) An examination and review of all personal income tax returns for errors under the direct supervision of the Licensed Tax Consultant or a Licensed Tax Preparer chosen based on experience and reviewing ability; and

(B) Giving notice to the Licensed Tax Preparer of any adjustments after examination and review; and

(C) Maintaining in principal and branch offices current federal and state personal income tax reference material; and

(D) Providing access to the Licensed Tax Consultant (including telephone or electronic media access from branch offices) so that the Licensed Tax Preparer is encouraged to seek tax law consultation and advice; and

(E) Exercising control by the Licensed Tax Consultant over the tax preparation practices and all other matters governed by the statutes and Board rules in each principal and branch office.

(2) Licensed Tax Preparers who have not had at least one year's tax return preparation experience during the previous five year period must be under the immediate, onsite supervision of more experienced personnel when preparing, advising, or assisting in the preparation of tax returns.

(3) Licensed Tax Consultants who employ any person described in subsection (4) of ORS 673.610 to act in the capacity of Licensed Tax Preparer or Licensed Tax Consultant under their supervision shall report to the Board the names of these persons and the basis for their exemption.

(4) If a Licensed Tax Preparer is found by the Board to be in violation of the statutes or Board rules, the Licensed Tax Consultant responsible for supervision of that Licensed Tax Preparer shall be deemed to be in violation in the same manner and to the same extent, and may be disciplined by the Board regardless of any discipline imposed on the Licensed Tax Preparer, unless the Licensed Tax Consultant demonstrates to the satisfaction of the Board that the circumstances that led to the violation occurred without the permission or knowledge of the Licensed Tax Consultant and that the violation occurred regardless of an adequate system of supervision that would generally prevent such violation. In the case of a corporation, firm, or partnership, both the designated consultant and the corporation, firm, or partnership may be disciplined.

Stat. Auth.: ORS 673.730(5)

Stats. Implemented: ORS 673.615(2)

Hist.: TSE 1-1985, f. & ef. 1-15-85; TSE 2-1996, f. & cert. ef. 12-30-96; BTP 2-2007, f. 1-12-07, cert. ef. 2-1-07

800-025-0060

Consultant in Residence

(1) A Licensed Tax Consultant shall be in residence at each principal and branch office. "Tax consultant in residence" means that a Licensed Tax Consultant is physically present to conduct and carry out his/her duties in the principal or branch office for at least fifty (50) percent of the time an office is open to the public for tax preparation, assistance & advice during each week from January 15 to April 15 or during each month for the remainder of the year.

(2) The Board may waive the Licensed Tax Consultant in residence requirement of subsection (1) upon written application which details how the management and supervision of principal and branch offices will effectively be accomplished. The Board shall grant a waiver only where at least one of the following circumstances exist:

(a) Sickness or death of a Licensed Tax Consultant.

(b) Unforeseen or unusual circumstances.

(3) In granting or denying a written application for waiver, the Board shall evaluate each case on an individual basis, considering the following factors:

(a) Distance between offices supervised by a Licensed Tax Consultant.

(b) Past compliance of waiver applicants with ORS 673.605 to 673.735 and rules of the Board.

(c) Whether the policies and procedures described in the application will result in effective management and supervision of Licensed Tax Preparers in the absence of a resident consultant.

(4) Applicants shall apply annually for waiver of the resident consultant rule. The application shall provide all of the information described in guidelines established by the Board for applying for waivers. Except in emergency circumstances, such as incapacitation, death or resignation of a

resident tax consultant, waiver applications will not be accepted after January 31 for branch offices intended to operate at any time during the period January 1 to April 15 of the same calendar year. Approved waivers shall expire on the expiration date of the associated tax business registration or a date established by the Board.

(5) All applications must be acted upon by a Business Practices Committee consisting of three Board members appointed by the Board chair. Disapproval of an application by the Business Practices Committee may be appealed to the Board.

(6) The supervising Licensed Tax Consultant of an office for which a waiver has been approved shall meet in person with Licensed Tax Preparers in the office at least twice weekly to review the work of each Licensed Tax Preparer and respond to questions.

Stat. Auth.: ORS 673.730(5)

Stats. Implemented: ORS 673.615(2)4

Hist.: TSE 1-1985, f. & ef. 1-15-85; TSE 5-1986, f. & ef. 10-6-86; TSE 6-1987, f. & ef. 10-2-87; TSE 3-1988, f. & cert. ef. 8-26-88; TSE 5-1995, f. & cert. ef. 5-5-95; TSE 2-1996, f. & cert. ef. 12-30-96; BTSE 1-2001, f. & cert. ef. 4-19-01; BTP 3-2005, f. 8-31-05, cert. ef. 9-1-05; BTP 2-2007, f. 1-12-07, cert. ef. 2-1-07

800-025-0070

Keeping of Records

(1) If a Licensed Tax Consultant is employed by another Licensed Tax Consultant, the records shall be kept by the employing Licensed Tax Consultant.

(2) If the Licensed Tax Consultant who has been designated as responsible for the tax return preparation activities and decisions of the corporation, firm or partnership, ceases to be connected with the corporation, firm or partnership the records shall be retained by the corporation, firm or partnership.

Stat. Auth.: ORS 673

Stats. Implemented:

Hist.: TSE 8, f. & ef. 5-19-76; TSE 1-1985, f. & ef. 1-15-85; Renumbered from 800-020-0070; BTP 2-2007, f. 1-12-07, cert. ef. 2-1-07

Bureau of Labor and Industries Chapter 839

Rule Caption: Amends and Extends Residential Rates for Specified Residential Projects.

Adm. Order No.: BLI 44-2006

Filed with Sec. of State: 12-18-2006

Certified to be Effective: 1-1-07

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*, Clark Center Annex, Project #2006-01, dated March 10, 2006, Rate Extension dated June 15, 2006 for the period of July 1, 2006 through June 30, 2007.

(b) *Special Prevailing Wage Rate Determination-Second Rate Extension-for Residential Project*, Headwaters Apartments, Project #2004-06, dated October 14, 2004. Rate Extension dated June 15, 2006, for the period of July 1, 2006 through June 30, 2007.

(c) *Special Prevailing Wage Rate Determination for Residential Project*, New Winds Project, Project #2006-02, dated August 15, 2006, for the period of August 18, 2006 through June 30, 2007.

(d) *Special Prevailing Wage Rate Determination for Residential Project*, Penny Lane Apartments Project, Project #2006-03, dated September 7, 2006, for the period of September 11, 2006 through June 30, 2007.

(e) *Special Prevailing Wage Rate Determination-Second Rate Extension for Residential Project*, Mt. Angel Project, Project #2005-10, dated October 26, 2005, Rate Extension dated December 19, 2006, for the period of January 1, 2007 through March 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

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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.

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

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. 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

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

Adm. Order No.: BLI 45-2006

Filed with Sec. of State: 12-26-2006

Certified to be Effective: 1-1-07

Notice Publication Date:

Rules Amended: 839-025-0700

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

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

839-025-0700

Prevailing Wage Rate Determination/Amendments to Determination

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

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

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

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

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

Stats. Implemented: ORS 279C.815

Hist.: BLI 7-1998(Temp), f. & cert. ef. 10-29-98 thru 4-27-99; BLI 1-1999, f. 1-8-99, cert. ef. 1-15-99; BLI 4-1999, f. 6-16-99, cert. ef. 7-1-99; BLI 6-1999, f. & cert. ef. 7-23-99; BLI 9-1999, f. 9-14-99, cert. ef. 10-1-99; BLI 16-1999, f. 12-8-99, cert. ef. 1-1-00; BLI 4-2000, f. & cert. ef. 2-1-00; BLI 9-2000, f. & cert. ef. 3-1-00; BLI 10-2000, f. 3-17-00, cert. ef. 4-1-00; BLI 22-2000, f. 9-25-00, cert. ef. 10-1-00; BLI 26-2000, f. 12-14-00, cert. ef. 1-1-01; BLI 1-2001, f. & cert. ef. 1-5-01; BLI 3-2001, f. & cert. ef. 3-15-01; BLI 4-2001, f. 3-27-01, cert. ef. 4-1-01; BLI 5-2001, f. 6-21-01, cert. ef. 7-1-01; BLI 8-2001, f. & cert. ef. 7-20-01; BLI 14-2001, f. 9-26-01, cert. ef. 10-1-01; BLI 16-2001, f. 12-28-01, cert. ef. 1-1-02; BLI 2-2002, f. 1-16-02, cert. ef. 1-18-02; BLI 8-2002, f. 3-25-02, cert. ef. 4-1-02; BLI 12-2002, f. 6-19-02, cert. ef. 7-1-02; BLI 16-2002, f. 12-24-02, cert. ef. 1-1-03; BLI 1-2003, f. 1-29-03, cert. ef. 2-14-03; BLI 3-2003, f. & cert. ef. 4-1-03; BLI 4-2003, f. 6-26-03, cert. ef. 7-1-03; BLI 5-2003, f. 9-17-03, cert. ef. 10-1-03; BLI 9-2003, f. 12-31-03, cert. ef. 1-5-04; BLI 1-2004, f. 4-9-04,

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

Rule Caption: Clarify list of alternate requirements defining conduct qualifying as sexual harassment by adding "and."

Adm. Order No.: BLI 46-2006

Filed with Sec. of State: 12-29-2006

Certified to be Effective: 1-3-07

Notice Publication Date: 11-1-06

Rules Amended: 839-005-0030

Subject: This amendment would clarify the introduction of a list of alternate requirements defining types of conduct qualifying as sexual harassment by adding the word "and."

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

839-005-0030

Sexual Harassment

(1) Sexual harassment is unlawful discrimination on the basis of gender and includes the following types of conduct:

(a) Unwelcome sexual advances, requests for sexual favors, or other conduct of a sexual nature when such conduct is directed toward an individual because of that individual's gender and:

(A) Submission to such conduct is made either explicitly or implicitly a term or condition of employment; or

(B) Submission to or rejection of such conduct is used as the basis for employment decisions affecting that individual.

(b) Any unwelcome verbal or physical conduct that is sufficiently severe or pervasive to have the purpose or effect of unreasonably interfering with work performance or creating a hostile, intimidating or offensive working environment.

(2) The standard for determining whether harassment based on an individual's gender is sufficiently severe or pervasive to create a hostile, intimidating or offensive working environment is whether a reasonable person in the circumstances of the complaining individual would so perceive it.

(3) Employer proxy: A employer is liable for harassment when the harasser's rank is sufficiently high that the harasser is the employer's proxy, for example, the respondent's president, owner, partner or corporate officer.

(4) Harassment by Supervisor plus Tangible Employment Action: An employer is liable for sexual harassment by a supervisor with immediate or successively higher authority over an individual when the harassment results in a tangible employment action that the supervisor takes or causes to be taken against that individual. A tangible employment action includes but is not limited to the following:

(a) Terminating employment, including constructive discharge;

(b) Failing to hire;

(c) Failing to promote; or

(d) Changing a term or condition of employment, such as work assignment, work schedule, compensation or benefits or making a decision that causes a significant change in an employment benefit.

(5) Harassment by Supervisor, No Tangible Employment Action: When sexual harassment by a supervisor with immediate or successively higher authority over an individual is found to have occurred, but no tangible employment action was taken, the employer is liable if:

(a) The employer knew of the harassment, unless the employer took immediate and appropriate corrective action.

(b) The employer should have known of the harassment. The division will find that the employer should have known of the harassment unless the employer can demonstrate:

(A) That the employer exercised reasonable care to prevent and promptly correct any sexually harassing behavior; and

(B) That the complaining individual unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to otherwise avoid harm.

(6) Harassment by Co-Workers or Agents: An employer is liable for sexual harassment by the employer's employees or agents who do not have

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immediate or successively higher authority over the complaining individual when the employer knew or should have known of the conduct, unless the employer took immediate and appropriate corrective action.

(7) Harassment by Non-Employees: An employer is liable for sexual harassment by non-employees in the workplace when the employer or the employer's agents knew or should have known of the conduct unless the employer took immediate and appropriate corrective action. In reviewing such cases the division will consider the extent of the employer's control and any legal responsibility the employer may have with respect to the conduct of such non-employees.

(8) Withdrawn Consent: An employer is liable for sexual harassment of an individual by the employer's supervisory or non-supervisory employees, agents or non-employees, even if the acts complained of were of a kind previously consented to by the complaining individual, if the employer knew or should have known that the complaining individual had withdrawn consent to the offensive conduct.

(9) When employment opportunities or benefits are granted because of an individual's submission to an employer's sexual advances, requests for sexual favors, or other sexual harassment, the employer is liable for unlawful sex discrimination against other individuals who were qualified for but denied that opportunity or benefit.

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.029 & 659A.030
Hist.: BLI 19-2000, f. & cert. ef. 9-15-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 46-2006, f. 12-29-06, cert. ef. 1-3-07

Rule Caption: Amendment to make rule consistent with ORS 656.240.

Adm. Order No.: BLI 47-2006

Filed with Sec. of State: 12-29-2006

Certified to be Effective: 1-3-07

Notice Publication Date: 11-1-06

Rules Amended: 839-009-0280

Subject: The current rule would allow an employer to require an employee on Oregon Family Leave whose leave is concurrent with Worker's Compensation leave, to exhaust sick leave benefits during leave. This amendment will make the rule consistent with ORS 656.240 of the Worker's Compensation statutes, which provides that an employer may only require an employee on Worker's compensation leave to use a limited amount of sick leave.

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

839-009-0280

Use of Paid Leave

(1) OFLA leave is unpaid leave except that an employee may use accrued paid vacation leave during OFLA leave, or an employer may require the use of accrued paid leave during OFLA leave, as follows:

(a) An employee may use, or an employer may require the employee to use, accrued vacation or personal leave during OFLA leave;

(b) An employee may use, or an employer may require the employee to use, accrued sick leave during OFLA leave if to do so is consistent with a collective bargaining agreement or the employer's sick leave policy. (For example, if an employee is entitled to take sick leave for the illness of a family member, then the employer must allow, or may require, the employee to use accrued sick leave during OFLA leave for the serious health condition of a family member.)

(c) An employee taking parental leave may use, or the employer may require the employee to use, accrued vacation, personal and sick leave. The employer may not deny the use of accrued sick leave to an employee for the purpose of parental leave, regardless of the employer's regular policy except for the provisions in section (2) of this rule.

(d) As used in subsections (b) and (c) of section (1), accrued sick leave does not include disability insurance or disability benefits.

(2) Notwithstanding the provisions of section (1) of this rule and subject to the terms of a collective bargaining agreement or other written employment agreement, an employer may require an employee to use paid leave during OFLA leave, if available, and may determine the order in which paid leave is to be used if more than one type of leave is available. The employer may exercise these prerogatives only if:

(a) The employer provides written notice to the employee that accrued paid leave is to be used during OFLA leave, prior to the commencement of OFLA leave; or

(b) The employer provides written notice to the employee within two business days of the employee's notice of unanticipated or emergency leave that the employee will be required to use accrued paid leave.

(3) Either the employee or the employer may choose to have OFLA leave for the employee's serious health condition run concurrently with a Workers' Compensation leave for the same health condition. With the employee's consent, the employer may deduct from the employee's accrued sick leave during the concurrent OFLA and Workers' Compensation leaves, provided the payment amount for sick leave deducted makes up for but does not exceed the employee's daily wage that is not covered by time loss benefits. See ORS 656.240.

(4) Either the employee or the employer may choose to have an employee's OFLA leave run concurrently with a type of paid or unpaid leave not referenced in these rules, as provided or allowed under the employer's policy.

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORE 656.240, 659A.150 - 659A.186
Hist.: BL 2-1995, f. 9-8-95, cert. ef. 9-9-95; BLI 5-2000, f. & cert. ef. 2-1-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 47-2006, f. 12-29-06, cert. ef. 1-3-07

Department of Administrative Services Chapter 125

Rule Caption: Rules implement ORS 182.122 by establishing a unified framework for information security across the executive department.

Adm. Order No.: DAS 8-2006

Filed with Sec. of State: 12-28-2006

Certified to be Effective: 12-28-06

Notice Publication Date: 9-1-06

Rules Adopted: 125-800-0005, 125-800-0010, 125-800-0020

Subject: These rules describe the purpose of the states information security efforts and provide common definitions. These rules also describe the actions and explicit accountabilities required to enable a successful enterprise-level approach to information security in the areas of: leadership; planning; policy development and implementation; government-wide coordination; security assessments; incident response; systems management; security awareness and training; enterprise-level reporting; performance management; compliance and oversight; financial management; procurement; agency evaluations; agency responsibilities; approval of agency security plans; security assessments and mitigation of disclosed vulnerabilities; interagency and intergovernmental collaboration; and a state incident response capability. These rule authorize the position and prescribe duties for the position of State Chief Information Security Officer.
Rules Coordinator: Cheryl Knottingham—(503) 378-2349, ext. 325

125-800-0005

Purpose, Application, and Authority

These rules are adopted under 2005 Oregon Laws Chapter 739. These rules set forth the policies for state government-wide information security.

Stat. Auth.: ORS 182.122, 291.038
Stats. Implemented: ORS 182.122
Hist.: DAS 8-2006, f. & cert. ef. 12-28-06

125-800-0010

Definitions

(1) "Incident" means any material adverse event that impairs the confidentiality, integrity or availability of information resources.

(2) "Information Resources" means all categories of automated or non-automated systems and data, including but not limited to, records, files, and databases, information technology equipment, facilities, and software owned or leased by the state.

(3) "Material adverse event" means an adverse event whereby some aspect of computer security could be threatened: loss of data confidentiality, disruption of data or system integrity, or disruption or denial of availability.

(4) "Ordinary Public Access" means unauthenticated access to systems or online resources intentionally provided for public use, such as an agency's public web site.

(5) "Publicly addressable interfaces" means any network device or software application using Internet protocols that can be accessed using addresses that are routable over the public Internet infrastructure, including the state's backbone network.

(6) "Privately addressed interfaces" means any network device or software application using Internet protocols accessed using addresses that

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are not routable over the public Internet infrastructure, including the state's backbone network.

(7) **"State Information Security Plan"** means a compilation of documents including, but not limited to, statutes, administrative rules, policies, and plans, prescribing the information security practices of the State of Oregon.

(8) **"Security Assessment"** means any organized method of determining the risk or vulnerability including, but not limited to: risk assessment; vulnerability assessment; security penetration test, and security audits and reviews.

(9) **"State Shared Computing and Network Infrastructure"** means all network and information assets under the direct control or maintained by the Executive Department.

Stat. Auth.: ORS 184.305; 182.122

Stats. Implemented: 2005 Oregon Laws Chapter 739

Hist.: DAS 8-2006, f. & cert. ef. 12-28-06

125-800-0020

State Information Security

(1) Duties:

(a) Department of Administrative Services (Department): The Department shall serve as the primary point of accountability and coordination for information security in state government except for elected offices as identified in section 4, Elected Offices Exception. The Department, in collaboration with state agencies, shall routinely take necessary actions, proactive and reactive, to protect and verify protection of the state's shared computing and network infrastructure including, but not limited to: active scanning and monitoring; intrusion prevention and detection; scheduled and unscheduled security reviews and compliance audits; protection, containment and mitigation actions taken to address threats, vulnerabilities, and security problems; termination or filtering of connections to mitigate problematic network traffic or unauthorized access; quarantine of infected systems to allow for the forensic identification and analysis of system threats; and the application of other steps and practices as may be required.

(A) **Leadership.** The Department shall provide central leadership for state government-wide information security including, but not limited to: centrally directing and coordinating all enterprise information security activities; determining security risks to the state's Information assets and collaboratively working with state agencies in taking those actions required to mitigate unacceptable risks; collaboratively work with state agencies to determine appropriate state and agency security activities to maintain appropriate levels of security preparedness and competency; reducing the cost of providing security by implementing an enterprise approach; detecting and eliminating unnecessary duplication of efforts and obstacles to forward progress in information security; creating the processes and process linkages necessary to maintain a fully functional state government security capability; and creating and maintaining the tools and practices necessary to manage the host of simultaneous and interoperable activities that comprise information security.

(B) **Planning.** The Department, in collaboration with state agencies, shall direct information security planning including, but not limited to: determining strategic security objectives and associated performance measures; analyzing and evaluating state, agency and trusted partner security practices; proposing and subsequently prescribing solutions for information security challenges; establishing a process to determine, prioritize and schedule security enhancements on a state government-wide basis; ensuring through validation that information security is an essential part of state and agency business planning and operations; determining essential state information security roles and responsibilities; and identifying opportunities for security master contracting and other procurement efficiencies. The Department may plan, manage and undertake enterprise-level information security projects and initiatives.

(C) **Policy.** The Department, in collaboration with state agencies, shall develop, recommend, implement and maintain the full spectrum of administrative rules, policies, architecture, standards, guidelines, and procedures necessary to create and maintain an appropriate state government-wide information security competency.

(D) **Coordination.** The Department shall coordinate the security activities of state government including, but not limited to: providing the security communications, coordination, planning and development hub for state government; establishing collaborative partnerships with local and regional governments and the Federal government in the realm of security planning and implementation; and enterprise coordination of all information security-related activities and initiatives across state government.

(E) **Security Assessments.** The Department shall work collaboratively with state agencies to conduct information security assessments and testing within Oregon state government including, but not limited to: determining when it is appropriate to outsource security testing of state or agency Information assets; coordinating security assessments and tests; establishing standards for the timing and nature of agency information security assessments and tests including, but not limited to internal and external, third-party assessments; provide oversight for agency vulnerability and risk mitigation planning and actions; and ensuring the dissemination of any security assessment and test report data is restricted to only those who, in the judgment of the State Chief Information Security Officer, Agency Director, and/or appropriate state agency staff, have a business need for such information. The Department shall determine qualifications for vendors contracted to perform security assessments.

(F) **Incident Response.** The Department shall create a state incident response capability including, but not limited to: appointing a standing, multi-agency State Incident Response Team (SIRT) as described in section (2) of this rule; ensuring the SIRT, in collaboration with state agencies, prescribes and takes those actions necessary to immediately assemble and deploy the coordinated expertise, tools, communications infrastructure, methodologies and controls required to prevent or mitigate damage caused by an Incident. SIRT will perform a structured investigation into the nature and cause of an Incident; document evidence of computer crime, misuse or Incident; employ forensic techniques and controls; evaluate Incidents for improvement of information security; perform any duties required to appropriately defend against an Incident and subsequently prosecute the perpetrator; and cooperate with law enforcement and other authorities.

(G) **System Management.** The Department, in collaboration with state agencies, shall provide policies, standards and consultation on systems management associated with information security including, but not limited to management of: firewalls; routers; intrusion detection and protection mechanisms; identity and access management; patch/configuration management; digital certificates; secure transmission and access controls (encryption); wireless devices; change controls, and automated system log aggregation and monitoring.

(H) **Security Awareness and Training.** The Department will provide the communications practices and tools necessary to form and maintain a viable information security community of practice across Oregon state government including, but not limited to: creation and maintenance of an information security knowledge and document repository; creation and maintenance of a enterprise level user awareness program, and participation with state and national stakeholder groups; provide the training or training curriculum required to: inform managers, users and technologists on the policies and practices of state information security; work with agencies to ensure all who have access to information assets are provided training on their security-related responsibilities and the specific security-related actions they are expected to take; and identifying, conducting or arranging appropriate security certification for key state and agency staff.

(I) **Reporting.** The Department shall continually track and share relevant enterprise security information including, but not limited to: creation and dissemination of standardized reports demonstrating the status and progress of information security efforts across state government. Keep state executive management and the Legislature apprised of the state's information security posture.

(J) **Performance Management.** The Department shall identify, track, analyze, adjust and report information security performance measurement and management to the Legislature, state executive management.

(K) **Compliance and Oversight.** The Department shall require and enforce compliance with information security practices including, but not limited to: performing or directing compliance reviews to ensure agencies are taking appropriate information security actions and adhering to laws, rules, policies, architecture, standards, procedures and guidelines; routinely inventory and evaluate the information security capabilities of the agencies of state government; prescribing a standardized approach for responding to audit and security assessment issues; and taking appropriate action when there is a failure to adhere to information security practices.

(L) **Financial Management.** The Department shall develop budgets and manage the finances for enterprise security projects and initiatives.

(M) **Procurement.** The Department shall manage procurements for the enterprise information security program including, but not limited to: procurement of hardware, software and expertise; approving enterprise security-related procurements; and issuing and managing enterprise-level, information security program contracts; ensuring contract language regarding information security is properly addressed in contracts.

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(N) **Evaluation.** The Department shall evaluate and report the risk, feasibility, effectiveness and cost implications of potential enterprise information security issues and provide recommendations for mitigation.

(O) **State Chief Information Security Officer.** The Department will designate a State Chief Information Security Officer to manage and promote information security across the agencies of state government.

(b) **Agency Responsibilities.** The chief executive of each agency is accountable for their agency's information security. Each agency head must: provide active leadership for information security practices within the agency and be responsible for agency security practices; designate an agency security liaison to participate in the collaborative development and implementation of the state security plan, and ensure agency compliance with this rule and the state information security plan; support, cooperate with and participate in the state information security program; report security-related information including, but not limited to, incident reporting, security status reporting, security-related financial reporting, and security audit or risk mitigation action. The agency head may delegate his/her authority for information security to an agency Information Security Officer (ISO), although the overall responsibility for agency information system remains with the agency head.

(c) **Approval of Agency Security Plans.** The Department, in collaboration with state agencies, shall establish standards for agency information assets security plans. Should an agency security plan contradict or contravene, or fail to meet minimum standards established by the state information systems security plan, the Department shall have the right to return the plan to the agency for revision and may decline to certify such plans until the plan has been modified to satisfy the overarching objective of protecting the state's information assets.

(d) **Security Assessment.** The Department shall notify an agency of any negative outcome of any security assessment. If, as a result of a security assessment, the Department determines that there are severe vulnerabilities, the agency must take appropriate actions in a timely fashion to mitigate identified vulnerabilities. Additionally, the agency shall draft and implement a Security Assessment mitigation plan, subject to the Department's approval, to mitigate the risks identified in the security assessment. The Department shall ensure that the vulnerabilities described in the assessment are mitigated following the approved plan. The Department, in collaboration with the agency, may take any action prudently required to protect the states information assets from unacceptable risks. For the purposes of this rule, risks or vulnerabilities identified by a security assessment, test, or in some other way, may constitute an incident requiring an incident response. The Department shall determine if a risk or vulnerability constitutes an incident.

(e) **Interagency Collaboration.** The Department will work with other governmental jurisdictions within the State of Oregon including, but not limited to all state, local and regional governmental entities contingent upon their written request and an agreement for appropriate cost sharing. The objective of such interaction is development of a cost-effective, common approach resulting in optimization of limited resources and enhanced strategic capabilities.

(2) State Incident Response Team:

(a) **Authority:** The State Incident Response Team (SIRT) shall be advised by and collaborate with the State Chief Information Officer, the state Chief Information Security Officer, and appropriate advisory bodies. Each state agency is responsible for creating and implementing an agency-level incident response capability.

(b) **SIRT Membership:** The SIRT is appointed by the Department and is, at a minimum, comprised of: representatives from the Department, Office of Emergency Management (OEM) and Oregon State Police (OSP); agency information security experts; and resources dedicated to incident communications. The members of the SIRT will work collaboratively to develop procedures, rules of engagement, and resource commitments to the SIRT.

(c) **SIRT Agency Duties:** Each agency shall report incidents to the SIRT as prescribed in applicable rules, policies, and procedures. Agencies are required to report incidents, cooperate with and support SIRT activities, and adhere to SIRT policies and procedures.

(3)(a) **Applicability to Oregon University System:** Oregon University System computers, hardware, software, storage media, networks directly connected to the state's computing and network infrastructure, and not exempted by the provisions of 2005 Oregon Laws Chapter 739, are subject to these rules. The Department, in conjunction with Oregon University System, shall determine when such connection has occurred.

(b) **Applicability to Oregon Lottery:** These rules shall apply only to Oregon Lottery computer systems and network devices directly connected

to the state's backbone network using publicly addressable interfaces. The Department, in conjunction with the Oregon Lottery, shall determine when such connection has occurred. Subject to constitutional and statutory limitations, the Oregon Lottery will notify the Department in the event of any incident adversely affecting Lottery gaming systems and networks that could impact the state's shared computing and network infrastructure.

(4) **Elected Offices Exception:** The Department shall establish, in collaboration with Elected Officers, criteria to determine compatibility between the information security plans adopted by the Secretary of State, the State Treasurer and the Attorney General (elected officers) and the state information security plan and associated standards, policies and procedures. If a joint information security plan and associated operational standards and policies cannot be agreed upon by the Department and the elected officers, or if the Department determines the information security plans adopted by the elected officers are not compatible with the state information security plan and associated standards, policies and procedures, the Department will continue to work with the elected office agencies to resolve outstanding issues.

Stat. Auth.: ORS 182.122, 291.038

Stats. Implemented: ORS 182.122

Hist.: DAS 8-2006, f. & cert. ef. 12-28-06

Rule Caption: Criminal Records Check and Fitness Determination.

Adm. Order No.: DAS 9-2006

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Rules Repealed: 125-007-0200(T), 125-007-0210(T), 125-007-0220(T), 125-007-0230(T), 125-007-0240(T), 125-007-0250(T), 125-007-0260(T), 125-007-0270(T), 125-007-0280(T), 125-007-0290(T), 125-007-0300(T), 125-007-0310(T), 125-007-0320(T), 125-007-0330(T)

Subject: These rules control the Department's acquisition of information about a subject individual's criminal history through criminal records checks or other means and its use of that information to determine whether the subject individual is fit to provide services to the Department as an employee, volunteer, contractor or vendor in a position covered by OAR 125-077-0220(2)(a)-(n). The fact that the Department approves a subject individual as fit does not guarantee the individual a position as a Department employee, volunteer, contractor or vendor.

Rules Coordinator: Cheryl Knottingham—(503) 378-2349, ext. 325

125-007-0200

Statement of Purpose and Statutory Authority

(1) **Purpose.** These rules control the Department's acquisition of information about a subject individual's criminal history through criminal records checks or other means and its use of that information to determine whether the subject individual is fit to provide services to the Department as an employee, volunteer, contractor or vendor in a position covered by OAR 125-007-0220(2)(a)-(n). The fact that the Department approves a subject individual as fit does not guarantee the individual a position as a Department employee, volunteer, contractor or vendor.

(2) **Authority.** These rules are authorized under ORS 181.534, 184.340 and 184.365.

Stat. Auth.: ORS 181.534, 184.340, 184.365.

Stats. Implemented: ORS 181.534(9)

Hist.: DAS 6-2006(Temp), f. & cert. ef. 9-12-06 thru 2-11-07; DAS 9-2006, f. & cert. ef. 12-28-06

125-007-0210

Definitions

As used in OAR chapter 125, division 007, unless the context of the rule requires otherwise, the following definitions apply:

(1) **"Approved"** means that, pursuant to a preliminary fitness determination under OAR 125 007-0240 or a final fitness determination under OAR 125-007-0260, an authorized designee has determined that the subject individual is fit to be an employee, volunteer, contractor or vendor in a position covered by OAR 125-007-0220(2)(a)-(n).

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(2) “**Authorized Designee**” means a Department employee authorized to obtain and review criminal offender information and other criminal records information about a subject individual through criminal records checks and other means, and to conduct a fitness determination in accordance with these rules.

(3) “**Conviction**” means that a court of law has entered a final judgment on a verdict or finding of guilty, a plea of guilty, or a plea of nolo contendere (no contest) against a subject individual in a criminal case, unless that judgment has been reversed or set aside by a subsequent court decision.

(4) “**Criminal Offender Information**” includes records and related data as to physical description and vital statistics, fingerprints received and compiled by the Oregon Department of State Police Bureau of Criminal Identification for purposes of identifying criminal offenders and alleged offenders, records of arrests and the nature and disposition of criminal charges, including sentencing, confinement, parole and release.

(5) “**Crime Relevant to a Fitness Determination**” means a crime listed or described in OAR 125-007-0270.

(6) “**Criminal Records Check and Fitness Determination Rules**” or “**These Rules**” means OAR chapter 125, division 007.

(7) “**Criminal Records Check**” or “**CRC**” means one of three processes undertaken to check the criminal history of a subject individual:

(a) A check of criminal offender information and motor vehicle registration and driving records conducted through use of the Law Enforcement Data System (LEDS) maintained by the Oregon Department of State Police, in accordance with the rules adopted and procedures established by the Oregon Department of State Police (LEDS Criminal Records Check);

(b) A check of Oregon criminal offender information, including through fingerprint identification, conducted by the Oregon Department of State Police at the Department’s request (Oregon Criminal Records Check); or

(c) A nationwide check of federal criminal offender information, including through fingerprint identification, conducted by the Oregon Department of State Police through the Federal Bureau of Investigation or otherwise at the Department’s request (Nationwide Criminal Records Check).

(8) “**Denied**” means that, pursuant to a preliminary fitness determination under OAR 125-007-0240 or a final fitness determination under OAR 125-007-0260, an authorized designee has determined that the subject individual is not fit to be an employee, volunteer, contractor or vendor in a position covered by OAR 125-007-0220(2)(a)–(n).

(9) “**Department**” means the Oregon Department of Administrative Services (DAS) or any subdivision thereof.

(10) “**False Statement**” means that, in association with an activity governed by these rules, a subject individual either provided the Department with materially false information about his or her criminal history, such as materially false information about his or her identity or conviction record, or failed to provide to the Department information material to determining his or her criminal history.

(11) “**Fitness Determination**” means a determination made by an authorized designee pursuant to the process established in OAR 125-007-0240 (preliminary fitness determination) or 125-007-0260 (final fitness determination) that a subject individual is or is not fit to be a Department employee, volunteer, contractor or vendor in a position covered by OAR 125-007-0220(2)(a)–(n).

(12) “**Other Criminal Records Information**” means any information, in addition to criminal offender information, sought or obtained by the Department about a subject individual relevant to determining the individual’s criminal history.

(13) “**Related**” means that an individual has a relationship with another person described by one of the following labels: spouse, domestic partner, natural parent, foster parent, adoptive parent, stepparent, child, foster child, adopted child, stepchild, sibling, stepbrother, stepsister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandparent, grandchild, aunt, uncle, niece, nephew or first cousin.

(14) “**Subject Individual**” means an individual identified in OAR 125-007-0220 as someone from whom the Department may require fingerprints for the purpose of conducting a criminal records check.

Stat. Auth.: ORS 181.534, 184.340, 184.365.

Stats. Implemented: ORS 181.534(9).

Hist.: DAS 6-2006(Temp), f. & cert. ef. 9-12-06 thru 2-11-07; DAS 9-2006, f. & cert. ef. 12-28-06

125-007-0220

Subject Individual

“**Subject Individual**” means a person from whom the Department may require fingerprints for the purpose of conducting a criminal records check because the person:

(1)(a) Is employed by or applying for employment with the Department; or

(b) Provides services or seeks to provide services to the Department as a volunteer, contractor, or vendor; and

(2) Is, or will be, working or providing services in a position:

(a) In which the person is providing information technology services and has control over, or access to, information technology systems that would allow the person to harm the information technology systems or the information contained in the systems;

(b) In which the person has access to information, the disclosure of which is prohibited by state or federal laws, rules or regulations or information that is defined as confidential under state or federal laws, rules or regulations;

(c) That has payroll functions;

(d) In which the person has responsibility for receiving, receipting or depositing money or negotiable instruments;

(e) In which the person has responsibility for billing, collections or other financial transactions;

(f) In which the person has responsibility for purchasing or selling property or has access to property held in trust or to private property in the temporary custody of the state;

(g) That has mailroom duties as the primary duty or job function of the position;

(h) In which the person has responsibility for auditing the Department or other governmental agencies;

(i) That has personnel or human resources functions as one of the position’s primary responsibilities;

(j) In which the person has access to personal information about employees or members of the public including Social Security numbers, dates of birth, driver license numbers, medical information, personal financial information or criminal history information;

(k) In which the person has access to chemicals or hazardous materials, to facilities in which chemicals and hazardous materials are present or to information regarding the transportation of chemical or hazardous materials;

(l) In which the person has access to property to which access is restricted in order to protect the health or safety of the public;

(m) In which the person provides security, design or construction services for government buildings, grounds or facilities; or

(n) In which the person has access to critical infrastructure or security-sensitive facilities or information.

Stat. Auth.: ORS 181.534, 184.340, 184.365.

Stats. Implemented: ORS 181.534(9).

Hist.: DAS 6-2006(Temp), f. & cert. ef. 9-12-06 thru 2-11-07; DAS 9-2006, f. & cert. ef. 12-28-06

125-007-0230

Criminal Records Check Process

(1) Disclosure of Information by Subject Individual.

(a) Preliminary to a criminal records check, a subject individual shall complete and sign the DAS Criminal Records Request form and, if requested by the Department, a fingerprint card. Both forms ask for identifying information, e.g., name, birth date, Social Security Number, physical characteristics, marital status, driver’s license or identification card number and current address. The DAS Criminal Records Request form also asks for information about prior residences and for details concerning any circumstance listed in OAR 125-007-0240(3)(a)–(f).

(b) A subject individual shall complete and submit to the Department the DAS Criminal Records Request form and, if requested, a fingerprint card within three business days of receiving the forms. An authorized designee may extend the deadline for good cause.

(c) The Department shall receive a fingerprint card from a subject individual under the age of 18 years only if the subject individual also submits the written consent of a parent or guardian.

(d) Within a reasonable period of time as established by an authorized designee, a subject individual shall disclose additional information as requested by the Department in order to resolve an issue hindering the completion of a criminal records check, e.g., providing additional proof of identity.

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(2) When a Criminal Records Check is conducted. An authorized designee may conduct, or request that the Oregon Department of State Police conduct, a criminal records check when:

(a) An individual meets the definition of “subject individual,” but has not been approved under these rules, unless the individual was a Department employee serving in his or her current position prior to the effective date of these rules and that position does not involve authorized designee responsibilities;

(b) An individual employed by the Department meets the definition of “subject individual” because he or she is either moving to or applying for a position that meets the criteria of OAR 125-007-0220(2)(a)–(n), if:

(A) The Department has not conducted a fitness determination on the subject individual within the previous three years;

(B) The subject individual had been previously approved under OAR 125-007-0260(3)(b); or

(C) An authorized designee determines that the new position requires greater responsibility for functions covered by OAR 125-007-0220(2)(a)–(n) than the subject individual’s prior position;

(c) An authorized designee has reason to believe that a subject individual committed a crime listed in OAR 125-007-0270 and either a fitness determination has not yet been done on the subject individual or the crime had not been identified in a prior fitness determination;

(d) An authorized designee has reason to believe that a factor relevant to a fitness determination listed in OAR 125-007-0260(2), not previously identified in a fitness determination, applies to a subject individual who had been previously approved under OAR 125-007-0260(3)(b);

(e) Required by federal law or regulation, by state law or administrative rule, or by contract or written agreement with the Department.

(3) Which Criminal Records Check(s) Is Conducted. When an authorized designee determines under subsection (2) of this rule that a criminal record check is needed, the authorized designee shall proceed as follows:

(a) LEDS Criminal Records Check. The authorized designee shall conduct a LEDS criminal records check as part of any fitness determination conducted in regard to a subject individual.

(b) Oregon Criminal Records Check. The authorized designee shall request that the Oregon Department of State Police conduct an Oregon criminal records check when:

(A) The authorized designee determines that an Oregon criminal records check is warranted after review of the information provided by the subject individual, the results of a LEDS criminal records check, or other criminal records information; or

(B) The authorized designee requests a nationwide criminal records check.

(c) Nationwide Criminal Records Check. The authorized designee shall request that the Oregon Department of State Police conduct a nationwide criminal records check when:

(A) A subject individual has lived outside Oregon for 60 or more consecutive days during the previous three (3) years;

(B) Information provided by the subject individual or the results of a LEDS or Oregon criminal records check provide reason to believe, as determined by an authorized designee, that the subject individual has a criminal history outside of Oregon;

(C) As determined by an authorized designee, there is reason to question the identity of or information provided by a subject individual because, e.g., the subject individual fails to disclose a Social Security Number, discloses a Social Security Number that appears to be invalid, or does not have an Oregon driver’s license or identification card;

(D) A check is required by federal law or regulation, by state law or administrative rule, or by contract or written agreement with the Department;

(E) A subject individual is a DAS employee working in, moving to, or applying for a position within the State Data Center or Enterprise Security Office;

(F) The Department Director or Deputy Director seeks to serve as an authorized designee; or

(G) A subject individual is a DAS employee working in, moving to, or applying for a position within the Personnel Unit of the Department’s Operations Division designated by the Department Director or the Director’s designee as including the responsibilities of an authorized designee.

Stat. Auth.: ORS 181.534, 184.340, 184.365.

Stats. Implemented: ORS 181.534(9).

Hist.: DAS 6-2006(Temp), f. & cert. ef. 9-12-06 thru 2-11-07; DAS 9-2006, f. & cert. ef. 12-28-06

125-007-0240

Preliminary Fitness Determination.

(1) An authorized designee may conduct a preliminary fitness determination if the Department is interested in hiring or appointing a subject individual on a preliminary basis, pending a final fitness determination.

(2) An authorized designee shall make a preliminary fitness determination about a subject individual based on information disclosed by the subject individual under OAR 125-007-0230(1) and a LEDS criminal records check.

(3) The authorized designee shall approve a subject individual as fit on a preliminary basis if the authorized designee has no reason to believe that the subject individual has made a false statement and the information available to the authorized designee does not disclose that the subject individual:

(a) Has been convicted of, found guilty except for insanity (or comparable disposition) of, or has a pending indictment for a crime listed under OAR 125-007-0270;

(b) Within the last five years, has been arrested for or charged with a crime listed under OAR 125-007-0270;

(c) Is being investigated for, or has an outstanding warrant for a crime listed under OAR 125-007-0270;

(d) Is currently on probation, parole, or another form of post-prison supervision for a crime listed under OAR 125-007-0270;

(e) Has a deferred sentence or conditional discharge or is participating in a diversion program in connection with a crime listed under OAR 125-007-0270; or

(f) Has been adjudicated in a juvenile court and found to be within the court’s jurisdiction for an offense that would have constituted a crime listed in OAR 125-007-0270 if committed by an adult.

(4) If the information available to the authorized designee discloses one or more of the circumstances identified in section (3), the authorized designee may nonetheless approve a subject individual as fit on a preliminary basis if the authorized designee concludes, after evaluating all available information, that hiring or appointing the subject individual on a preliminary basis does not pose a risk of harm to the Department, its client entities, the State, or members of the public.

(5) If a subject individual is either approved or denied on the basis of a preliminary fitness determination, an authorized designee thereafter shall conduct a fitness determination under OAR 125-007-0260.

(6) A subject individual may not appeal a preliminary fitness determination, under the process provided under OAR 125-007-0300 or otherwise.

Stat. Auth.: ORS 181.534, 184.340, 184.365.

Stats. Implemented: ORS 181.534(9).

Hist.: DAS 6-2006(Temp), f. & cert. ef. 9-12-06 thru 2-11-07; DAS 9-2006, f. & cert. ef. 12-28-06

125-007-0250

Hiring or Appointing on a Preliminary Basis

(1) The Department may hire or appoint a subject individual on a preliminary basis if an authorized designee has approved the subject individual on the basis of a preliminary fitness determination under OAR 125-007-0240.

(2) A subject individual hired or appointed on a preliminary basis under this rule may participate in training, orientation, or work activities as assigned by the Department.

(3) A subject individual hired or appointed on a preliminary basis is deemed to be on trial service and, if terminated prior to completion of a final fitness determination under OAR 125-007-0260, may not appeal the termination under the process provided under OAR 125-007-0300.

(4) If a subject individual hired or appointed on a preliminary basis is denied upon completion of a final fitness determination, as provided under OAR 125-007-0260(3)(d), then the Department shall immediately terminate the subject individual’s employment or appointment.

(5) A subject individual whose employment or appointment is terminated under subsection (4) of this rule may avail himself or herself of the appeal process provided under OAR 125-007-0300.

Stat. Auth.: ORS 181.534, 184.340, 184.365.

Stats. Implemented: ORS 181.534(9).

Hist.: DAS 6-2006(Temp), f. & cert. ef. 9-12-06 thru 2-11-07; DAS 9-2006, f. & cert. ef. 12-28-06

125-007-0260

Final Fitness Determination

(1) An authorized designee shall make a fitness determination about a subject individual based on information provided by the subject individual

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under OAR 125-007-0230(1), the criminal records check(s) conducted, if any, and any false statements made by the subject individual.

(2) In making a fitness determination about a subject individual, an authorized designee shall consider the factors in subsections (a)–(f) in relation to information provided by the subject individual under OAR 125-007-0230(1), any LEDS report or criminal offender information obtained through a criminal records check, and any false statement made by the subject individual. To assist in considering these factors, the authorized designee may obtain other criminal records information from the subject individual or any other source, including law enforcement agencies or courts within or outside of Oregon. To acquire other criminal offender information from the subject individual, an authorized designee may request to meet with the subject individual, to receive written materials from him or her, or both. The authorized designee will use all collected information in considering:

(a) Whether the subject individual has been convicted of, found guilty except for insanity (or a comparable disposition) of, or has a pending indictment for a crime listed in OAR 125-007-0270;

(b) The nature of any crime identified under subsection (a);

(c) The facts that support the conviction, finding of guilty except for insanity, or pending indictment;

(d) The facts that indicate the subject individual made a false statement;

(e) The relevance, if any, of a crime identified under subsection (a) or of a false statement made by the subject individual to the specific requirements of the subject individual's present or proposed position, services or employment; and

(f) The following intervening circumstances, to the extent that they are relevant to the responsibilities and circumstances of the services or employment for which the fitness determination is being made:

(A) The passage of time since the commission or alleged commission of a crime identified under subsection (a);

(B) The age of the subject individual at the time of the commission or alleged commission of a crime identified under subsection (a);

(C) The likelihood of a repetition of offenses or of the commission of another crime;

(D) The subsequent commission of another crime listed in OAR 127-007-0270;

(E) Whether a conviction identified under subsection (a) has been set aside or pardoned, and the legal effect of setting aside the conviction or of a pardon;

(F) A recommendation of an employer;

(G) The disposition of a pending indictment identified under subsection (a);

(H) Whether the subject individual has been arrested for or charged with a crime listed under OAR 125-007-0270 within the last five years;

(I) Whether the subject individual is being investigated, or has an outstanding warrant, for a crime listed under OAR 125-007-0270;

(J) Whether the subject individual is currently on probation, parole or another form of post-prison supervision for a crime listed under OAR 125-007-0270;

(K) Whether the subject individual has a deferred sentence or conditional discharge or is participating in a diversion program in connection with a crime listed under OAR 125-007-0270;

(L) Whether the subject individual has been adjudicated in a juvenile court and found to be within the court's jurisdiction for an offense that would have constituted a crime listed in OAR 125-007-0270 if committed by an adult;

(M) Periods of incarceration of the subject individual;

(N) Whether the subject individual has a history of drug or alcohol abuse which relates to his or her criminal activity and the subject individual's history of treatment or rehabilitation for such abuse; and

(O) The education and work history (paid or volunteer) of the subject individual since the commission or alleged commission of a crime.

(3) Possible Outcomes of a Final Fitness Determination

(a) Automatic Approval. An authorized designee shall approve a subject individual if the information described in sections (1) and (2) shows:

(A) No credible evidence that the subject individual has been convicted of, or found guilty except for insanity (or comparable disposition) of a crime listed in OAR 125-007-0270(1);

(B) No credible evidence that the subject individual had been convicted of, or found guilty except for insanity (or comparable disposition) of a crime listed in OAR 125-007-0270(2) within ten years of the date that the subject individual signed the DAS Criminal Records Request form;

(C) No credible evidence that the subject individual had been convicted of, or found guilty except for insanity (or comparable disposition) of a crime listed in OAR 125-007-0270(3) within five years of the date that the subject individual signed the DAS Criminal Records Request form;

(D) No credible evidence that the subject individual has a pending indictment for a crime listed in OAR 125-007-0270;

(E) No credible evidence of the subject individual having made a false statement; and

(F) No discrepancies between the criminal offender information, other criminal records information and information obtained from the subject individual.

(b) Evaluative Approval. If a fitness determination under this rule shows credible evidence of any of the factors identified in paragraphs (3)(a)(A)–(F) of this rule, an authorized designee may approve the subject individual only if, in evaluating the information described in sections (1) and (2), the authorized designee determines that the subject individual acting in the position for which the fitness determination is being conducted would not pose a risk of harm to the Department, its client entities, the State, or members of the public.

(c) Restricted Approval.

(A) If an authorized designee approves a subject individual under subsection (3)(b) of this rule, the authorized designee may restrict the approval to specific activities or locations.

(B) An authorized designee shall complete a new criminal records check and fitness determination on the subject individual prior to removing a restriction.

(d) Denial.

(A) If a fitness determination under this rule shows credible evidence of any of the factors identified in paragraphs (3)(a)(A)–(F) of this rule and, after evaluating the information described in sections (1) and (2) of this rule, an authorized designee concludes that the subject individual acting in the position for which the fitness determination is being conducted would pose a risk of harm to the Department, its client entities, the State, or members of the public, the authorized designee shall deny the subject individual as not fit for the position.

(B) Refusal to Consent. If a subject individual refuses to submit or consent to a criminal records check including fingerprint identification, the authorized designee shall deny the subject individual as not fit without further assessment under the fitness determination process.

(C) If a subject individual is denied as not fit, then the subject individual may not be employed by or provide services as a volunteer, contractor or vendor to the Department in a position covered by OAR 125-007-0220(2).

(4) Final Order. A completed final fitness determination becomes a final order of the Department unless the affected subject individual appeals by requesting either a contested case hearing as provided by OAR 125-007-0300(2)(a) or an alternative appeals process as provided by OAR 125-007-0300(6).

Stat. Auth.: ORS 181.534, 184.340, 184.365.

Stats. Implemented: ORS 181.534(9).

Hist.: DAS 6-2006(Temp), f. & cert. ef. 9-12-06 thru 2-11-07; DAS 9-2006, f. & cert. ef. 12-28-06

125-007-0270

Crimes Relevant to a Fitness Determination

(1) Permanent Review Crimes.

(a) ORS 162.015, Bribe giving;

(b) ORS 162.025, Bribe receiving;

(c) ORS 162.065, Perjury;

(d) ORS 162.085, Unsworn falsification;

(e) ORS 162.155, Escape II;

(f) ORS 162.165, Escape I;

(g) ORS 162.235, Obstructing governmental or judicial administration;

(h) ORS 162.265, Bribing a witness;

(i) ORS 162.275, Bribe receiving by a witness;

(j) ORS 162.305, Tampering with public records;

(k) ORS 162.325, Hindering prosecution;

(l) ORS 162.405, Official misconduct II;

(m) ORS 162.415, Official misconduct I;

(n) ORS 162.425, Misuse of confidential information;

(o) ORS 163.005, Criminal homicide;

(p) ORS 163.095, Aggravated murder;

(q) ORS 163.115, Murder;

(r) ORS 163.118, Manslaughter I;

(s) ORS 163.125, Manslaughter II;

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- (t) ORS 163.145, Criminally negligent homicide;
(u) ORS 163.160, Assault IV;
(v) ORS 163.165, Assault III;
(w) ORS 163.175, Assault II;
(x) ORS 163.185, Assault I;
(y) ORS 163.187, Strangulation;
(z) ORS 163.190, Menacing;
(aa) ORS 163.200, Criminal mistreatment II;
(bb) ORS 163.205, Criminal mistreatment I;
(cc) ORS 163.207, Female genital mutilation;
(dd) ORS 163.208, Assault of Public Safety Officer;
(ee) ORS 163.213, Unlawful use of an electrical stun gun, tear gas, or mace I;
(ff) ORS 163.225, Kidnapping II;
(gg) ORS 163.235, Kidnapping I;
(hh) ORS 163.257, Custodial interference I;
(ii) ORS 163.275, Coercion;
(jj) ORS 163.355, Rape III;
(kk) ORS 163.365, Rape II;
(ll) ORS 163.375, Rape I;
(mm) ORS 163.385, Sodomy III;
(nn) ORS 163.395, Sodomy II;
(oo) ORS 163.405, Sodomy I;
(pp) ORS 163.408, Unlawful Sexual penetration II;
(qq) ORS 163.411, Unlawful Sexual penetration I;
(rr) ORS 163.415, Sexual abuse III;
(ss) ORS 163.425, Sexual abuse II;
(tt) ORS 163.427, Sexual abuse I;
(uu) ORS 163.435, Contributing to the sexual delinquency of a minor;
(vv) ORS 163.452, Custodial sexual misconduct I;
(ww) ORS 163.454, Custodial sexual misconduct II;
(xx) ORS 163.465, Public indecency;
(yy) ORS 163.515, Bigamy;
(zz) ORS 163.525, Incest;
(aaa) ORS 163.535, Abandonment of a child;
(bbb) ORS 163.537, Buying or selling a person under 18 years of age;
(ccc) ORS 163.545, Child neglect II;
(ddd) ORS 163.547, Child neglect I;
(eee) ORS 163.555, Criminal nonsupport;
(fff) ORS 163.575, Endangering the welfare of a minor;
(ggg) ORS 163.670, Using child in display of sexually explicit conduct;
(hhh) ORS 163.684, Encouraging child sexual abuse I;
(iii) ORS 163.686, Encouraging child sexual abuse II;
(jjj) ORS 163.687, Encouraging child sexual abuse III;
(kkk) ORS 163.688, Possession of materials depicting sexually explicit conduct of a child I;
(lll) ORS 163.689, Possession of materials depicting sexually explicit conduct of a child II;
(mmm) ORS 163.693, Failure to report child pornography;
(nnn) ORS 163.732, Stalking;
(ooo) ORS 164.057, Aggravated theft I;
(ppp) ORS 164.075, Theft by extortion; ORS 164.085, Theft by deception;
(qqq) ORS 164.125, Theft of services; ORS 164.162, Mail theft or receipt of stolen mail;
(rrr) ORS 164.225, Burglary I;
(sss) ORS 164.325, Arson I;
ORS 164.377, Computer crime;
(ttt) ORS 164.395, Robbery III;
(uuu) ORS 164.405, Robbery II;
(vvv) ORS 164.415, Robbery I;
(www) ORS 165.007, Forgery II;
(xxx) ORS 165.013, Forgery I;
(yyy) ORS 165.017, Criminal possession of a forged instrument II;
(zzz) ORS 165.022, Criminal possession of a forged instrument I;
(aaaa) ORS 165.032, Criminal possession of a forgery device;
(bbbb) ORS 165.042, Fraudulently obtaining a signature;
(cccc) ORS 165.055, Fraudulent use of a credit card;
(dddd) ORS 165.080, Falsifying business records;
(eeee) ORS 165.095, Misapplication of entrusted property;
(ffff) ORS 165.100, Issuing a false financial statement;
(gggg) ORS 165.581, Cellular counterfeiting I;
(hhhh) ORS 165.800, Identity theft;
(iiii) ORS 166.005, Treason;
(jjjj) ORS 166.015, Riot;
(kkkk) ORS 166.085, Abuse of corpse II;
(llll) ORS 166.087, Abuse of corpse I;
(mmmm) ORS 166.155, Intimidation II;
(nnnn) ORS 166.165, Intimidation I;
(oooo) ORS 166.220, Unlawful use of weapon;
(pppp) ORS 166.270, Possession of weapons by certain felons;
(qqqq) ORS 166.272, Unlawful possession of machine guns, certain short-barreled firearms and firearm silencers;
(rrrr) ORS 166.275, Possession of weapons by inmates of institutions;
(ssss) ORS 166.429, Firearms used in felony;
(tttt) ORS 166.720, Racketeering activity unlawful;
(uuuu) ORS 167.012, Promoting prostitution;
(vvvv) ORS 167.017, Compelling prostitution;
(wwww) ORS 167.062, Sadomasochistic abuse or sexual conduct in live show;
(xxxx) ORS 167.065, Furnishing obscene materials to minors;
(yyyy) ORS 167.070, Sending obscene materials to minors;
(zzzz) ORS 167.075, Exhibiting an obscene performance to a minor;
(aaaaa) ORS 167.080, Displaying obscene materials to minors;
(bbbbb) ORS 167.262, Adult using minor in commission of controlled substance offense;
(ccccc) ORS 167.315, Animal abuse II;
(dddd) ORS 167.320, Animal abuse I;
(eeeee) ORS 167.322, Aggravated animal abuse I;
(fffff) ORS 167.333, Sexual assault of animal;
(ggggg) ORS 181.599, Failure to report as sex offender;
(hhhhh) ORS 192.852/865, Prohibited obtaining or disclosing of protected information;
(iiiiii) ORS 411.630, Unlawfully obtaining public assistance;
(jjjjj) ORS 411.675, Submitting wrongful claim or payment (e.g., public assistance);
(kkkkk) ORS 411.840, Unlawfully obtaining or disposing of food stamp benefits;
(lllll) ORS 475.525, Sale of drug paraphernalia prohibited;
(mmmmm) ORS 475.805, Providing hypodermic device to minor prohibited;
(nnnnn) ORS 475.840, Prohibited acts generally (regarding drug crimes);
(ooooo) ORS 475.846, Unlawful manufacture of heroin;
(ppppp) ORS 475.848, Unlawful manufacture of heroin within 1,000 ft of school;
(qqqqq) ORS 475.850, Unlawful delivery of heroin;
(rrrrr) ORS 475.852, Unlawful delivery of heroin within 1,000 ft of school;
(sssss) ORS 475.854, Unlawful possession of heroin;
(ttttt) ORS 475.856, Unlawful manufacture of marijuana;
(uuuuu) ORS 475.858, Unlawful manufacture of marijuana within 1,000 ft of school;
(vvvvv) ORS 475.860, Unlawful delivery of marijuana;
(wwwww) ORS 475.862, Unlawful delivery of marijuana within 1,000 ft of school;
(xxxxx) ORS 475.864, Unlawful possession of marijuana;
(yyyyy) ORS 475.866, Unlawful manufacture of 3,4-methylenedioxyamphetamine;
(zzzzz) ORS 475.868, Unlawful manufacture of 3,4-methylenedioxyamphetamine within 1,000 ft of school;
(aaaaa) ORS 475.870, Unlawful delivery of 3,4-methylenedioxyamphetamine;
(bbbbb) ORS 475.872, Unlawful delivery of 3,4-methylenedioxyamphetamine within 1,000 ft of school;
(ccccc) ORS 475.874, Unlawful possession of 3,4-methylenedioxyamphetamine;
(ddddd) ORS 475.876, Unlawful manufacture of cocaine;
(eeeee) ORS 475.878, Unlawful manufacture of cocaine within 1,000 ft of school;
(fffff) ORS 475.880, Unlawful delivery of cocaine;
(ggggg) ORS 475.882, Unlawful delivery of cocaine within 1,000 ft of school;
(hhhhh) ORS 475.884, Unlawful possession of cocaine;
(iiiiii) ORS 475.886, Unlawful manufacture of methamphetamine;
(jjjjj) ORS 475.888, Unlawful manufacture of methamphetamine within 1,000 ft of school;
(kkkkk) ORS 475.890, Unlawful delivery of methamphetamine;

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- (lllll) ORS 475.892, Unlawful delivery of methamphetamine within 1,000 ft of school;
- (mmmmm) ORS 475.894, Unlawful possession of methamphetamine;
- (nnnnn) ORS 475.904, Penalty for manufacture or delivery of controlled substance within 1000 feet of school;
- (ooooo) ORS 475.906, Penalties for distribution to minors;
- (ppppp) ORS 475.908, Causing another person to ingest a controlled substance;
- (qqqqq) ORS 475.910, Application of controlled substance to the body of another person;
- (rrrrr) ORS 475.914, Prohibited acts for registrants (with the State Board of Pharmacy; regarding felony crimes); ORS 475.916, Prohibited acts involving records and fraud; ORS 475.918, Falsifying drug test results;
- (sssss) ORS 475.920, Providing drug test falsification equipment
- (ttttt) ORS 475.967, Possession of precursor substance with intent to manufacture controlled substance;
- (uuuuu) ORS 475.975, Unlawful possession & distribution of iodine in its elemental form;
- (vvvvv) ORS 475.976, Unlawful possession & distribution of iodine matrix;
- (wwwww) ORS 677.080, Prohibited acts (regarding the practice of medicine);
- (yyyyy) ORS 803.230, Forging, altering or unlawfully producing or using title or registration;
- (zzzzz) ORS 811.140, Reckless driving;
- (aaaaa) ORS 811.182, Criminal driving while suspended or revoked;
- (bbbbbb) ORS 811.540, Fleeing or attempting to elude police officer;
- (ccccc) ORS 811.700, Failure to perform duties of driver when property is damaged;
- (dddddd) ORS 811.705, Failure to perform duties of driver to injured persons;
- (eeeeee) ORS 813.010, Driving under the influence of intoxicants (DUI);
- (ffffff) ORS 819.300, Possession of a stolen vehicle;
- (gggggg) Any federal crime;
- (hhhhhh) Any unclassified felony defined in Oregon Revised Statutes not listed elsewhere in this rule;
- (iiiiii) Any other felony under the statutes of Oregon or any other jurisdiction not listed elsewhere in this rule that the authorized designee determines is relevant to performance of the subject individual's present or proposed position as a Department employee, contractor, vendor or volunteer;
- (jjjjjj) Any crime of attempt, solicitation or conspiracy to commit a crime listed in this section (1) pursuant to ORS 161.405, 161.435, or 161.450;
- (kkkkkk) Any crime based on criminal liability for conduct of another pursuant to ORS 61.155, when the underlying crime is listed in this section (1);
- (llllll) Any crime in any other jurisdiction that is the substantial equivalent of any of the Oregon crimes listed in this section (1) as determined by the authorized designee;
- (mmmmmm) Any offense that no longer constitutes a crime under Oregon law or the laws of any other jurisdiction, but is the substantial equivalent of any of the crimes listed in this section (1) as determined by the authorized designee.
- (2) Ten-Year Review Crimes.
- (a) ORS 133.076, Failure to appear on criminal citation;
- (b) ORS 162.075, False swearing;
- (c) ORS 162.117, Public investment fraud;
- (d) ORS 162.145, Escape III;
- (e) ORS 162.175, Unauthorized departure;
- (f) ORS 162.185, Supplying contraband;
- (g) ORS 162.195, Failure to appear II;
- (h) ORS 162.205, Failure to appear I;
- (i) ORS 162.247, Interfering with a peace officer or parole & probation officer;
- (j) ORS 162.285, Tampering with a witness;
- (k) ORS 162.295, Tampering with physical evidence;
- (l) ORS 162.315, Resisting arrest;
- (m) ORS 162.335, Compounding;
- (n) ORS 162.355, Simulating legal process;
- (o) ORS 162.365, Criminal impersonation;
- (p) ORS 162.367, Criminal impersonation of peace officer;
- (q) ORS 162.369, Possession of false law enforcement identification card;
- (r) ORS 162.375, Initiating a false report;
- (s) ORS 162.385, Giving false information to police officer for a citation or arrest warrant;
- (t) ORS 163.195, Recklessly endangering another person;
- (u) ORS 163.212, Unlawful use of an electrical stun gun, tear gas, or mace II;
- (v) ORS 163.245, Custodial interference II;
- (w) ORS 163.445, Sexual misconduct;
- (x) ORS 163.467, Private indecency;
- (y) ORS 163.700, Invasion of personal privacy;
- (z) ORS 163.750, Violating court's stalking protective order;
- (aa) ORS 164.043, Theft III;
- (bb) ORS 164.045, Theft II;
- (cc) ORS 164.055, Theft I;
- (dd) ORS 164.095, Theft by receiving;
- (ee) ORS 164.135, Unauthorized use of a vehicle;
- (ff) ORS 164.140, Criminal possession of rented or leased personal property;
- (gg) ORS 164.215, Burglary II;
- (hh) ORS 164.235, Possession of burglar's tools or theft device;
- (ii) ORS 164.255, Criminal trespass I;
- (jj) ORS 164.265, Criminal trespass while in possession of firearm;
- (kk) ORS 164.272, Unlawful entry into motor vehicle;
- (ll) ORS 164.315, Arson II;
- (mm) ORS 164.335, Reckless burning;
- (nn) ORS 164.354, Criminal Mischief II;
- (oo) ORS 164.365, Criminal Mischief I;
- (pp) ORS 165.037, Criminal simulation;
- (qq) ORS 165.065, Negotiating a bad check;
- (rr) ORS 165.070, Possessing fraudulent communications device;
- (ss) ORS 165.074, Unlawful factoring of payment card transaction;
- (tt) ORS 165.085, Sports bribery;
- (uu) ORS 165.090, Sports bribe receiving;
- (vv) ORS 165.102, Obtaining execution of documents by deception;
- (ww) ORS 165.540, Obtaining contents of communication;
- (xx) ORS 165.543, Interception of communications;
- (yy) ORS 165.570, Improper use of emergency reporting system;
- (zz) ORS 165.572, Interference with making a report;
- (aaa) ORS 165.577, Cellular counterfeiting III;
- (bbb) ORS 165.579, Cellular counterfeiting II;
- (ccc) ORS 165.692, Making false claim for health care payment;
- (ddd) ORS 166.023, Disorderly conduct I;
- (eee) ORS 166.025, Disorderly conduct II;
- (fff) ORS 166.065, Harassment;
- (ggg) ORS 166.076, Abuse of a memorial to the dead;
- (hhh) ORS 166.116, Interfering with public transportation;
- (iii) ORS 166.180, Negligently wounding another;
- (jjj) ORS 166.190, Pointing firearm at another;
- (kkk) ORS 166.240, Carrying of concealed weapon;
- (lll) ORS 166.250, Unlawful possession of firearms;
- (mmm) ORS 166.370, Possession of firearm or dangerous weapon in public building or court facility; exceptions; discharging firearm at school;
- (nnn) ORS 166.382, Possession of destructive device prohibited;
- (ooo) ORS 166.384, Unlawful manufacture of destructive device;
- (ppp) ORS 166.470, Limitations and conditions for sales of firearms;
- (qqq) ORS 166.480, Sale or gift of explosives to children;
- (rrr) ORS 166.649, Throwing an object off an overpass II;
- (sss) ORS 166.651, Throwing an object off an overpass I;
- (ttt) ORS 166.660, Unlawful paramilitary activity;
- (uuu) ORS 167.007, Prostitution;
- (vvv) ORS 167.090, Publicly displaying nudity or sex for advertising purposes;
- (www) ORS 167.212, Tampering with drug records;
- (xxx) ORS 167.222, Frequenting a place where controlled substances are used;
- (yyy) ORS 167.325, Animal neglect II;
- (zzz) ORS 167.330, Animal neglect I;
- (aaaa) ORS 167.337, Interfering with law enforcement animal;
- (bbbb) ORS 167.355, Involvement in animal fighting;
- (cccc) ORS 167.365, Dogfighting;
- (dddd) ORS 167.370, Participation in dogfighting;
- (eeee) ORS 167.820, Concealing the birth of an infant;

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(ffff) ORS 417.990, Penalty for placement of children in violation of compact;

(gggg) ORS 418.130, Unauthorized use and custody of records of temporary assistance for needy families program;

(hhhh) ORS 418.140, Sharing assistance prohibited;

(iiii) ORS 418.250, Supervision of child-caring agencies;

(jjjj) ORS 418.327, Licensing of certain schools and organizations offering residential programs;

(kkkk) ORS 433.010, Spreading disease (willfully) prohibited;

(llll) ORS 471.410, Providing liquor to person under 21 or to intoxicated person; allowing consumption by minor on property;

(mmmm) ORS 475.900, Commercial drug offense;

(nnnn) ORS 475.912, Unlawful delivery of imitation controlled substance;

(oooo) ORS 475.914, Prohibited acts for registrants (with the State Board of Pharmacy; regarding misdemeanor crimes);

(pppp) ORS 475.950, Failure to report precursor substance;

(qqqq) ORS 475.955, Failure to report missing precursor substances;

(rrrr) ORS 475.960, Illegally selling drug equipment;

(ssss) ORS 475.962, Distribution of equipment, solvent, etc., with intent to manufacture controlled substance;

(tttt) ORS 475.965, Providing false information on precursor substances report;

(uuuu) ORS 475.979 Unlawful possession of lithium or sodium metal;

(vvvv) ORS 657A.280, Failure to certify child care facility;

(wwww) ORS 807.620, Giving false information to police officer;

(xxxx) ORS 830.475, Failure to perform the duties of an operator (boat);

(yyyy) Any unclassified misdemeanor defined in Oregon's or any other jurisdiction's statutes and not listed elsewhere in this rule;

(zzzz) Any other misdemeanor under the statutes of Oregon or any other jurisdiction and not listed elsewhere in this rule that the authorized designee determines is relevant to performance of the subject individual's present or proposed position as a Department employee, contractor, vendor or volunteer;

(aaaaa) Any crime of attempt, solicitation or conspiracy to commit a crime listed in this section (2) pursuant to ORS 161.405, 161.435, or 161.450;

(bbbbb) Any crime based on criminal liability for conduct of another pursuant to ORS 161.155, when the underlying crime is listed in this section (2);

(ccccc) Any crime in any other jurisdiction which is the substantial equivalent of any of the Oregon crimes listed in this section (2) as determined by the authorized designee;

(dddd) Any offense that no longer constitutes a crime under Oregon law or the laws of another jurisdiction, but is the substantial equivalent of any of the crimes listed in this section (2) as determined by the authorized designee.

(3) Five-Year Review Crimes.

(a) ORS 164.245, Criminal trespass II;

(b) ORS 164.345, Criminal mischief III;

(c) ORS 164.882, Unlawful operation of audiovisual device;

(d) ORS 165.555, Unlawful telephone solicitation of contributions for charitable purposes;

(e) ORS 166.075, Abuse of venerated objects;

(f) ORS 166.090, Telephonic harassment;

(g) ORS 166.095, Misconduct with emergency telephone calls;

(h) ORS 167.340, Animal abandonment;

(i) ORS 418.630, Operating uncertified foster home;

(j) ORS 685.990, Violations pertaining to naturopathic medicine;

(k) ORS 822.045, Crimes relating to conducting a vehicle dealer business;

(l) ORS 830.035/990, Fleeing or attempting to allude a peace officer (small watercraft);

(m) ORS 830.053/990, Fraudulent report of theft of boat;

(n) ORS 830.315/990, Reckless operation of a boat;

(o) ORS 830.325, Operating boat while under influence of intoxicating liquor or controlled substance;

(p) ORS 830.730/990, False information to peace officer or State Marine Board;

(q) ORS 830.955/990, Prohibition of installation of submersible polystyrene device;

(r) Any crime of attempt, solicitation or conspiracy to commit a crime listed in this section pursuant to ORS 161.405, 161.435 or 161.450

(s) Any crime based on criminal liability for conduct of another pursuant to ORS 161.155, when the underlying crime is listed in this section (3).

(t) Any crime in any other jurisdiction which is the substantial equivalent of any of the Oregon crimes listed in this section (3) as determined by the authorized designee.

(u) Any offense that no longer constitutes a crime under Oregon law or the law of another jurisdiction, but is the substantial equivalent of any of the crimes listed in this section (3) as determined by the authorized designee.

(4) Evaluation Based on Oregon Laws. An authorized designee shall evaluate a crime on the basis of Oregon laws and, if applicable, federal laws or the laws of any other jurisdiction in which a criminal records check indicates a subject individual may have committed a crime, as those laws are in effect at the time of the fitness determination.

(5) Expunged Juvenile Record. Under no circumstances shall a subject individual be denied under these rules on the basis of the existence or contents of a juvenile record that has been expunged pursuant to ORS 419A.260 and 419A.262.

Stat. Auth.: ORS 181.534, 184.340, 184.365.

Stats. Implemented: ORS 181.534(9).

Hist.: DAS 6-2006(Temp), f. & cert. ef. 9-12-06 thru 2-11-07; DAS 9-2006, f. & cert. ef. 12-28-06

125-007-0280

Incomplete Fitness Determination.

(1) The Department will close a preliminary or final fitness determination as incomplete when:

(a) Circumstances change so that a person no longer meets the definition of a "subject individual" under OAR 125-007-0220;

(b) The subject individual does not provide materials or information under OAR 125-007-0230(1) within the timeframes established under that rule;

(c) An authorized designee cannot locate or contact the subject individual;

(d) The subject individual fails or refuses to cooperate with an authorized designee's attempts to acquire other criminal records information under OAR 125-007-0260(2); or

(e) The Department determines that the subject individual is not eligible or not qualified for the position (of employee, contractor, vendor or volunteer) for a reason unrelated to the fitness determination process.

(2) A subject individual does not have a right to a contested case hearing under OAR 125-007-0300 to challenge the closing of an incomplete fitness determination.

Stat. Auth.: ORS 181.534, 184.340, 184.365.

Stats. Implemented: ORS 181.534(9).

Hist.: DAS 6-2006(Temp), f. & cert. ef. 9-12-06 thru 2-11-07; DAS 9-2006, f. & cert. ef. 12-28-06

125-007-0290

Notice to Subject Individual of Fitness Determination.

(1) An authorized designee shall provide, in a format approved by the Department, written notice to a subject individual upon completion of a preliminary or final fitness determination, or upon the closing a fitness determination due to incompleteness.

(a) The authorized designee shall record on the notice the date on which the fitness determination was either closed as incomplete or completed.

(b) If the notice pertains to a completed final fitness determination, it shall be accompanied by a separate notice addressing the subject individual's right to request a contested case hearing to appeal the Department's determination and containing the information required by OAR 137-003-0505.

(2) An authorized designee shall provide for hand delivery or first class mail delivery of the notice as soon as possible after completion or closure of a fitness determination, but in no case later than 14 calendar days after the date of completion or closure, to the address provided by the subject individual on the DAS Criminal Records Request form, or to an updated address as provided in writing by the subject individual.

Stat. Auth.: ORS 181.534, 184.340, 184.365.

Stats. Implemented: ORS 181.534(9).

Hist.: DAS 6-2006(Temp), f. & cert. ef. 9-12-06 thru 2-11-07; DAS 9-2006, f. & cert. ef. 12-28-06

125-007-0300

Appealing a Fitness Determination

(1) Purpose. This rule sets forth a contested case hearing process by which a subject individual may appeal a completed final fitness determina-

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tion made under OAR 125-007-0260 that he or she is fit or not fit to hold a position with, or provide services to the Department as an employee, volunteer, contractor, or vendor. Section (6) of the rule identifies an alternative appeal process available only to current DAS employees.

(2) Process:

(a) A subject individual may appeal a fitness determination by submitting a written request for a contested case hearing to the address specified in the notice provided under OAR 125-007-290(1)(b), within 14 calendar days of the date appearing on the notice. The Department shall address a request received after expiration of the deadline as provided under OAR 137-003-0528.

(b) When a timely request is received by the Department under subsection (a), a contested case hearing shall be conducted by an administrative law judge assigned by the Office of Administrative Hearings, pursuant to the Attorney General's Uniform and Model Rules, "Procedural Rules, Office of Administrative Hearings" OAR 137-003-0501 to 137-003-0700, as supplemented by the provisions of this rule.

(c) The Department shall provide the subject individual or the subject individual's legal representative with all of the information required under OAR 137-003-0510 in writing before the hearing.

(d) As provided in OAR 137-003-0510(3), if participating in a contested case hearing, the Department and the subject individual may agree to use a collaborative method of dispute resolution designed to encourage them to work together to develop a mutually agreeable solution, such as negotiation or a settlement conference.

(3) Discovery

(a) A subject individual's hearing request under section (2)(a) of this rule shall constitute a discovery request for the following records:

(A) Any records the subject individual has a right to inspect under OAR 125-007-0310(2)(e); and

(B) In accordance with the Public Records Law, any records described in OAR 125-007-0310(3)(a).

(b) The Department or the administrative law judge may protect information made confidential by ORS 181.534(15) or other applicable law as provided in OAR 137-003-0570(7) or (8).

(4) No Public Attendance. Contested case hearings on fitness determinations are closed to non-participants.

(5) Proposed and Final Order:

(a) Proposed Order. After a hearing, the administrative law judge shall issue a proposed order. If the subject individual or subject individual's legal counsel does not file written exceptions with the Department within 14 calendar days after service of the proposed order, the proposed order shall become the final order.

(b) Exceptions. If the subject individual or the subject individual's legal counsel files timely written exceptions to the proposed order with the Department, the Department Director or the Director's designee shall consider the exceptions and serve a final order, or request a revised proposed order from the administrative law judge.

(c) Default. A completed final fitness determination made under OAR 125-007-260 shall constitute a final order without a hearing as provided under OAR 137-003-0672.

(6) Alternative Process. A subject individual currently employed by DAS may choose to appeal a fitness determination either under the process made available by this rule or through the process made available by applicable personnel rules, policies and collective bargaining provisions. A subject individual's decision to appeal a fitness determination through applicable personnel rules, policies, and collective bargaining provisions is an election of remedies as to the rights of the individual with respect to the fitness determination and is a waiver of the contested case process made available by this rule.

(7) Challenging Criminal Offender Information. A subject individual may not use the appeals process established by this rule to challenge the accuracy or completeness of information provided by the Oregon Department of State Police, the Federal Bureau of Investigation, or agencies reporting information to the Oregon Department of State Police or the Federal Bureau of Investigation.

(a) To challenge information identified in this section (7), a subject individual may use any process made available by the providing agency.

(b) If the subject individual successfully challenges the accuracy or completeness of information provided by the Oregon Department of State Police, the Federal Bureau of Investigation, or an agency reporting information to the Oregon Department of State Police or the Federal Bureau of Investigation, the subject individual may request that the Department conduct a new criminal records check and re-evaluate the original fitness deter-

mination made under OAR 125-007-0260 by submitting a new DAS Criminal Records Request form.

Stat. Auth.: ORS 181.534, 184.340, 184.365.

Stats. Implemented: ORS 181.534(9).

Hist.: DAS 6-2006(Temp), f. & cert. ef. 9-12-06 thru 2-11-07; DAS 9-2006, f. & cert. ef. 12-28-06

125-007-0310

Recordkeeping and Confidentiality

(1) An authorized designee shall document a preliminary or final fitness determination, or the closing of a fitness determination due to incompleteness, in writing.

(2) Records Received from the Oregon Department of State Police.

(a) Records the Department receives from the Oregon Department of State Police resulting from a criminal records check, including but not limited to LEDS reports and state or federal criminal offender information originating with the Oregon Department of State Police or the Federal Bureau of Investigation, are confidential pursuant to ORS 181.534(15).

(b) Within the Department, only authorized designees shall have access to records the Department receives from the Oregon Department of State Police resulting from a criminal records check.

(c) An authorized designee shall have access to records received from the Oregon Department of State Police in response to a criminal records check only if the authorized designee has a demonstrated and legitimate need to know the information contained in the records.

(d) Authorized designees shall maintain and disclose records received from the Oregon Department of State Police resulting from a criminal records check in accordance with applicable requirements and restrictions in ORS chapter 181 and other applicable federal and state laws, rules adopted by the Oregon Department of State Police pursuant thereto (see OAR chapter 257, division 15), these rules, and any written agreement between the Department and the Oregon Department of State Police.

(e) If a fingerprint-based criminal records check was conducted with regard to a subject individual, the Department shall permit that subject individual to inspect his or her own state and federal criminal offender information, unless prohibited by federal law.

(f) If a subject individual with a right to inspect criminal offender information under subsection (e) requests, the Department shall provide the subject individual with a copy of the individual's own state and federal criminal offender information, unless prohibited by federal law.

(3) Other Records.

(a) The Department shall treat all records received or created under these rules that concern the criminal history of a subject individual, other than records covered under section (2) of this rule, including DAS Criminal Records Request forms and fingerprint cards, as confidential pursuant to ORS 181.534(15).

(b) Within the Department, only authorized designees shall have access to the records identified under subsection (a).

(c) An authorized designee shall have access to records identified under subsection

(a) Only if the authorized designee has a demonstrated and legitimate need to know the information contained in the records.

(d) A subject individual shall have access to records identified under subsection (a) pursuant to the terms of the Public Records Law, ORS 192.410 to 192.505.

Stat. Auth.: ORS 181.534, 184.340, 184.365.

Stats. Implemented: ORS 181.534(9).

Hist.: DAS 6-2006(Temp), f. & cert. ef. 9-12-06 thru 2-11-07; DAS 9-2006, f. & cert. ef. 12-28-06

125-007-0320

Authorized Designees

(1) Appointment.

(a) The Department Director or the Director's designee shall designate positions within the Personnel Unit of the Department's Operations Division as including the responsibilities of an authorized designee.

(b) Appointment to one of the designated positions shall be contingent upon an individual being approved under the Department's criminal records check and fitness determination process.

(c) Appointments shall be made by the Department Director or the Director's designee at his or her discretion.

(2) The Department Director and Deputy Director may also serve as authorized designees, contingent on being approved under the Department's criminal records check and fitness determination process.

(3) Conflict of Interests. An authorized designee shall not participate in a fitness determination or review any information associated with a fitness determination for a subject individual if either of the following is true:

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- (a) The authorized designee is related to the subject individual; or
- (b) The authorized designee has a financial or close personal relationship with the subject individual. If an authorized designee is uncertain of whether a relationship with a subject individual qualifies as a financial or close personal relationship under this subsection (b), the authorized designee shall consult with his or her supervisor prior to taking any action that would violate this rule if such a relationship were determined to exist.

(4) Termination of Authorized Designee Status.

(a) When an authorized designee's employment in a designated position ends, his or her status as an authorized designee is automatically terminated.

(b) The Department shall suspend or terminate a Department employee's appointment to a designated position within the Personnel Unit of the Department's Operations Division, and thereby suspend or terminate his or her status as an authorized designee, if the employee fails to comply with OAR 125-007-0200 thru 125-007-310 in conducting criminal records checks and fitness determinations.

(c) An authorized designee shall immediately report to his or her supervisor if he or she is arrested for or charged with, is being investigated for, or has an outstanding warrant or pending indictment for a crime listed in OAR 125-007-0270. Failure to make the required report is grounds for termination of the individual's appointment to a designated position within the Personnel Unit of the Department's Operations Division, and thereby termination of his or her status as an authorized designee.

(d) The Department will review and update an authorized designee's eligibility for service in a designated position within the Personnel Unit of the Department's Operations Division, during which a new criminal records check and fitness determination may be required:

(A) Every three years; or

(B) At any time the Department has reason to believe that the authorized designee has violated these rules or no longer is eligible to serve in his or her current position within the Personnel Unit of the Department's Operations Division.

(5) A denial under OAR 125-007-0260(3) related to a designated position within the Personnel Unit of the Department's Operations Division is subject to the appeal rights provided under OAR 125-007-0300.

Stat. Auth.: ORS 181.534, 184.340, 184.365.

Stats. Implemented: ORS 181.534(9).

Hist.: DAS 6-2006(Temp), f. & cert. ef. 9-12-06 thru 2-11-07; DAS 9-2006, f. & cert. ef. 12-28-06

125-007-0330

Fees

(1) The Department may charge a fee for acquiring criminal offender information for use in making a fitness determination. In any particular instance, the fee shall not exceed the fee(s) charged the Department by the Oregon Department of State Police and the Federal Bureau of Investigation to obtain criminal offender information on the subject individual.

(2) The Department may charge the fee to the subject individual on whom criminal offender information is sought, or, if the subject individual is an employee of a Department contractor or vendor and is undergoing a fitness determination in that capacity, the Department may charge the fee to the subject individual's employer.

(3) The Department shall not charge a fee if the subject individual is a Department employee, a Department volunteer, or an applicant for employment or a volunteer position with the Department.

Stat. Auth.: ORS 181.534, 184.340, 184.365.

Stats. Implemented: ORS 181.534(9).

Hist.: DAS 6-2006(Temp), f. & cert. ef. 9-12-06 thru 2-11-07; DAS 9-2006, f. & cert. ef. 12-28-06

Department of Agriculture Chapter 603

Rule Caption: Expand Umatilla Management Area on landowners' request; housekeeping for consistency with other Columbia basin rules.

Adm. Order No.: DOA 22-2006

Filed with Sec. of State: 12-21-2006

Certified to be Effective: 12-21-06

Notice Publication Date: 8-1-06

Rules Amended: 603-095-0300, 603-095-0320, 603-095-0340, 603-095-0380

Rules Repealed: 603-095-0360

Subject: This revision adds land to the Umatilla Management Area and was requested by local landowners. The revised rules now

include all lands draining into the Umatilla River and all lands in Oregon that drain directly to the Columbia and which lie between the Umatilla and Walla Walla rivers. OAR 603-095-0340 was revised to add insects to the allowable exceptions when developing an Integrated Pest Management Plan to deal with unfavorable crop pests. Other proposed changes revise the soil erosion requirements, eliminate some rules that are outside the agency's scope of authority or are redundant, and change the rules' effective date from 2010 to 2008. Additionally, some rule language was revised to make it more consistent with other Columbia basin area rules.

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

603-095-0300

Purpose

(1) These rules have been developed to implement a water quality management area plan for the Umatilla Agricultural Water Quality Management Area pursuant to authorities vested in the department through ORS 568.900–568.933 and 561.190–561.191. The area plan is known as the Umatilla Agricultural Water Quality Management Area Plan.

(2) The purpose of these rules is to outline requirements for landowners in the Umatilla Agricultural Water Quality Management Area for the prevention and control of water pollution from agricultural activities and soil erosion. Compliance with Division 95 rules is expected to aid in the achievement of applicable water quality standards in the Umatilla Agricultural Water Quality Management Area.

Stat. Auth.: ORS 561.190 – 561.191, 568.912

Stats. Implemented: ORS 568.900 - 568.933

Hist.: DOA 22-1999 f. & cert. ef. 10-6-99; DOA 22-2006, f. & cert. ef. 12-21-06

603-095-0320

Geographic and Programmatic Scope

(1) The Umatilla Agricultural Water Quality Management Area includes all land that drains into the Umatilla River and all land in Oregon that drains directly to the Columbia River between the Umatilla River and the Walla Walla River. The physical boundaries of the Umatilla Agricultural Water Quality Management Area are indicated on the map included as **Appendix 1** of these rules.

(2) Operational boundaries for the land base under the purview of these rules include all lands within the Umatilla Agricultural Water Quality Management Area in agricultural use and agricultural and rural lands which are lying idle or on which management has been deferred, with the exception of public lands managed by federal agencies (e.g., U.S. Forest Service, U.S. Fish and Wildlife Service), lands which make up the Reservation of the Confederated Tribes of the Umatilla, and activities which are subject to the Forest Practices Act.

(3) The provisions of these rules apply to all agricultural and rural land whether or not in current productive agricultural use.

(4) The provisions and requirements outlined in these rules may be adopted by reference by Designated Management Agencies with appropriate authority and responsibilities in other geographic areas of the Umatilla Agricultural Water Quality Management Area.

(5) For lands in agricultural use within other Designated Management Agencies' or state agency jurisdictions, the department and the appropriate Local Management Agency will work with these Designated Management Agencies to assure that provisions of these rules apply and to assure that duplication of any services provided or fees assessed does not occur.

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

Stat. Auth.: ORS 561.190 – 561.191, 568.912

Stats. Implemented: ORS 568.900 - 568.933

Hist.: DOA 22-1999 f. & cert. ef. 10-6-99; DOA 22-2006, f. & cert. ef. 12-21-06

603-095-0340

Prevention and Control Measures

(1) All landowners or operators conducting activities on lands in agricultural use must be in compliance with the following rules. A landowner is responsible for only those conditions caused by activities conducted on land managed by the landowner or operator. Rules will be applied with consideration of agronomic and economic impacts.

(a) These rules do not apply to conditions resulting from unusual weather events or other exceptional circumstances.

(b) Temporary exceptions to the rules are allowed when a specific integrated pest management plan is in place to deal with certain weed, insect pest, or disease problems.

(c) Unless otherwise indicated, the rules below become effective on January 1, 2008.

(2) Waste Management:

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Effective on rule adoption, no person subject to these rules shall violate any provision of ORS 468B.025 or 468B.050.

(3) Soil Erosion and Sediment Control Landowners must control upland soil erosion using technically sound and economically feasible methods.

(a) Landowners must control active channel (gully) erosion to protect against sediment delivery to streams.

(b) On croplands, a landowner may demonstrate intent to comply with this rule by:

(A) Operating consistent with a Soil and Water Conservation District (SWCD)-approved conservation plan that meets Resource Management Systems (RMS) quality criteria for soil and water resources; or

(B) Operating in accordance with an SWCD-approved plan for Highly Erodible Lands (HEL) developed for the purpose of complying with the current US Department of Agriculture (USDA) farm program legislation and farming non-HEL cropland in a manner that meets the requirements of an approved USDA HEL compliance plan for similar cropland soils in the county; or

(C) Farming such that the predicted sheet and rill erosion rate does not exceed 5 tons/acre/year, as estimated by the Revised Universal Soil Loss Equation (RUSLE); or

(D) Constructing and maintaining terraces, sediment basins, or other structures sufficient to keep eroding soil out of streams.

(c) On rangelands, a landowner may demonstrate intent to comply with this rule by:

(A) Operating consistent with a Soil and Water Conservation District (SWCD)-approved conservation plan that meets Resource Management Systems (RMS) quality criteria for soil and water resources;

(B) Maintaining sufficient live vegetation cover and plant litter to capture precipitation, slow the movement of water, increase infiltration, and reduce excessive movement of soil off the site; or

(C) Minimizing visible signs of erosion, such as pedestal or rill formation and areas of sediment accumulation.

(d) Private roads that traverse rural lands or roads used for agricultural activities must be constructed and maintained such that road surfaces, fill and associated structures are designed and maintained to limit contributing sediment to waters of the state. All roads on agricultural lands not subject to the Oregon Forest Practices Act (OFPA) are subject to this regulation. Homesteads and other non-crop areas must be laid out and managed in a manner that controls soil erosion and prevents delivery of sediments to the stream. Stream crossings, with or without culverts or bridges, must be kept to a minimum, and must be installed and maintained to prevent sediment delivery to the stream. Agricultural lands must be managed to prevent runoff of sediment to public road drainage systems.

(4) Stream-side Area Management

(a) Agricultural land management activities must not cause stream-bank instability.

(b) Agricultural land management near streams must include establishment and maintenance of riparian vegetation, vegetative buffers, filter strips, sediment retention structures, or equally effective water pollution control practices, placed so as to prevent sediment, thermal and other pollution of waters of the state.

(c) When establishment or reestablishment of crops occurs near waters of the state during the growing season (March through October), cropping and management systems must be employed that prevent erosion. An adequate vegetative buffer or equally effective erosion control practice must be provided during the winter months (November through March).

(5) Livestock Management:

(a) Pastures and rangeland must be managed to prevent sediment, nutrient and bacterial contributions to waters of the state. Adequate vegetative buffers or filter strips must be installed and maintained, and vegetative cover must be maintained or restored after use as needed to control contaminated runoff or weed infestations. Where appropriate, waste management systems must be installed to collect, store and utilize animal wastes.

(b) Barnyards, feedlots, drylots, confinement and non-pasture areas, and other livestock facilities located near waters of the state must employ an adequate runoff control system, or an equally effective pollution control practice. Where necessary to prevent waste delivery, waste management systems must be installed to collect, store and utilize animal wastes.

(c) Grazing must be done in a manner that does not degrade waters of the state or negatively impact the stability of streambanks. Grazing management systems must be applied that allow for recovery of plants and leaves adequate vegetative cover to ensure streambank stability, reduce sediments entering the stream, and provide stream-side shading consistent

with the site. The grazing management system must maintain or develop the desired vegetative cover.

(6) Irrigation Management

(a) Irrigation systems must be designed and operated to prevent runoff of potential contaminants. Irrigation scheduling must consider such factors as soil conditions, crop, climate and topography.

(b) Overland return flows from irrigation must be managed to prevent the delivery of pollution including water temperature increases to waters of the state.

(7) Nutrient and Farm Chemical Management

(a) Crop nutrient applications, including manure, sludge and commercial fertilizers, must be done at a time and in a manner that does not pollute waters of the state.

(b) Nutrients and farm chemicals must be stored in a location and condition that makes them unlikely to be carried into the waters of the state by any means.

(8) Channel and Drain Management Whenever major construction, reconstruction or maintenance occurs in ditches and water channels, exclusive of perennial and intermittent streams, they must be designed and maintained with a capacity to handle a greater than normal runoff event with a minimum likelihood of bank erosion or erosion impacts on nearby land areas.

Stat. Auth.: ORS 561.190 – 561.191, 568.912

Stats. Implemented: ORS 568.900 – 568.933

Hist.: DOA 22-1999 f. & cert. ef. 10-6-99; DOA 22-2006, f. & cert. ef. 12-21-06

603-095-0380

Complaints and Investigations

(1) When the department receives notice of an alleged occurrence of agricultural pollution through a written complaint, its own observation, through notification by another agency, or by other means, the department may conduct an investigation. The department may, at its discretion, coordinate inspection activities with the appropriate Local Management Agency.

(2) Each notice of an alleged occurrence of agricultural pollution will be evaluated in accordance with the criteria in ORS 568.900 to 568.933 or any rules adopted thereunder to determine whether an investigation is warranted.

(3) Any person allegedly being damaged or otherwise adversely affected by agricultural pollution or alleging any violation of ORS 568.900 to 568.933 or any rules adopted thereunder may file a complaint with the department.

(4) The department will evaluate or investigate a complaint filed by a person under section OAR 603-095-0380(3) if the complaint is in writing, signed and dated by the complainant and indicates the location and description of:

(a) The waters of the state allegedly being damaged or impacted; and

(b) The property allegedly being managed under conditions violating criteria described in ORS 568.900 to 568.933 or any rules adopted thereunder.

(5) As used in section OAR 603-095-0380(4), "person" does not include any local, state or federal agency.

(6) Notwithstanding OAR 603-095-0380, the department may investigate at any time any complaint if the department determines that the violation alleged in the complaint may present an immediate threat to the public health or safety.

(7) If the department determines that a violation of ORS 568.900 through 568.933 or any rules adopted thereunder has occurred, that landowner may be subject to the enforcement procedures of the department outlined in OAR 603-090-0060 through 603-090-0120.

Stat. Auth.: ORS 561.190 – 561.191, 568.912

Stats. Implemented: ORS 568.900 – 568.933

Hist.: DOA 22-1999 f. & cert. ef. 10-6-99; DOA 22-2006, f. & cert. ef. 12-21-06

Rule Caption: Amends Oregon Administrative Rules for Shellfish growing and harvesting.

Adm. Order No.: DOA 1-2007

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

Certified to be Effective: 1-2-07

Notice Publication Date: 11-1-06

Rules Adopted: 603-100-0040

Rules Amended: 603-100-0000, 603-100-0010

Subject: OAR chapter 603, division 100, applies to the sanitation of shellfish growing areas and harvesting, processing and distribution of shellfish. The amendments proposed for OAR 603-100-0000,

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would correct the definition of shellfish to make it identical to the definition in the shellfish statute, ORS 622. The amendment proposed for OAR 603-100-0010 changes the reference to the National Shellfish Sanitation Program Model Ordinance from the 1997 edition to the 2005 edition. It also adds definition for oyster seed and restricts the sale of commercially harvested oysters to licensed shellfish shippers and shucker packers.

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

603-100-0000

Definitions

As used in OAR 603-100-0000 to and including 603-100-0030 and in addition to the definitions set forth in ORS 622.010 and 622.080, the following shall apply:

(1) "Director" means the Director of the Department of Agriculture or authorized representative.

(2) "Certification Number" means the number assigned by the Department to each certified shellfish dealer. It consists of a one-to-five digit number preceded by the two-letter state abbreviation and followed by the two-letter symbol designating the type of operation certified.

(3) "Dealer" means every person or peddler engaged in the business of growing, harvesting, processing, or distributing shellfish. Dealers are certified and assigned a certification number by type of operation classified as follows:

(a) "Depuration processor (DP)" means a shellfish dealer who purchases or harvests shell stock from conditionally approved or restricted growing areas and submits such shell stock to an approved controlled purification process. Such dealers shall be certified as a shucker-packer and assigned a certification number designating depuration processor (DP) as the type of operation;

(b) "Distributor" means a jobber or wholesaler who furnishes or sells shellfish to retail outlets. Such dealers shall be certified as a distributor and assigned a certification number designating shellstock shipper (SS) as the type of operation;

(c) "Grower (GR)" means a dealer engaged in the business of growing shellfish intended for human consumption. Such dealers shall be certified as a grower and assigned a certification number designating (GR) as the type of operation;

(d) "Harvester (HV)" means a dealer who harvests shellfish intended for human consumption or employs persons to harvest shellfish intended for human consumption from growing areas. Such dealers shall be certified as harvesters and assigned a certification number designating harvester (HV) as type of operation;

(e) "Repackers (RP)" means dealers other than the original certified shucker-packer who repack shucked shellfish. Such dealers shall be certified as a shucker-packer, and assigned a certification number designating repacker (RP) as type of operation;

(f) "Reshippers (RS)" means dealers who receive shellfish, either shellstock or shucked stock in original containers from certified shellfish distributors and transship such shellfish to other dealers or to the final consumer. Such dealers will be certified as distributors, and assigned a certification number designating shellstock reshipper (RS) as the type of operation;

(g) "Shellstock shippers (SS)" means dealers who buy, sell, or ship shellstock. Such dealers will be certified as a distributor and assigned a certification number designating shellstock shipper (SS) as the type of operation. A shellstock shipper may ship shucked shellfish, but, is not authorized to shuck or repack shucked shellfish;

(h) "Shucker-packer (SP)" means dealers who shuck, pack, and repack shellfish. Such dealers will be certified as a shucker-packer and assigned a certification number designating shucker-packer (SP) as the type of operation.

(4) "Seed" means shellfish that are less than market size for human consumption and have a maximum shell length of:

- (a) Thirteen millimeters (1/2 inch) for mussels;
 - (b) Twenty-five millimeters (1 inch) for scallops;
 - (c) Nineteen millimeters (3/4 inch) for Olympia oysters;
 - (d) Nineteen millimeters (3/4 inch) for Kumamoto oysters;
 - (e) Fifty-one millimeters (2 inches) for other oyster species;
 - (f) Thirty-eight millimeters (1 and 1/2 inch) for geoducks; and
 - (g) Thirteen millimeters (1/2 inch) for other clam species.
- (5) "Shellfish" means:

(a) All edible species of oysters, either shucked or in the shell, fresh or frozen, whole or in part and intended for human consumption.

(b) All edible species of clams, either shucked or in the shell, fresh or frozen, whole or in part and intended for human consumption.

(c) All edible species of mussels, either shucked or in the shell, fresh or frozen, whole or in part and intended for human consumption.

(d) All edible species of scallops, either shucked or in the shell, fresh or frozen, whole or in part, except when the final product is the shucked adductor muscle only, and intended for human consumption.

(6) "State Waters" means waters that belong wholly to the state including the Territorial Sea out to the three mile limit.

Stat. Auth.: ORS 561.190 & 622.180

Stats. Implemented: ORS 622.180

Hist.: HD 24-1987, f. & ef. 11-30-87; AD 22-1993, f. & cert. ef. 12-15-93; Renumbered from 333-190-0000; DOA 1-2007, f. & cert. ef. 1-2-07

603-100-0010

Sanitation of Shellfish Growing Areas and Harvesting, Processing and Distribution of Shellfish

As provided in ORS 622.180, the National Shellfish Sanitation Program, Guide for the Control of Molluscan Shellfish, 2005 Revision, is hereby adopted as the rules governing this subject matter in Oregon. The material covered is that governing growing area survey and classification, controlled relaying, patrol of harvest areas, control of harvesting, aquaculture, laboratory and administrative procedures. In addition the rules cover the harvesting, handling and shipping of shellfish; wet storage; shucking and packing shellfish; shellfish shipping, heat shock, depuration and application of Hazardous Analysis Critical Control Point (HACCP). These rules are recommended by the Interstate Shellfish Sanitation Conference and the Food and Drug Administration of Health and Human Services.

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

Stat. Auth.: ORS 561.190 & 622.180

Stats. Implemented: ORS 622.180

Hist.: HD 24-1987, f. & ef. 11-30-87; AD 22-1993, f. & cert. ef. 12-15-93; Renumbered from 333-191-0000; DOA 11-1999, f. & cert. ef. 6-4-99; DOA 1-2007, f. & cert. ef. 1-2-07

603-100-0040

Growers and Harvesters

(1) Growers and Harvesters must deliver shellfish intended for human consumption to a shellfish shipper certified by the Oregon Department of Agriculture within 24 hours of harvest.

(2) Growers and Harvesters may only sell shellfish intended for human consumption to shellfish shippers certified by the Oregon Department of Agriculture.

Stat. Auth.: ORS 561.190 & 622.180

Stats. Implemented: ORS 622.180

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

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

Rule Caption: Advisory board meeting processes.

Adm. Order No.: BCD 14-2006

Filed with Sec. of State: 12-29-2006

Certified to be Effective: 12-29-06

Notice Publication Date: 12-1-06

Rules Adopted: 918-040-0000, 918-040-0020, 918-040-0030, 918-040-0040

Rules Repealed: 918-225-0230, 918-251-0070, 918-400-0260, 918-690-0400

Subject: These rules establish consistent advisory board meeting processes for the administration of activities carried out by the Electrical and Elevator Board, the Building Codes Structures Board, the Mechanical Board, the Residential Structures Board, the Board of Boiler Rules, the Oregon State Plumbing Board and the Manufactured Structures and Parks Advisory Board.

Rules Coordinator: Dodie Wagner—(503) 373-7438

918-040-0000

Purpose and Scope

The rules in OAR chapter 918 division 040 establish consistent protocols for the administration of activities carried out by the boards covered by these rules. These rules apply to the Electrical and Elevator Board, the Building Codes Structures Board, the Mechanical Board, the Residential Structures Board, the Board of Boiler Rules, the Oregon State Plumbing Board and the Manufactured Structures and Parks Advisory Board.

Stat. Auth.: ORS 183.335

Stats. Implemented: ORS 455.144

Hist.: BCD 14-2006, f. & cert. ef. 12-29-06

ADMINISTRATIVE RULES

918-040-0020

Board Agendas

(1) Board meeting agendas will be made available approximately two weeks prior to scheduled meetings.

(2) Any person requesting that an item be placed on the agenda must make the request to the division at least 30 days before the scheduled meeting. The request must include:

- (a) A written statement explaining the subject matter of the item;
- (b) The action or result requested, if applicable;
- (c) The amount of time requested; and
- (d) Any other documents relevant to the item.

(3) The appropriate board chairperson may exclude a requested item from the agenda if the request does not include the information required in Section (2) of this rule, or is not relevant to, or appropriate for, the board in question.

(4) The board may restrict presentation time on any agenda item.

Persons appearing are encouraged to submit written statements.

Stat. Auth.: ORS 183.335
Stats. Implemented: ORS 455.144
Hist.: BCD 14-2006, f. & cert. ef. 12-29-06

918-040-0030

Rules of Order

Sturgis Standard Code of Parliamentary Procedure, Fourth Edition, is adopted for board and board-committee proceedings.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 183.335
Stats. Implemented: ORS 455.144
Hist.: BCD 14-2006, f. & cert. ef. 12-29-06

918-040-0040

Public Comment

(1) Board meeting agendas provide for public comment. No prior arrangements are necessary to make public comment.

(2) Time for comment may be restricted by the presiding officer.

(3) The board may decide to refer an item from public comment to the next meeting agenda.

Stat. Auth.: ORS 183.335
Stats. Implemented: ORS 455.144
Hist.: BCD 14-2006, f. & cert. ef. 12-29-06

Rule Caption: Changes boiler and pressure vessel inspection requirements.

Adm. Order No.: BCD 15-2006

Filed with Sec. of State: 12-29-2006

Certified to be Effective: 1-1-07

Notice Publication Date: 9-1-06

Rules Amended: 918-225-0570

Subject: This rule changes the boiler and pressure vessel inspection requirements. The rule prioritizes inspections while preserving public safety.

Rules Coordinator: Dodie Wagner—(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) Prior to March 1, 2007, hot water heating and hot water supply 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.

(5) Effective March 1, 2007, 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.

(6) Pressure vessels containing anhydrous ammonia intended for use, as fertilizer must be inspected externally every three years.

(7) Prior to September 1, 2007, fixed 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 (12) of this rule; and

(b) Externally — every five years.

(8) Effective September 1, 2007, fixed 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 (12) of this rule; and

(b) Externally — every six years.

(9) Pressure vessels, not classified in sections (6), (7) and (8) of this rule, and subject to internal corrosion or erosion must be inspected:

(a) Internally — every two years, subject to section (12) of this rule; and

(b) Externally — every two years.

(10) Unfired pressure vessels, not classified in sections (6), (7) and (8) of this rule, and not subject to internal corrosion must be inspected externally — every two years.

(11) 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.

(12) The inspector may waive an internal inspection, under sections (7), (8) and (9) 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.

(13) 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.

(14) Failure to comply with sections (1) through (13) 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

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

Adm. Order No.: BCD 16-2006

Filed with Sec. of State: 12-29-2006

Certified to be Effective: 1-1-07

Notice Publication Date: 10-1-06

Rules Adopted: 918-225-0435

Rules Amended: 918-225-0430

Subject: These rules adopt the nationally published addenda to the Oregon Boiler and Pressure Vessel Specialty Code.

Rules Coordinator: Dodie Wagner—(503) 373-7438

918-225-0430

Adopted Oregon Boiler and Pressure Vessel Specialty Code

The **Oregon Boiler and Pressure Vessel Specialty Code** containing the minimum safety standards for boilers, pressure vessels, pressure piping, nuclear components, parts, items, and repair and alteration procedures follow:

(1) ORS 480.510 to 480.670 and OAR chapter 918, division 225;

(2) The **Boiler and Pressure Vessel Code of The American Society of Mechanical Engineers (ASME), 2004 Edition** as published, including Section I; Section II, Parts A, B, C and D; Section IV; Section V; Section VI; Section VII; Section VIII, Division 1, 2 and 3; Section IX; and Section X.

(3) The **2004 Edition of the ANSI/ASME B31.1 Power Piping Code**.

(4) The **2004 Edition of the ANSI/ASME B31.3 Process Piping Code**.

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(5) The **2001 Edition of the ANSI/ASME B31.5 Refrigeration Piping Code**.

(6) The **1996 Edition of the ANSI/ASME B31.9 Building Service Piping Code**.

(7) The **2004 Edition of the National Board Inspection Code ANSI/NB 23**;

(8) The **2004 Edition of NFPA 85, Boiler and Combustion Systems Hazards Code**; and

(9) The **2004 Edition of ASME CSD-1, Controls and Safety Devices for Automatically Fired Boilers**.

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

Stat. Auth.: ORS 455.020, 480.545 & 480.550

Stats. Implemented: ORS 480.545, 480.550 & 480.560

Hist.: DC 17, f. 7-31-72, ef. 8-15-72; DC 19, f. 6-21-73, ef. 7-1-73; DC 27(Temp), f. & ef. 12-31-73; DC 33, f. 5-6-74, ef. 5-25-74; DC 38(Temp), f. & ef. 11-1-74; DC 50, f. 7-2-75, ef. 7-25-75; DC 89, f. & ef. 6-2-77; DC 93, f. & ef. 7-19-76; DC 1-1978, f. 1-5-78, ef. 1-15-78; DC 4-1980, f. & ef. 5-30-80; DC 6-1982, f. & ef. 2-4-82; DC 23-1982, f. & ef. 11-9-82; DC 18-1983, f. & ef. 8-11-1983; DC 21-1983, f. & ef. 9-29-83; DC 1-1984, f. & ef. 1-5-84; DC 18-1984, f. & ef. 5-9-84; DC 36-1984, f. & ef. 12-4-84; DC 16-1985, f. & ef. 7-1-85; DC 6-1986, f. & ef. 5-5-86; DC 2-1987, f. & ef. 2-18-87; BCA 5-1987, f. & ef. 8-24-87; BCA 15-1988, f. & cert. ef. 11-16-88; BCA 25-1989, f. & cert. ef. 7-27-89; Renumbered from 814-025-0006; BCA 5-1990, f. & cert. ef. 2-6-90; BCA 26-1990, f. & cert. ef. 10-30-90; BCA 36-1993, f. 12-30-93, cert. ef. 1-1-94; Renumbered from 918-225-0015; BCD 17-1996, f. & cert. ef. 9-17-96; BCD 18-1997, f. 12-3-97, cert. ef. 1-1-98; BCD 26-1998, f. 12-30-98, cert. ef. 1-1-99; BCD 36-2000, f. 12-29-00, cert. ef. 1-1-01; BCD 13-2002, f. 6-28-02, cert. ef. 7-1-02; BCD 17-2005(Temp), f. & cert. ef. 7-12-05 thru 9-30-05; BCD 20-2005, f. 9-15-05, cert. ef. 10-1-05; BCD 16-2006, f. 12-29-06, cert. ef. 1-1-07

918-225-0435

Amendments to the Oregon Boiler and Pressure Vessel Specialty Code

(1) The **Oregon Boiler and Pressure Vessel Specialty Code** is adopted and amended pursuant to chapter 918, division 8. Amendments adopted for inclusion into the **Oregon Boiler and Pressure Vessel Specialty Code** are placed in this rule, showing the section reference and a descriptive caption.

(2) Effective January 1, 2007, the following sections of the **Boiler and Pressure Vessel Code of The American Society of Mechanical Engineers (ASME), 2004 Edition**, are amended to adjust Oregon boiler code provisions that are in conflict with national standards:

(a) Section IV, "Rules for Construction of Heating Boilers."

(b) Section V, "Nondestructive Examination."

(c) Section VI, "Recommended Rules for the Care and Operation of Heating Boilers."

(d) Section VII, "Recommended Guidelines for the Care of Power Boilers."

(e) Section VIII, Divisions 1, 2 and 3, "Rules for Construction of Pressure Vessels."

(f) Section IX, "Qualification Standard for Welding and Brazing Procedures, Welders, Brazers, and Welding and Brazing Operators."

(g) Section X, "Fiber-Reinforced Plastic Pressure Vessels."

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

Stat. Auth.: ORS 455.020, 480.545 & 480.550

Stats. Implemented: ORS 480.545 & 480.550

Hist.: BCD 16-2006, f. 12-29-06, cert. ef. 1-1-07

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Rule Caption: Adopt amendments to the Oregon Elevator Specialty Code.

Adm. Order No.: BCD 17-2006

Filed with Sec. of State: 12-29-2006

Certified to be Effective: 1-1-07

Notice Publication Date: 10-1-06

Rules Adopted: 918-400-0458

Rules Amended: 918-400-0455

Subject: These rules adopt the nationally published 2005 Supplement and Addenda to the Safety Code for Elevators and Escalators, ASME 17.1, 2004 Edition, as amendments to the Oregon Elevator Specialty Code. The code amendments are housekeeping in nature to correct code references, eliminate duplicative language and clarify existing code requirements. Code amendments also allow for use of new technologies as an option, but do not mandate any change from existing requirements.

Rules Coordinator: Dodie Wagner—(503) 373-7438

918-400-0455

Adopted Oregon Elevator Specialty Code

The Oregon Elevator Specialty Code is:

(1) "The Belt Manlift Standard" published by the **American Society of Mechanical Engineers, ASME A90.1b, 2001 Edition** with revisions and interpretations through January 1, 2005;

(2) "**Oregon Specialty Lift Code,**" **2005 Edition**, including:

(a) Part 1, Vertical Reciprocating Lifts (VRL); and

(b) Part 2, Portable Wheelchair Lift Code.

(3) "The Inspector's Manual" published by the **American Society of Mechanical Engineers, ASME A17.2, 2001 Edition** together with revisions and interpretations published through July 1, 2002.

(4) The safety standard for the general installation, alteration, repair and maintenance of elevators, other than those identified in sections (1) to (3) of this rule, is the **Safety Code for Elevators and Escalators, ASME A17.1, 2004 Edition** with published revisions and interpretations through January 1, 2005. The escalator step/skirt index Requirements 6.1.3.3.7 and 6.1.3.3.8 and Section 8.6.8.3 shall be considered optional. Elective testing and installation of skirt deflecting devices shall conform to Requirements 6.1.3.3.7 and 6.1.3.3.8 and Section 8.6.8.3 as applicable.

(5) The safety standard for the general installation, alteration, repair and maintenance of vertical and inclined wheelchair lifts and inclined stairway chairlifts is the **Safety Standard for Platform Lifts and Stairway Chairlifts, ASME A18.1, 2001 Edition** with published revisions and interpretations through January 1, 2005.

(6) Referenced standards referred to within adopted standards, shall recognize the latest Oregon adopted edition unless otherwise specified herein.

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

Stat. Auth.: ORS 460.085

Stats. Implemented: ORS 460.085

Hist.: DC 25-1982, f. & ef. 12-16-82; DC 12-1986(Temp), f. & ef. 7-8-86; DC 10-1987, f. & ef. 4-13-87; Renumbered from 814-030-0005; BCA 35-1989, f. 12-22-89, cert. ef. 1-1-90; BCA 7-1992, f. & cert. ef. 4-10-92; BCA 26-1992, f. 12-29-92, cert. ef. 1-1-93; BCA 13-1993(Temp), f. 6-23-93, cert. ef. 7-1-93; BCA 17-1993, f. 8-24-93, cert. ef. 9-1-93; BCA 24-1993, f. 10-22-93, cert. ef. 11-1-93; BCA 35-1993, f. 12-14-93, cert. ef. 1-1-94; BCD 21-1994, f. 9-13-94, cert. ef. 9-15-94; BCD 18-1995, f. & cert. ef. 12-15-95; Renumbered from 918-400-0010; BCD 3-1997, f. 3-18-97, cert. ef. 4-1-97; BCD 20-1997, f. 12-24-97, cert. ef. 1-1-98; BCD 13-1999, f. & cert. ef. 10-1-99; Renumbered from 918-400-0520; BCD 3-2003, f. 2-28-03, cert. ef. 3-1-03; BCD 2-2005, f. 3-16-05, cert. ef. 4-1-05; BCD 17-2006, f. 12-29-06, cert. ef. 1-1-07

918-400-0458

Amendments to the Oregon Elevator Specialty Code

(1) The **Oregon Elevator Specialty Code** is adopted and amended pursuant to chapter 918, division 8. Amendments adopted for inclusion into the **Oregon Elevator Specialty Code** are placed in this rule, showing the section reference and a descriptive caption of the amendment.

(2) Effective January 1, 2007, adopt ASME A17.1a-2005, addenda to ASME A17.1. (2004 Edition)

(3) Effective January 1, 2007, adopt ASME A17.1S-2005, supplement to ASME A17.1. (2004 Edition).

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

Stat. Auth.: ORS 460.085

Stats. Implemented: ORS 460.085

Hist.: BCD 17-2006, f. 12-29-06, cert. ef. 1-1-07

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Rule Caption: Partial electrical product certification exemption for certain emergency installations.

Adm. Order No.: BCD 18-2006

Filed with Sec. of State: 12-29-2006

Certified to be Effective: 1-1-07

Notice Publication Date: 3-1-06

Rules Adopted: 918-261-0034

Subject: The rule partially exempts certain electrical equipment from product certification requirements when that equipment is used in the electrical distribution system exceeding 600 volts. The exemption is restricted to installations made in the event of an emergency repair or installation.

Rules Coordinator: Dodie Wagner—(503) 373-7438

918-261-0034

Product Certification Partial Exemption

(1) A partial exemption from electrical product certification is created under ORS 479.540 for distribution equipment operating at over 600 volts only when:

(a) The product is used in an emergency repair or installation as defined in section (4); and

(b) The installer provides the local jurisdiction with written evidence that the equipment meets the appropriate standards within 72 hours of installation.

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(2) The exemption is restricted to repairs or installations that include the following:

(a) Cable and associated fittings that meet the standards of the serving utility; or

(b) Pad-mounted switch gear that meets ANSI IEEE C37.73-1998 or C37.74-2003, or the equivalent and appropriate standard in effect at the time the product was manufactured.

(3) A jurisdiction may require product certification or take other appropriate steps if any of the circumstances in section (1) and (2) do not exist.

(4) For the purposes of this rule, emergency repair or installation means an acute, unplanned and immediate need for electrical repair or replacement involving an existing electrical installation or electrical product.

Stat. Auth.: 479.540

Stats. Implemented: 479.540

Hist.: BCD 18-2006, f. 12-29-06, cert. ef. 1-1-07

Rule Caption: Removes references to programs for inspector certifications no longer required.

Adm. Order No.: BCD 19-2006

Filed with Sec. of State: 12-29-2006

Certified to be Effective: 1-1-07

Notice Publication Date: 10-1-06

Rules Amended: 918-098-1000, 918-098-1005, 918-098-1010, 918-098-1025, 918-098-1030, 918-098-1305, 918-098-1310, 918-098-1315, 918-098-1320, 918-098-1325, 918-098-1330, 918-098-1440, 918-098-1450, 918-098-1620, 918-098-1630, 918-281-0020, 918-695-0400

Rules Repealed: 918-098-1040, 918-098-1042, 918-098-1045, 918-098-1050, 918-098-1055, 918-098-1060, 918-098-1065, 918-098-1070, 918-098-1075, 918-098-1085, 918-098-1200, 918-098-1205, 918-098-1220, 918-098-1400

Rules Ren. & Amend: 918-098-1080 to 918-098-1020

Subject: These rules remove references to in-training programs and transition periods for certification of inspectors and plans examiners because the transition time period has expired.

Rules Coordinator: Dodie Wagner—(503) 373-7438

918-098-1000

Purpose and Scope

(1) These rules establish minimum training, experience and certification requirements for building officials and persons who perform specialty code plan review and inspections in this state. The certification requirements for commercial plumbing and electrical inspectors are located in OAR 918-695-0400 through 918-695-0410 and 918-281-0000 through 918-281-0020.

(2) Nothing in these rules is intended to allow a person to violate statute or rule or change certification and licensing requirements set forth in statute.

(3) Nothing in these rules prevents the administrator from waiving procedural requirements in the rare circumstance where substantial compliance is impracticable.

Stat. Auth.: ORS 455.720

Stats. Implemented: ORS 446.250, 455.622 & 455.720

Hist.: BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05; BCD 24-2005, f. 9-30-05, cert. ef. 10-1-05; BCD 4-2006, f. 3-31-06, cert. ef. 4-1-06; BCD 19-2006, f. 12-29-06, cert. ef. 1-1-07

918-098-1005

Definitions

As used in OAR chapter 918, division 098, unless the context requires otherwise:

(1) "A-level Structures" means structures regulated by the Oregon Structural Specialty Code that require a state fire and life safety plan review or are required to be designed by an Oregon licensed architect or engineer pursuant to ORS Chapter 671.

(2) "B-level Structures" means structures regulated by the Oregon Structural Specialty Code that do not require a state fire and life safety plan review and are not required to be designed by an Oregon licensed architect or engineer pursuant to ORS chapter 671.

(3) "Building Inspection Technology" means an approved curriculum meeting the requirements of OAR 918-098-1420.

(4) "Code-Change Course" means a continuing education course that addresses changes to specialty codes, code standards, interpretations and alternate methods or administrative rules addressing code.

(5) "Commercial" means structures regulated by the **Oregon Structural Specialty Code**.

(6) "Cross-Training Program" means a division approved residential, electrical or plumbing inspector on-the-job cross-training program and practical evaluation, established by the building official of a local jurisdiction, that meets the minimum training and education requirements established by the division.

(7) "Design" means professional, engineering or technical design of systems or components that requires computations, research or special knowledge.

(8) "Division" means the Building Codes Division.

(9) "Education Institution" is an institution accredited through a nationally recognized body and is usually governed by a local board and receives a state recognition.

(10) "Education Program" is a minimum two-year, or one-year focused building inspection technology program administered by an education institution.

(11) "International Code Council certification" means a certification issued by the International Code Council demonstrating that an individual has passed a specific International Code Council certification examination.

(12) "Nationally Recognized Certification Body" means a body or organization that provides formal recognition that a person possesses minimum knowledge of a recognized code.

(13) "High Priority Training" means periodic continuing education training identified by the division that addresses new technologies or specific problem areas identified by the division.

(14) "Oregon Code Certification" means a certification issued by the division for:

(a) Building Official;

(b) Fire and Life Safety Plans Examiner;

(c) A-Level Structural Plans Examiner;

(d) B-Level Structural Plans Examiner;

(e) Residential or One-and-Two Family Dwelling Plans Examiner;

(f) Residential or One-and-Two Family Dwelling Structural

Inspector;

(g) A-Level Structural Inspector;

(h) A-Level Mechanical Inspector;

(i) B-Level Structural Inspector;

(j) B-Level Mechanical Inspector;

(k) Residential or One-and-Two Family Dwelling Mechanical Inspector;

(l) Electrical Specialty Code Inspector;

(m) Residential or One-and-Two Family Dwelling Electrical Inspector;

(n) Plumbing Specialty Code Inspector;

(o) Residential or One-and-Two Family Dwelling Plumbing Inspector;

(p) Limited Plumbing Inspector — Building Sewers;

(q) Manufactured Structure Construction Inspector;

(r) Manufactured Structure Installation Inspector;

(s) Recreational Vehicle Inspector Certification; and

(t) Park and Camp Inspector.

(15) "Oregon Inspector Certification" means a certification issued by the division demonstrating that a person has passed a division-approved examination that covers Oregon laws and regulations relating to state building codes including, but not limited to, architectural barrier laws governing accessibility to buildings by disabled persons.

(16) "Practical Experience Evaluation" means a division-approved evaluation to determine if a person meets the practical experience equivalent of 50 percent of the required work experience listed in the appropriate certification categories defined in OAR 918-098-1030.

(17) "Recognized Code" means a regulatory document enforced by one or more state or local governments that prescribes minimum standards for building materials and construction methods of buildings or structures and building service equipment including plumbing, mechanical and electrical systems.

(18) "Residential Structures" means one-and two-family dwellings, townhouses and rowhouses regulated by the **Oregon Residential Specialty Code**, excluding apartment buildings.

(19) "Year of Experience" means 2,000 hours of documented experience.

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

Stat. Auth.: ORS 455.720

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Stats. Implemented: ORS 455.720

Hist.: BCA 16-1992, f. & cert. ef. 8-11-92; BCD 23-1996(Temp), f. & cert. ef. 10-21-96; BCD 8-1997, f. & cert. ef. 4-1-97; Renumbered from 918-099-0220; BCD 15-1997, f. 9-30-97, cert. ef. 10-1-97; BCD 38-2000, f. 12-29-00, cert. ef. 1-1-01; BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05, Renumbered from 918-098-0010; BCD 24-2005, f. 9-30-05, cert. ef. 10-1-05, Renumbered from 918-098-0010; BCD 4-2006, f. 3-31-06, cert. ef. 4-1-06; BCD 19-2006, f. 12-29-06, cert. ef. 1-1-07

918-098-1010

Certification Requirements

(1) Unless otherwise stated in this rule, every person who performs building official duties building code inspections, or plan reviews must possess either:

(a) An Oregon Code Certification issued prior to October 1, 2005; or
(b) An Oregon Inspector Certification and an Oregon Code Certification issued after October 1, 2005; or

(c) An Oregon Inspector Certification and the current appropriate International Code Council certification for the work being performed and the minimum level of experience as follows:

(A) Two years of construction or inspection-related experience or its equivalent; or

(B) An approved one-year inspection-related education program and one year of construction or inspection-related experience; or

(C) A degree from an approved two-year inspection-related education program or its equivalent; or

(D) Be a registered Oregon architect, a certified Oregon professional engineer, or have a bachelor or master degree in architecture or civil or structural engineering.

(2) Notwithstanding section (1)(c) of this rule, a person may perform the duties of a building official with only the Oregon Inspector Certification providing the person passes the International Code Council Certified Building Official Legal Management examination within six months of hire.

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

Stat. Auth.: ORS 455.720 & 455.730

Stats. Implemented: ORS 455.720 & 455.730

Hist.: BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05; BCD 24-2005, f. 9-30-05, cert. ef. 10-1-05; BCD 4-2006, f. 3-31-06, cert. ef. 4-1-06; BCD 19-2006, f. 12-29-06, cert. ef. 1-1-07

918-098-1020

Expanded Scope of Work for Oregon A- or B-Level or Commercial Mechanical Inspectors

(1) Persons who possess a current and valid Oregon Code Certification as an Oregon A- or B-level Mechanical Inspector, or an Oregon Inspector Certification and an International Code Council Certification as a Commercial Mechanical Inspector, may conduct inspections of brazing or welding work related to the installation, alteration or repair of refrigeration piping systems, except as regulated by the Oregon Boiler and Pressure Vessel Program under OAR chapter 918, division 225.

(2) To perform work under section (1) of this rule, these persons must successfully complete a training program in accordance with either **Section IX, "Welding and Brazing Qualification"** of the **ASME Boiler and Pressure Vessel Code**, or **AWS B2.2, "Standard for Brazing Procedure and Performance Qualification"** administered by a division-approved organization.

(3) Inspector certification for refrigeration piping in residential structures is not required.

[Publications referenced are available for review at the division.]

Stat. Auth.: ORS 455.720

Stats. Implemented: ORS 455.720

Hist.: BCD 2-2001, f. 2-2-01, cert. ef. 7-1-01; BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05, Renumbered from 918-098-0900; BCD 24-2005, f. 9-30-05, cert. ef. 10-1-05, Renumbered from 918-098-0900; Renumbered from 918-098-1080, BCD 19-2006, f. 12-29-06, cert. ef. 1-1-07

918-098-1025

Oregon Inspector Certification and Oregon Code Certification Application Process; Testing Procedures

(1) Unless a person is qualified to apply under section (2) of this rule, all persons who seek certification to perform the duties of a building official, inspector or plans examiner must apply for the Oregon Inspector Certification as follows:

(a) Submit a division-approved application with a payment of \$22.00; and

(b) Successfully pass the Oregon Inspector Certification examination.

(2) Persons applying for an Oregon Code Certification under these rules, or under OAR 918-281-0020 and 918-695-0400 must:

(a) Submit a division-approved application demonstrating appropriate experience, as defined in chapter 918, division 281, 695, or these rules; and

(b) Pay a \$22.00 fee; and

(c) Successfully pass the appropriate Oregon Code Certification exam.

(3) Applicants for an Oregon Inspector Certification who fail the examination may reapply under section (1) of this rule to retest.

(4) Applicants for an Oregon Code Certification who fail the examination may reapply under section (2) of this rule to retest. Applicants may not retake the test for 30 days after each failed attempt.

(5) If an applicant fails to take the Oregon Inspector Certification exam or the Oregon Code Certification exam within 60 days of being approved to do so, the applicant must re-apply under section (1) or (2) of this rule.

Stat. Auth.: ORS 455.720, 455.730 & 455.735

Stats. Implemented: ORS 455.720, 455.730 & 455.735

Hist.: BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05; BCD 24-2005, f. 9-30-05, cert. ef. 10-1-05; BCD 4-2006, f. 3-31-06, cert. ef. 4-1-06; BCD 19-2006, f. 12-29-06, cert. ef. 1-1-07

918-098-1030

Practical Experience Evaluation Requirements

(1) The following evaluation process is established to determine a practical experience equivalent for the various structural and mechanical Oregon Code Certifications issued under these rules.

(2) Satisfactory completion of an approved evaluation shall be accepted by the division or a building official as compliance with 50 percent of the minimum experience requirements for the specific Oregon Code Certification. The evaluation may include, but is not limited to, a field evaluation and division-approved written examination.

(3) When a field evaluation is used, the jurisdiction with the intent to hire must:

(a) Schedule the evaluators from a list provided by the division; and

(b) Coordinate appropriate job site locations for the evaluators and applicants, when applicable.

(4) There shall be two or more division-approved evaluators, that may include a representative of the division, for each field evaluation who must:

(a) Have at least two years inspection or plan review experience with the same or higher certification in the same discipline for which the person has applied; and

(b) Not be employed by the municipality that is sponsoring the applicant.

(5) The applicant may appeal the evaluation results to the administrator and request a contested case hearing under ORS Chapter 183.

Stat. Auth.: ORS 455.720

Stats. Implemented: ORS 455.720

Hist.: BCD 38-2000, f. 12-29-00, cert. ef. 1-1-01; BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05, Renumbered from 918-098-0065; BCD 24-2005, f. 9-30-05, cert. ef. 10-1-05, Renumbered from 918-098-0065; BCD 19-2006, f. 12-29-06, cert. ef. 1-1-07

918-098-1305

Manufactured Structure Installation Inspector Certification

(1) Scope of Activities and Authority.

(a) A manufactured structure installation inspector conducts on-site field inspections of manufactured dwelling or park trailer installations including site preparation, setbacks, drainage, stand, foundation support, earthquake bracing systems, tie-downs, under-floor enclosures, access, egress, plumbing utility connections (within 30 lineal feet of the manufactured dwelling), mechanical connections and electrical feeder assembly connections (as defined by **Article 550 of the National Electrical Code**), electrical fixture connections and plumbing, mechanical and electrical crossover connections for manufactured structures under ORS 446.230 and 446.240;

(b) This certification does not include inspections or plan reviews of manufactured dwelling alterations or manufactured structure accessory structures and accessory buildings. See OAR 918-098-1325 and 918-098-1330 for certification requirements.

(c) This certification can be used only in a jurisdiction that:

(A) Meets all of the requirements of this rule and OAR 918-500-0055;

(B) Complies with ORS 446.250 and 446.253(2) relating to the delegation of full responsibility for permit issuance and inspections;

(C) Issues permits according to ORS 446.253; and

(D) Enforces the current edition of the **Oregon Manufactured Dwelling and Park Specialty Code** and all referenced standards contained therein.

(2) Procedure for Qualification. An applicant for certification under this rule must meet the general qualifications in section (3) of this rule,

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make application, pay the required fees, attend a division-approved training program and pass a division-approved examination.

(3) Experience, Education and Training Requirements. An applicant must have at least one of the following:

(a) 2 years of supervisory experience in the building construction industry; or

(b) 2 years of experience in design work related to building construction; or

(c) Be a division-certified building inspector or plans examiner; or

(d) 2 years of experience as a quality assurance inspector in a manufactured structure manufacturing plant; or

(e) 2 years of experience as an Oregon licensed manufactured dwelling installer; or

(f) An associate degree or equal from a division-approved education program in a construction-related field; or

(g) Any combination of the experience and education listed in subsections (a) through (f) of this section equaling at least 2 years; or

(h) A one-year certificate of completion in building inspection technology from a division-approved education program and completion of 180 hours working under the supervision of a person with a minimum of three years experience as a certified manufactured structure installation inspector or a person approved by the board.

(4) Inspector Training and Examination. An applicant must successfully complete a division-approved manufactured structure installation inspector training program and pass a division-approved examination covering:

(a) The Oregon Manufactured Dwelling and Park Specialty Code and those standards referenced therein;

(b) ORS 446.003, 446.155 to 446.253, and 446.395 to 446.420; and

(c) OAR chapter 918, divisions 500, 515, 520, and 530.

(5) After October 1, 2005, a Manufactured Structure Installation Inspector must also possess an Oregon Inspector Certification issued under OAR 918-098-1025 prior to performing inspections.

(6) Revocation. The division is authorized to revoke this certification under ORS 446.255. Persons certified under this rule who fail to meet the minimum continuing education requirements shall be subject to revocation. If the minimum continuing education is met within 60 days from the date it was originally due, the division shall discontinue any pending revocation action based on a failure to meet minimum continuing education requirements.

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

Stat. Auth.: ORS 446.250, 446.255 & 455.720

Stats. Implemented: ORS 446.250, 446.255 & 455.720

Hist.: BCA 25-1990, f. & cert. ef. 10-17-90; BCD 13-1997, f. 9-18-97, cert. ef. 10-1-97; Renumbered from 918-099-0135; BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05, Renumbered from 918-098-0310; BCD 24-2005, f. 9-30-05, cert. ef. 10-1-05, Renumbered from 918-098-0310; BCD 19-2006, f. 12-29-06, cert. ef. 1-1-07

918-098-1310

Recreational Vehicle Inspector Certification

(1) Scope of Activities and Authority. A recreational vehicle inspector conducts field, dealer lot, repair operation, alteration, visual and manufacturing plant inspections, reviews plans and provides other technical services for recreational vehicle manufacturers, dealers and owners in accordance with ORS 446.185 and 446.160(1).

(2) Procedure for Qualification. An applicant for certification under this rule must meet the general qualifications in section (3) of this rule, make application, pay the required fees and pass a division-approved examination.

(3) Experience, Education and Training Requirements. An applicant for certification as a recreational vehicle inspector must have at least one of the following:

(a) 2 years of experience as a supervisor in the building construction industry;

(b) 2 years of experience in design work related to building construction;

(c) 2 years of experience as a certified building inspector or plans examiner;

(d) 2 years of experience as a quality assurance inspector in a manufactured structure plant;

(e) 2 years of experience as a division-certified recreational vehicle quality assurance technician;

(f) 2 years of code-related experience as a recreational vehicle technician;

(g) An associate degree or equal from a division-approved education program in a construction-related field;

(h) Any combination of the experience and education listed in subsections (a) through (g) of this section equaling at least 2 years; or

(i) A one-year certificate of completion in building inspection technology from a division-approved education program and completion of 800-hours working under the supervision of a person with a minimum of three years experience as a certified recreational vehicle inspector or a person approved by the board.

(4) Inspector Examination. An applicant for certification as a recreational vehicle inspector must pass a division-approved examination covering the following:

(a) **American National Standards Institute (ANSI) A119.2 (1999 Edition);**

(b) **American National Standards Institute (ANSI) A119.5 (1998 Edition);**

(c) **National Electrical Code (NFPA) 70 (2005 Edition);**

(d) ORS 446.003 and 446.155 to 446.253; and

(e) OAR chapter 918, divisions 525 and 530.

(5) After October, 1 2005, a Recreational Vehicle Inspector must also possess an Oregon Inspector Certification issued under OAR 918-098-1025 prior to performing inspections.

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

Stat. Auth.: ORS 455.720

Stats. Implemented: ORS 455.720

Hist.: BCA 25-1990, f. & cert. ef. 10-17-90; BCD 13-1997, f. 9-18-97, cert. ef. 10-1-97; Renumbered from 918-099-0140; BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05, Renumbered from 918-098-0320; BCD 24-2005, f. 9-30-05, cert. ef. 10-1-05, Renumbered from 918-098-0320; BCD 19-2006, f. 12-29-06, cert. ef. 1-1-07

918-098-1315

Manufactured Structure Construction Inspector Certification

(1) Scope of Activities and Authority. A manufactured structure construction inspector conducts field, dealer lot, consumer assistance, alteration, visual and manufacturing plant inspections, reviews plans and provides technical services for manufactured dwelling manufacturers, dealers and owners.

(2) Procedure for Qualification. An applicant for this certification must meet the general qualifications in section (3) of this rule, make application, pay the required fees and pass a division-approved examination.

(3) Experience, Education and Training Requirements. An applicant for certification as a manufactured structure construction inspector must have at least one of the following:

(a) 2 years of experience as a supervisor in the building construction industry;

(b) 2 years of experience in design work related to building construction;

(c) 2 years of experience as a certified building inspector or plans examiner;

(d) 2 years of experience as a quality control inspector in a manufactured structures plant;

(e) An associate degree or equal from a division-approved education program in a construction-related field; or

(f) Any combination of the experience and education listed in subsections (a) through (e) of this section equaling at least two years; or

(g) A one-year certificate of completion in building inspection technology from a division-approved education program and completion of 800-hours working under the supervision of a person with a minimum of three years experience as a certified manufactured structure construction inspector or a person approved by the board.

(4) Inspector Examination. An applicant for certification as a manufactured structure construction inspector must pass a division-approved examination covering:

(a) **Oregon Manufactured Dwelling and Park Specialty Code;**

(b) **National Electrical Code (NFPA) 70 (2005 Edition);**

(c) **Manufactured Home Construction and Safety Standards Act;**

(d) **Public Law 93-383, Title VI;**

(e) **ORS 446.003 and 446.155 to 446.253;**

(f) **OAR chapter 918, divisions 500 and 520; and**

(5) After October, 1 2005, a Manufactured Structure Construction Inspector must also possess an Oregon Inspector Certification issued under OAR 918-098-1025 prior to performing inspections.

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

Stat. Auth.: ORS 446.250 & 455.720

Stats. Implemented: ORS 446.250 & 455.720

Hist.: BCA 25-1990, f. & cert. ef. 10-17-90; BCD 13-1997, f. 9-18-97, cert. ef. 10-1-97; Renumbered from 918-099-0145; BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05, Renumbered from 918-098-0330; BCD 24-2005, f. 9-30-05, cert. ef. 10-1-05, Renumbered from 918-098-0330; BCD 19-2006, f. 12-29-06, cert. ef. 1-1-07

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918-098-1320

Park and Camp Inspector Certification

(1) Scope of Activities and Authority.

(a) A park and camp inspector conducts field inspections, reviews plans and provides other technical services for manufactured dwelling parks, recreational parks, organizational camps and picnic parks under ORS 446.066 and 446.335.

(b) This certification can be used only in a jurisdiction that:

(A) Meets all of the requirements of this rule;

(B) Complies with ORS 446.430, 455.170 and 455.680 relating to the delegation of full responsibility for permit issuance and inspections; and

(C) Issues permits, enforces the current edition of ORS Chapter 446, OAR chapter 918, divisions 600 and 650 and all referenced standards contained therein.

(2) Procedure for Qualification. An applicant for certification under this rule must meet the general qualifications in section (3) of this rule, make application, pay the required fees and pass a division-approved examination.

(3) Experience, Education and Training Requirements. An applicant for certification as a park and camp inspector must have at least one of the following:

(a) 2 years of experience as a supervisor in the building or road construction industry;

(b) 2 years of experience in design work related to building or road construction;

(c) 2 years of experience as a road construction inspector;

(d) 2 years of experience as a surveyor or landscape architect;

(e) 2 years of experience as a registered sanitarian;

(f) 2 years of experience as an Oregon licensed manufactured dwelling installer;

(g) A division certification as a building inspector or plans examiner;

(h) An associate degree or equal from a division-approved education program in a construction-related field; or

(i) Any combination of the experience and education listed in subsection (a) through (h) of this section equaling 2 years; or

(j) A one-year certificate of completion in building inspection technology from a division-approved education program and completion of 180-hours working under the supervision of a person with a minimum of three years experience as a certified park and camp inspector or a person approved by the board.

(4) Inspector Examination. An applicant for certification under this rule must pass a division-approved park and camp inspector certification examination covering:

(a) ORS 446.003 to 446.140, 446.310 to 446.350, 446.430, 455.170, and 455.680;

(b) OAR chapter 918, divisions 600 and 650; and

(c) **Oregon Manufactured Dwelling and Park Specialty Code**, Chapters 1, 2, 9, and 10.

(5) After October 1, 2005, a Park and Camp Inspector must also possess an Oregon Inspector Certification issued under OAR 918-098-1025 prior to performing inspections.

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

Stat. Auth.: ORS 455.720

Stats. Implemented: ORS 455.720

Hist.: BCA 25-1990, f. & cert. ef. 10-17-90; BCD 13-1997, f. 9-18-97, cert. ef. 10-1-97; Renumbered from 918-099-0150; BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05, Renumbered from 918-098-0340; BCD 24-2005, f. 9-30-05, cert. ef. 10-1-05, Renumbered from 918-098-0340; BCD 19-2006, f. 12-29-06, cert. ef. 1-1-07

918-098-1325

Requirements for Alteration Inspection and Plan Review of Manufactured Dwellings

(1) Scope of Work. Manufactured dwelling alteration inspections and plan reviews include on-site field inspections of alterations including structural, fire and life safety, electrical, plumbing and mechanical alterations made to manufactured dwellings after the initial sale of the home to the first consumer after all the terms of the sales contract have been met. Most alteration inspections made prior to this time are the responsibility of the division and must be performed by a certified manufactured structure construction inspector. All alteration inspections made to recreational vehicles and park trailers are the responsibility of the division and must be performed by a certified recreational vehicle inspector.

(2) Certifications. Inspectors of manufactured dwelling alterations are required to be certified by ORS 446.250. The division requires that persons performing inspections or plan reviews on manufactured dwelling alterations have:

(a) The appropriate Oregon Code Certification under OAR 918-098-1015 for the Oregon Residential Specialty Code for the specific discipline being used issued prior to October 1, 2005; or

(b) An Oregon Inspector Certification and the appropriate ICC Residential Certification as described in OAR 918-098-1010; or

(f) An Oregon Code Certification issued under OAR 918-098-1210 or 918-098-1215 after October 1, 2005.

(3) The requirement in section (2) is not applicable to alteration inspections performed on manufactured homes still under the jurisdiction of the U.S. Department of Housing and Urban Development (HUD), recreational vehicles or park trailers.

(4) Authority. Inspectors and plans examiners of manufactured dwelling alterations may only inspect or review plans in a jurisdiction that has been delegated the manufactured dwelling alteration program and that:

(a) Complies with ORS 446.250 and 446.253(2) relating to the delegation of full responsibility for permit issuance and inspections;

(b) Issues permits and enforces the current edition of ORS Chapter 446 and OAR chapter 918, divisions 500 and 520;

(c) Meets the requirements of OAR 918-500-0055 for delegation; and

(d) Enforces the current edition of the **Oregon Manufactured Dwelling and Park Specialty Code** and all referenced standards contained therein.

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

Stat. Auth.: ORS 446.250 & 455.720

Stats. Implemented: ORS 446.250 & 455.720

Hist.: BCD 13-1997, f. 9-18-97, cert. ef. 10-1-97; BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05, Renumbered from 918-098-0350; BCD 24-2005, f. 9-30-05, cert. ef. 10-1-05, Renumbered from 918-098-0350; BCD 19-2006, f. 12-29-06, cert. ef. 1-1-07

918-098-1330

Manufactured Structure Accessory Structure or Accessory Building Inspection

(1) Scope of Work. Manufactured structure accessory structure or accessory building inspections and plan reviews include on-site field inspections of installations of manufactured structure accessory structures and accessory buildings (i.e., carports, ramadas, cabanas, garages, storage sheds, awnings, decks, steps and ramps).

(2) Certifications. Inspectors of manufactured structure accessory structures and accessory buildings are required to be certified by ORS 446.250. To satisfy this mandate, the division requires that persons performing inspections or plan reviews on manufactured structure accessory structures or accessory buildings have the appropriate Oregon Code Certification under OAR 918-098-1015 or the Oregon Inspector Certification and the appropriate ICC Residential Certification as described in OAR 918-098-1010 for the **Oregon Residential Specialty Code** for the specific discipline being used.

(3) Authority. Inspectors of manufactured structure accessory structures and accessory buildings may only inspect or review plans in a jurisdiction that has been delegated the manufactured dwelling accessory structure and accessory building program and that:

(a) Complies with ORS 446.250 and 446.253(2) relating to the delegation of full responsibility for permit issuance and inspections;

(b) Complies with the Oregon Manufactured Dwelling and Park Specialty Code and all referenced standards contained therein;

(c) Issues permits and enforces the current edition of ORS Chapter 446 and OAR chapter 918, division 500;

(d) Meets the requirements of OAR 918-500-0055 for delegation; and

(e) Enforces the current edition of the **Oregon Manufactured Dwelling and Park Specialty Code** and all referenced standards contained therein.

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

Stat. Auth.: ORS 446.250 & 455.720

Stats. Implemented: ORS 446.250 & 455.720

Hist.: BCD 13-1997, f. 9-18-97, cert. ef. 10-1-97; BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05, Renumbered from 918-098-0360; BCD 24-2005, f. 9-30-05, cert. ef. 10-1-05, Renumbered from 918-098-0360; BCD 19-2006, f. 12-29-06, cert. ef. 1-1-07

918-098-1440

Approval of Inspector Continuing Education and Educational Programs

(1) Applications for approval of continuing education and educational programs must be filed at least 45 days prior to the date of the proposed class or beginning date of training. The 45-day period or any other procedural rule controlling these programs may be waived if the administrator determines there is an emergency.

(2) The application must describe the course objectives, qualifications for entry into the course, course content, materials to be used, length of class, field time if applicable, and instructor names and qualifications.

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(3) Where continuing education credits are sought, the application must show the number of credits sought for the course and provide justification.

(4) Instructors approved by the division to teach code-change courses shall be granted the same number of continuing education credit hours as those attending the course.

(5) Persons or organizations requesting reimbursement from the division training funds for education programs must have a valid contract with the division or specific written approval from the division at the time of course offering.

Stat. Auth.: ORS 455.720

Stats. Implemented: ORS 455.725

Hist.: BCA 16-1992, f. & cert. ef. 8-11-92; BCD 8-1997, f. & cert. ef. 4-1-97; Renumbered from 918-099-0500; BCD 15-1997, f. 9-30-97, cert. ef. 10-1-97; BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05, Renumbered from 918-098-0430; BCD 24-2005, f. 9-30-05, cert. ef. 10-1-05, Renumbered from 918-098-0430; BCD 19-2006, f. 12-29-06, cert. ef. 1-1-07

918-098-1450

Continuing Education Requirements

(1) Persons performing inspections and plan review in Oregon are required to obtain at least 16 hours of continuing education every three years, beginning January 1, 2006.

(2) At least one course during each three-year cycle must be a division-approved code-change course related to the scope of work allowed under each certification, if the code related to that specific certification changed during the cycle.

(3) In addition to the minimum hours in section (1), if a person has more than one Oregon Code Certification or ICC certification, for each certification the person must take at least one division-approved code-change course.

(4) Building officials shall be required to obtain six hours continuing education credits every other year in classes related to the duties of a building official. The classes must also include at least one division approved class covering new legislation relating to the administration and enforcement of building inspection programs within one year after the legislature adjourns.

(5) The division may periodically verify that a person is maintaining and recording their continuing education.

Stat. Auth.: ORS 455.720

Stats. Implemented: ORS 455.720

Hist.: BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05; BCD 24-2005, f. 9-30-05, cert. ef. 10-1-05; BCD 4-2006, f. 3-31-06, cert. ef. 4-1-06; BCD 19-2006, f. 12-29-06, cert. ef. 1-1-07

918-098-1620

Post Earthquake Damage Inspector Registration Requirements

All persons seeking registration as a post-earthquake inspector must complete a division application form and complete a division approved Applied Technology Council (ATC) training course within three years of application.

(1) To be registered as a general post-earthquake damage inspector, an applicant must:

(a) Be registered in any state as an architect, or be qualified by training and experience to take the Oregon examination for registration as an architect; or

(b) Be certified in the state of Oregon as an A-level, B-level structural or fire and life safety plans examiner or inspector, or be qualified to take the Oregon A-level, B-level commercial or fire and life safety plans examiner or inspector certification examination; or

(c) Possess a current ICC Commercial Building Inspector, Commercial Building Plans Examiner or Commercial Fire Plans Examiner certificate; or

(d) Be registered in any state as a certified professional engineer in civil or structural engineering, or be qualified by education and experience to take the Oregon certified professional engineer examination in civil or structural engineering, even though the applicant has not taken the Fundamentals of Engineering examination.

(2) To be registered as a limited post-earthquake damage inspector, an applicant must:

(a) Meet any of the qualifications listed in subsection (1) of this rule;

(b) Be certified in the State of Oregon as a residential structural inspector; or

(c) Be certified in the State of Oregon as a residential plans examiner; or

(d) Possess a current ICC Residential Building Inspector certificate.

Stat. Auth.: ORS 455.100 & 455.448

Stats. Implemented: ORS 455.448 & 455.449

Hist.: BCD 8-1997, f. & cert. ef. 4-1-97; BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05, Renumbered from 918-098-0620; BCD 24-2005, f. 9-30-05, cert. ef. 10-1-05, Renumbered from 918-098-0620; BCD 4-2006, f. 3-31-06, cert. ef. 4-1-06; BCD 19-2006, f. 12-29-06, cert. ef. 1-1-07

918-098-1630

Post-Earthquake Damage Inspector Continuing Education Requirements

(1) Post-earthquake damage inspectors must fulfill the following continuing education requirements every three years, beginning January 1, 2007:

(a) Completion of a division-approved Applied Technology Council (ATC) training course; or

(b) Participation in at least one emergency exercise drill, or actual emergency event.

(2) The division may periodically verify compliance with these continuing education requirements.

Stat. Auth.: ORS 455.100 & 455.448

Stats. Implemented: ORS 455.448 & 455.449

Hist.: BCD 8-1997, f. & cert. ef. 4-1-97; BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05, Renumbered from 918-098-0630; BCD 24-2005, f. 9-30-05, cert. ef. 10-1-05, Renumbered from 918-098-0630; BCD 4-2006, f. 3-31-06, cert. ef. 4-1-06; BCD 19-2006, f. 12-29-06, cert. ef. 1-1-07

918-281-0020

Electrical Specialty Code Inspector Certification

(1) Scope: An Electrical Specialty Code inspector:

(a) Inspects electrical installations regulated by the Oregon Electrical Specialty Code;

(b) Inspects electrical installations regulated by the Oregon Residential Specialty Code; and

(c) May do electrical plan reviews as provided in OAR 918-311-0040.

(2) Qualifications: To qualify for the certification, the individual must have the following training or experience or both:

(a) Four years experience as a licensed general journeyman electrician and a current valid Oregon general supervising electrician license;

(b) A four-year Bachelor of Science degree in electrical engineering, plus three years approved experience in design, inspection or supervision of installations covered by the National Electrical Code or Oregon Electrical Specialty Code; or

(c) Equivalent experience or qualifications approved by the board.

(3) Application for Certification: A person seeking certification under this rule must apply for an Oregon Code Certification as provided in OAR 918-098-1025.

(4) All applicants must pass a board-approved examination with a minimum grade of 75 percent covering:

(a) The Oregon Electrical Specialty Code and electrical provisions of the Oregon Residential Specialty Code; and

(b) Electrical theory, design, installation and materials.

(5) A person who is certified after October 1, 2005 must also possess a valid Oregon Inspector Certification issued under OAR 918-098-1025 prior to performing electrical inspections or plan reviews.

(6) Persons qualifying under subsection (2)(b) or (2)(c) of this rule must pass the Oregon general supervising electrician license examination with a minimum grade of 75 percent. An Oregon general supervising electrician license may not be issued to applicants under these subsections.

(7) For purposes of this rule, one year of experience equals 2,000 hours.

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

Stat. Auth.: ORS 455.720

Stats. Implemented: ORS 455.720

Hist.: BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96; BCD 23-2000, f. 9-29-00, cert. ef. 10-1-00; BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05; BCD 24-2005, f. 9-30-05, cert. ef. 10-1-05; BCD 4-2006, f. 3-31-06, cert. ef. 4-1-06; BCD 19-2006, f. 12-29-06, cert. ef. 1-1-07

918-695-0400

Rules Establishing Certification for Plumbing Inspectors

(1) Scope: To promote effective and uniform enforcement of the Oregon Plumbing Specialty Code by improving the competence of plumbing inspectors, this rule establishes minimum training and experience qualifications to make inspections for compliance with the Oregon Plumbing Specialty Code.

(2) A Plumbing inspector:

(a) Inspects plumbing installations regulated by the Oregon Plumbing Specialty Code;

(b) Inspects plumbing installations regulated by the Oregon Residential Specialty Code; and

(c) May do plumbing plan reviews as provided in OAR 918-780-0040.

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(3) Limits on Municipalities: Nothing in the rules prohibits a local government from establishing additional requirements in the selection and hiring of plumbing inspectors. Nothing in OAR chapter 918, divisions 750 to 785 is intended to dictate the internal administrative organization of a city or county or to limit or otherwise affect the authority of a municipality to dismiss or suspend an inspector.

(4) Plumbing inspectors must meet continuing education requirements established by the division under OAR 918-098-1450.

(5) Application for Certification or Appeals: A person seeking certification under this rule must apply for an Oregon Code Certification as provided in OAR 918-098-1025. A certification fee must be submitted with the application as listed in ORS 455.735.

(6) Qualifications: An applicant will be certified as a plumbing inspector under this rule if the following minimum qualifications are met:

(a) Experience and Training:

(A) 3 years of employment and experience as a Journeyman Plumber, with an Oregon Journeyman Plumber's license or its equivalent;

(B) A degree in mechanical engineering or certified professional registration with 2 years of work experience in plumbing design, installation or inspection;

(C) 4 years of work experience in the inspection of plumbing installations of which at least 2 years is of commercial, industrial and multi-family structures, or if the 4 years of work experience is in the inspection of residential installations, the completion of a division-approved plumbing inspector training program; or

(D) Equivalent experience and training of paragraphs (A), (B) and (C) of this subsection; or

(E) Persons certified as Oregon one and two family dwelling plumbing inspectors as of April 1, 1998 and completing five years of plumbing inspection experience shall be considered qualified to sit for examinations as a plumbing inspector.

(b) Examination: Passing a board-approved examination on the **Oregon Plumbing Specialty Code** covering plumbing theory, inspection techniques, communication skills, public relations, design, installation, statutory rules, authority and materials.

(7) Training:

(a) Upon application, the division shall examine and evaluate any program or facility established by a municipality or educational institution for the training of plumbing inspectors.

(b) If the division finds that a training program meets the minimum requirements established pursuant to this rule, the division shall, in writing, certify the training program as qualified for such time and conditions as the division may prescribe. An individual complies with any minimum requirement for plumbing inspector established pursuant to classification and requirements in this rule after satisfactorily completing a training program certified under this rule.

(8) A person issued a plumbing inspector certification or a limited plumbing inspector — building sewers certification after October 1, 2005 must also possess a valid Oregon Inspector Certification issued under OAR 918-098-1025 prior to performing plumbing inspections or plan reviews.

(9) Special Certification:

(a) Limited Certification: The division, with board approval, may issue a limited certification for special types of inspections. Such limited certification will only be issued after the applicant passes an appropriate test of knowledge and ability;

(b) Limited Plumbing Inspector — Building Sewers. Limited certification for plumbing inspection of building sewers from five feet outside the building to the disposal terminal or connection with a main sewer line may be issued. To be certified, an applicant must have the following qualifications:

(A) A Journeyman Plumber License;

(B) Two years' experience in sewer design, installation, or inspection; or

(C) Experience and training equivalent to paragraph (A) or (B) of this subsection approved by the board; and

(D) Passing a board-approved examination on code, materials and installation practices for building sewers and sewers.

(10) For purposes of this rule, one year of experience is equal to 2,000 hours.

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

Stat. Auth.: ORS 455.720

Stats. Implemented: ORS 455.720

Hist.: DC 39, f. 1-6-75, ef. 2-1-75; DC 79, f. 6-16-76, ef. 8-1-76; DC 102, f. & ef. 11-1-77; DC 1-1979, f. & ef. 1-5-79; DC 5-1979(Temp), f. & ef. 3-5-79; DC 9-1979, f. & ef. 6-8-79; DC 1-1983, f. & ef. 1-3-83; DC 6-1985, f. & ef. 2-8-85; Renumbered from 814-021-0109; BCA 14-1992, f. 6-29-92, cert. ef. 7-1-92; BCD 6-1998, f. 3-2-98, cert. ef. 4-1-98, Renumbered from 918-750-0050; BCD 21-1998, f. 9-30-98, cert. ef. 10-1-98; BCD 22-2000, f. 9-19-00, cert. ef. 10-1-00; BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05; BCD

24-2005, f. 9-30-05, cert. ef. 10-1-05; BCD 4-2006, f. 3-31-06, cert. ef. 4-1-06; BCD 19-2006, f. 12-29-06, cert. ef. 1-1-07

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

Rule Caption: Clarify the application process and lending practice expectations of conventional consumer finance lenders.

Adm. Order No.: FCS 5-2006

Filed with Sec. of State: 12-21-2006

Certified to be Effective: 12-21-06

Notice Publication Date: 11-1-06

Rules Adopted: 441-730-0025, 441-730-0255

Rules Amended: 441-730-0000, 441-730-0010, 441-730-0050, 441-730-0080, 441-730-0120, 441-730-0320

Rules Ren. & Amend: 441-730-0005 to 441-730-0015

Subject: These rules describe with some specificity the compliance expectations of a lender under a conventional consumer finance lender license. These specifics would differentiate conventional consumer lending from short term consumer lending such as payday lending. Information to be included in an application for the conventional license is identified.

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, 725.505, and 725.625.

(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, 725.625

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

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 725.345(3), 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) "Extension" has the same meaning as "renewal" defined in section 15(1) of this rule.

(7) "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.

(8) "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.

(9) "License" means a Consumer Finance license or a Short-Term Personal Loan license issued under ORS 725.140.

(10) "Licensee" means a person licensed as a Consumer Finance licensee or a Short-Term Personal Loan licensee.

(11) "Loan" means a loan that is subject to the Oregon Consumer Finance Act.

(12) "Loan underwriting" means a written or otherwise documented evaluation of the assumption of risk preceding the granting of a loan to a

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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.

(13) "Periodic Payments" means loan repayments scheduled for monthly or more frequent periods of time.

(14) "Person" means a natural person or an organization, including a corporation, partnership, proprietorship, association, limited liability company or cooperative.

(15) "Renewal" of a loan means granting a borrower the right to postpone repayment of a Short-Term Personal Loan for a fee.

(16) "Roll-over" has the same meaning as "renewal" defined in section (15) of this rule.

(17) "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 (15) of this rule.

(18) "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.

(19) "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

441-730-0015

Consumer Finance and Short-Term Personal Loan Licenses

(1) The license issued pursuant to ORS 725.140 to a lender who makes loans secured by personal property, real property or unsecured loans which typically have periodic payments with terms longer than 60 days shall be a Consumer Finance License. Of the total number of loans made by a consumer finance licensee under its consumer finance license during each calendar year commencing January 1, 2007:

(a) 90% or more of the loans must have a term of at least six months;

(b) Loan underwriting must be documented in the borrower's file for 90% or more of the loans. The documented loan underwriting remains valid, at the option of the licensee, for any loan made within 12 months of the initial date of a previous consumer finance loan to that borrower; and

(c) Other than loans made pursuant to ORS 725.345 or 725.347 or that are secured by real estate or interests in farming implements or future farm crops, 90% or more of the loans must be structured to be repaid in fully amortized and substantially equal periodic payments. For purposes of this subsection, a loan will be considered to have substantially equal periodic payments:

(A) Notwithstanding that the first regularly scheduled periodic payment is larger due to any additional interest that accrues because the first regularly scheduled periodic payment is more than 30 days after the date of the loan;

(B) Notwithstanding that the final regularly scheduled periodic payment is larger, as long as the final payment is not more than one and one-half times the amount of the regularly scheduled periodic payment immediately preceding the final payment; and

(C) In the case of adjustable rate loans, as long as the periodic payments resulting from each interest rate adjustment meet the requirements of this subsection (c).

(2) A consumer finance licensee shall not disguise any loan as an open-ended loan authorized under ORS 725.345 or 725.347 as a device or subterfuge to evade the requirements and prohibitions of this rule.

(3)(a) If a consumer finance licensee makes a loan under the consumer finance license secured by an interest in a borrower's vehicle, the licensee may not retain possession of the title to the vehicle unless the licensee is recorded as a lien-holder on the title or has made application or taken other commercially reasonable steps to be added as a security interest holder of a vehicle.

(b) A consumer finance licensee may not require a borrower, as a condition of making a loan under its consumer finance license, to provide a postdated check or debit authorization for one or more future payments. However, if permitted by the lender and solely at the discretion of the borrower, one or more postdated checks or debit authorizations may be delivered to a consumer finance licensee to facilitate timely future payments. Payments made by postdated check or debit authorization will be presumed to be solely at the discretion of the borrower, if, within the calendar year:

(A) No more than 10% of the consumer finance lender's borrowers are using postdated checks or debit authorizations; and

(B) Each borrower makes no more than half of required payments on a loan, or six payments, whichever is less, using postdated checks or debit authorizations.

(4) The license issued pursuant to ORS 725.140 to a lender who makes Payday loans or Title loans shall be a Short-Term Personal Loan license. A Short-Term Personal Loan lender is limited to making payday loans or title loans or both under the short-term personal loan license, as stated on the license.

(5) A person is permitted to apply for, hold, and make appropriate loans under either a consumer finance license or a short-term personal loan license, or both licenses.

(6) No license shall be issued or renewed unless the applicant or licensee is legally qualified to conduct business in this state by making appropriate filings with the secretary of state.

Stat. Auth.: ORS 725.505

Stats. Implemented: ORS 725.110, 725.140(1), 725.330, 725

Hist.: FCS 2-2000, f. & cert. ef. 2-15-00; Renumbered from 441-730-0005, FCS 5-2006, f. & cert. ef. 12-21-06

441-730-0025

Consumer Finance License Applications

(1) For purposes of the investigation described in ORS 725.140(1), an applicant for a consumer finance license must submit the application form prescribed by the director, signed by an authorized owner or officer of the applicant, and attach:

(a) Information concerning relevant experience:

(A) Employment history for the past five years of at least one executive officer, director, managing partner, or other manager to be employed by the applicant, demonstrating verifiable recent experience in traditional lending, including but not limited to, experience obtained in the banking, consumer finance, or mortgage lending industries. For purposes of this paragraph, "recent" means no less than three years out of the five years immediately preceding the date of application. Short term lending experience alone is not a sufficient substitute for the required experience.

(B) At the request of the applicant and in the sole discretion of the director, education, extensive training or other business experience may be substituted for the three out of five years traditional lending experience. Factors that the director may consider include relevance of the education, or the number, complexity and types of transactions handled in the substituted business experience. Short term lending experience alone is not a sufficient substitute for the required experience. In-office, on the job training will not qualify as extensive training.

(C) The name of the proposed manager of the licensed location, and if this individual is not the experienced person described in paragraph (A) of this section, the employment history of this initial manager for the five years immediately preceding the date of the application.

(b) A business plan, including but not limited to:

(A) Financial and operational history of the applicant, if any;

(B) Copies of any loan documents proposed to be used;

(C) A description of the types of loans and the percentage of the different types of loans the applicant proposes to make, the length of the loans the applicant proposes to make, the interest rates or range of rates the applicant proposes to charge and any other business activities the licensee will engage in at the location;

(D) The process by which the applicant will determine that loans to be made comply with requirements in OAR 441-730-0015(1); and

(E) Funding sources for the loans, including third-party financial institutions.

(2) For purposes of ORS 725.140 and this rule, the date of filing an application is the date the application is complete. An application shall be deemed complete when:

(a) All required fees have been paid;

(b) All documents required to be submitted by this rule have been submitted and are materially complete, including a completed application form and completed business plan; and

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(c) Documents required to be submitted by this rule have been submitted.

(3) An application for licensing is deemed abandoned if:

(a) One or more documents as part of an application have been on file with the director for a minimum of 90 days;

(b) The application is not deemed complete as described in section (2) of this rule; and

(c) The applicant has failed to respond to the director's written warning of abandonment by providing all documents or information necessary to make the application complete within 30 calendar days of the date of warning.

(4) An applicant whose application has been abandoned may reapply by submitting a new application including new fees.

Stat. Auth.: ORS 725.505
Stats. Implemented: ORS 725.120, 725.140
Hist.: FCS 5-2006, f. & cert. ef. 12-21-06

441-730-0050

Notes and Agreements Must Comply with ORS 725

(1) All forms of notes and agreements pertaining to loans and security for loans used by a licensee shall be so worded that they comply with all provisions of ORS Chapter 725 and these rules.

(2) Any forms or agreements required or authorized by federal statute or regulations and in compliance with those statutes or regulations are considered in compliance with and authorized by ORS Chapter 725.

(3) No later than within thirty days of beginning use in Oregon of any new form of note or agreement, or a form or agreement that has been amended in a material way, the licensee must submit the new or materially amended form or agreement to the director.

Stat. Auth.: ORS 725.505, 725.625
Stats. Implemented: ORS 725.120, 725.320
Hist.: BB 14, f. & ef. 11-15-76; BB 3-1978, f. 5-16-78, ef. 7-1-78; BB 5-1982, f. 9-1-82, ef. 9-15-82; Renumbered from 805-075-0030; 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

441-730-0080

Qualifications of Person in Charge of Licensed Office

(1) A short-term personal loan licensee shall not place any person in charge of a licensed office unless the person has a thorough understanding of ORS Chapter 725 and these rules.

(2) A consumer finance licensee must place the experienced person as described in OAR 441-730-0025(1) in its licensed office.

(3) Notwithstanding section (2) of this rule, if the consumer finance licensee holds a license for more than one location or if the experienced person described in OAR 441-730-0025(1) is employed outside of Oregon, the licensee may place a qualified person with no less than one year's traditional lending experience in charge of each licensed office provided the experienced person described in OAR 441-730-0025(1) supervises the lending operations of each location.

(4) At the request of the applicant and in the sole discretion of the director, education, extensive training or other business experience may be substituted for the one year of relevant lending experience required in section (3) of this rule.

(5) Unless a licensee requires all loan underwriting decisions be forwarded to an experienced person at another location or uses a formalized grading system, a licensee must employ or place a qualified person as described in this rule at each licensed office to be in charge of and oversee the lending operations of the office. A licensee must notify the director within 30 days of the termination of employment of the qualified person.

Stat. Auth.: ORS 725.505, 725.625
Stats. Implemented: ORS 725.140, 725.310, 725.330, 725
Hist.: BB 14, f. & ef. 11-15-76; Renumbered from 805-075-0050; 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

441-730-0120

Account Record to Be Maintained for Each Loan

(1) A separate individual account record shall be maintained by the licensee for each loan made to any borrower. The record shall show:

- (a) The loan number;
- (b) The date of the loan;
- (c) The name and address of the borrower;
- (d) A brief description of the security, if any;
- (e) The agreed interest rate or rates and the amount of each charge, if any;

(f) The terms of repayment, including the expiration date of the loan, and any modifications of the terms.

(g) The amount of each payment made on the loan and in accordance with sections (2) and (3) of this rule, how the payment is allotted to principal, interest and charges;

(h) The date of the final entry when the loan is paid in full or otherwise finally settled or closed; and

(i) A clear, brief explanation of any other entries that result in the reduction or addition to the principal balance or interest.

(2) The account record for a daily interest loan shall show, for each loan payment received:

- (a) The amount, if any, applied to interest;
- (b) The date to which the interest is paid;
- (c) If payment is insufficient to pay interest to date, the dollar amount short;

(d) The amount applied to principal, if any; and

(e) The unpaid principal balance of the loan, if any.

(3) The account record for a precomputed-interest loan may comply with section (2) of this rule or it shall show, for each loan payment received:

- (a) The amount of the payment applied to installments, identifying which installments;
 - (b) The amount applied to any default charges; and
 - (c) The unpaid balance of the loan and charges, if any.
- (4) When a licensee makes advances to perform covenants, the account record shall specify:

(a) The amount of the advance which is added to the principal of the loan.

(b) A brief description of what the advance is paying; and

(c) When the advance is to purchase insurance coverage, the type and extent of coverage.

(5) The account record for a Short-Term Personal Loan shall show the date each loan is renewed, the amount of the charge the borrower paid and the new due date of the loan.

(6) All entries to the account record made by the licensee must be accurate and entered on the day the transaction occurred. However, a licensee may establish a reasonable time of day after which payments received that day will be posted on the following business day. If the licensee is unable to post a transaction as required by this section, the posting when made must reflect the actual date of the transaction.

Stat. Auth.: ORS 725.320 & 725.505
Stats. Implemented: ORS 725.330
Hist.: BB 14, f. & ef. 11-15-76; BB 5-1982, f. 9-1-82, ef. 9-15-82; Renumbered from 805-075-0065; FCS 2-2000, f. & cert. ef. 2-15-00; FCS 2-2001, f. 1-22-01, cert. ef. 3-22-01; FCS 13-2001, f. & cert. ef. 12-27-01; FCS 5-2006, f. & cert. ef. 12-21-06

441-730-0255

Payoff Information to be Furnished to Borrower Upon Request

(1) When a borrower requests the payoff information on a loan and specifies a payoff date, the lender shall promptly, but in no case later than three business days, provide the requested information.

(2) When a borrower requests payoff information on a loan but fails to specify a payoff date, the lender shall promptly, but in no case later than three business days, provide:

(a) The balance due on the date of the request plus the amount of daily interest, if any, that continues to accrue; or

(b) The balance that will be due on a specific future date, not more than 10 days from the date of the request.

Stat. Auth.: ORS 725.505
Stats. Implemented: ORS 725.360
Hist.: FCS 5-2006, f. & cert. ef. 12-21-06

441-730-0320

Report of Licensee

Licensees are required to file their annual reports by June 30 of each year. The report shall cover operations for the period of the previous calendar year. For purposes of this rule, "operations for the period of the previous calendar year" includes any of the following that has not previously been brought to the attention of the director in writing:

- (1) A new qualified person or office manager;
- (2) A new experienced person;
- (3) Material changes in business plan; or
- (4) Any criminal conviction entered against any person named in the application.

Stat. Auth.: ORS 725.505
Stats. Implemented: ORS 725.190
Hist.: FCS 2-2001, f. 1-22-01, cert. ef. 3-22-01; FCS 5-2006, f. & cert. ef. 12-21-06

ADMINISTRATIVE RULES

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

Rule Caption: Adoption of Federal OSHA's updating of consensus standards in Maritime.

Adm. Order No.: OSHA 1-2007

Filed with Sec. of State: 1-9-2007

Certified to be Effective: 1-16-07

Notice Publication Date: 12-1-06

Rules Amended: 437-005-0001

Subject: Oregon OSHA adopts the Federal OSHA changes as they appear in the October 17, 2006 Federal Register. These changes enhance the fire protection in shipyard employment standard (Division 5, Maritime, CFR 1915) by requiring employers to comply with the newer standards, which may be even more protective than the older standards. Federal OSHA states these changes will not result in additional compliance costs. Although Federal OSHA has jurisdiction over most marine activity, Oregon OSHA must remain at least as effective as the federal standard. Therefore, we adopt the federal changes in Oregon.

Rules Coordinator: Sue C. Joye—(503) 947-7449

437-005-0001

Adoption by Reference

In addition to, and not in lieu of, any other safety and health codes contained in OAR chapter 437, the Department adopts by reference the following federal rules as printed in the Code of Federal Regulations, 29 CFR 1915, revised as of 7/1/03, and any subsequent amendments published in the Federal Register as listed below:

(1) Subdivision A

(a) 29 CFR 1915.1. Purpose and authority, published 4/20/82, Federal Register (FR) vol. 47, p. 16984.

(b) 29 CFR 1915.2. Scope and application, published 4/20/82, FR vol. 47, p. 16984.

(c) 29 CFR 1915.3. Responsibility, published 4/20/82, FR vol. 47, p. 16984.

(d) 29 CFR 1915.4. Definitions, published 4/20/82, FR vol. 47, p. 16984; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

(e) 29 CFR 1915.5. Incorporation by reference, published 5/24/96, FR vol. 61, no. 102, p. 26359; amended 7/3/02, FR vol. 67, no. 128, p. 44541; 9/15/04, FR vol. 69, p. 55667; 10/17/06, FR vol. 71, no. 200, p. 60843.

(f) 29 CFR 1915.6. Commercial diving operations, published 4/20/82, FR vol. 47, p. 16984.

(g) 29 CFR 1915.7. Competent person, published 4/20/82, FR vol. 47, p. 16984; amended 6/7/89, FR vol. 54, p. 24334; 7/25/94, FR vol. 59, p. 37856.

(2) Subdivision B

(a) 29 CFR 1915.11. Scope, application and definitions applicable to this Subpart, published 4/20/82, FR vol. 47, p. 16984; amended 7/25/94, FR vol. 59, p. 37857.

(b) 29 CFR 1915.12. Precautions before entering confined and enclosed spaces and other dangerous atmospheres, published 4/20/82, FR vol. 47, p. 16984; amended 7/1/93, FR vol. 58, no. 125, p. 35514; amended 7/25/94, FR vol. 59, p. 37858; 3/16/95, FR vol. 60, no. 51, p. 14218.

(c) 29 CFR 1915.13. Cleaning and other cold work, published 4/20/82, FR vol. 47, p. 16984; amended 7/25/94, FR vol. 59, p. 37859.

(d) 29 CFR 1915.14. Hot work, published 4/20/82, FR vol. 47, p. 16984; amended 7/25/94, FR vol. 59, p. 37860; 3/16/95, FR vol. 60, no. 51, p. 14218; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

(e) 29 CFR 1915.15. Maintenance of safe conditions, published 4/20/82, FR vol. 47, p. 16984; amended 7/25/94, FR vol. 59, p. 37860; 3/16/95, FR vol. 60, no. 51, p. 14218; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

(f) 29 CFR 1915.16. Warning signs and labels, published 4/20/82, FR vol. 47, p. 16984; amended 7/25/94, FR vol. 59, p. 37861.

Appendix A to Subpart B published 7/25/94, FR vol. 59, p. 37816;

amended 7/3/02, FR vol. 67, no. 128, p. 44541.

Appendix B to Subpart B published 7/25/94, FR vol. 59, p. 37816.

(3) Subdivision C

(a) 29 CFR 1915.31. Scope & application of subdivision, published 4/20/82, FR vol. 47, p. 16984.

(b) 29 CFR 1915.32. Toxic cleaning solvents, published 4/20/82, FR vol. 47, p. 16984; 5/24/96, FR vol. 61, no. 102, p. 26351.

(c) 29 CFR 1915.33. Chemical paint & preservative remover, published 4/20/82, FR vol. 47, p. 16984; 5/24/96, FR vol. 61, no. 102, p. 26351.

(d) 29 CFR 1915.34. Mechanical paint removers, published 4/20/82, FR vol. 47, p. 16984; 5/24/96, FR vol. 61, no. 102, p. 26351.

(e) 29 CFR 1915.35. Painting, published 4/20/82, FR vol. 47, p. 16984; 5/24/96, FR vol. 61, no. 102, p. 26351; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

(f) 29 CFR 1915.36. Flammable liquids, published 4/20/82, FR vol. 47, p. 16984.

(4) Subdivision D

(a) 29 CFR 1915.51. Ventilation & protection in welding, cutting and heating, published 4/20/82, FR vol. 47, p. 16984; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

(b) 29 CFR 1915.52. Fire prevention, published 4/20/82, FR vol. 47, p. 16984; REMOVED 9/15/04, FR vol. 69, p. 55667.

(c) 29 CFR 1915.53. Welding, cutting and heating of hollow metal containers & structure not covered by 1915.12, published 4/20/82, FR vol. 47, p. 16984; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

(d) 29 CFR 1915.55. Gas welding & cutting, published 4/20/82, FR vol. 47, p. 16984.

(e) 29 CFR 1915.56. Arc welding and cutting, published 4/20/82, FR vol. 47, p. 16984.

(f) 29 CFR 1915.57. Uses of fissionable material in ship repairing and shipbuilding, published 4/20/82, FR vol. 47, p. 16984.

(5) Subdivision E

(a) 29 CFR 1915.71. Scaffolds or staging, published 4/20/82, FR vol. 47, p. 16984; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

(b) 29 CFR 1915.72. Ladders, published 4/20/82, FR vol. 47, p. 16984; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

(c) 29 CFR 1915.73. Guarding of deck openings and edges, published 4/20/82, FR vol. 47, p. 16984; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

(d) 29 CFR 1915.74. Access to vessels, published 4/20/82, FR vol. 47, p. 16984; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

(e) 29 CFR 1915.75. Access to and guarding of dry docks and marine railways, published 4/20/82, FR vol. 47, p. 16984; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

(f) 29 CFR 1915.76. Access to cargo spaces and confined spaces, published 4/20/82, FR vol. 47, p. 16984.

(g) 29 CFR 1915.77. Working surfaces, published 4/20/82, FR vol. 47, p. 16984; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

(6) Subdivision F

(a) 29 CFR 1915.91. Housekeeping, published 4/20/82, FR vol. 47, p. 16984.

(b) 29 CFR 1915.92. Illumination, published 4/20/82, FR vol. 47, p. 16984; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

(c) 29 CFR 1915.93. Utilities, published 4/20/82, FR vol. 47, p. 16984.

(d) 29 CFR 1915.94. Work in confined or isolated spaces, published 4/20/82, FR vol. 47, p. 16984.

(e) 29 CFR 1915.95. Ship repairing and shipbuilding work on or in the vicinity of radar and radio, published 4/20/82, FR vol. 47, p. 16984; amended 4/30/84, FR vol. 49, p. 18295; 6/7/89, FR vol. 54, p. 24334.

(f) 29 CFR 1915.96. Work in or on lifeboats, published 4/20/82, FR vol. 47, p. 16984; amended 8/24/87, FR vol. 52, p. 31886.

(g) 29 CFR 1915.97. Health and sanitation, published 4/20/82, FR vol. 47, p. 16984; amended 8/24/87, FR vol. 52, p. 31886; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

(h) 29 CFR 1915.98. First aid, published 4/20/82, FR vol. 47, p. 16984.

(NOTE: 29 CFR 1915.99, Hazard Communication, was redesignated as 1915.1200 on 7/1/93, FR vol. 58, no. 125, p. 35514.)

(i) 29 CFR 1915.100. Retention of DOT markings, placards and labels, published 7/19/94, Federal Register, vol. 59, no. 137, p. 36700.

(7) Subdivision G

(a) 29 CFR 1915.111. Inspection, published 4/20/82, FR vol. 47, p. 16984.

(b) 29 CFR 1915.112. Ropes, chains and slings, published 4/20/82, FR vol. 47, p. 16984; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

(c) 29 CFR 1915.113. Shackles and hooks, published 4/20/82, FR vol. 47, p. 16984; amended 9/29/86, FR vol. 51, p. 34562.

(d) 29 CFR 1915.114. Chain falls and pull-lifts, published 4/20/82, FR vol. 47, p. 16984.

(e) 29 CFR 1915.115. Hoisting and hauling equipment, published 4/20/82, FR vol. 47, p. 16984; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

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- (f) 29 CFR 1915.116. Use of gear, published 4/20/82, FR vol. 47, p. 16984; amended 7/3/02, FR vol. 67, no. 128, p. 44541.
- (g) 29 CFR 1915.117. Qualifications of operators, published 4/20/82, FR vol. 47, p. 16984.
- (h) 29 CFR 1915.118. Tables, published 4/20/82, FR vol. 47, p. 16984; amended 7/3/02, FR vol. 67, no. 128, p. 44541.
- (8) Subdivision H
- (a) 29 CFR 1915.131. General precautions, published 4/20/82, FR vol. 47, p. 16984; amended 7/3/02, FR vol. 67, no. 128, p. 44541.
- (b) 29 CFR 1915.132. Portable electric tools, published 4/20/82, FR vol. 47, p. 16984.
- (c) 29 CFR 1915.133. Hand tools, published 4/20/82, FR vol. 47, p. 16984.
- (d) 29 CFR 1915.134. Abrasive wheels, published 4/20/82, FR vol. 47, p. 16984; 5/24/96, FR vol. 61, no. 102, p. 26351; amended 7/3/02, FR vol. 67, no. 128, p. 44541.
- (e) 29 CFR 1915.135. Powder actuated fastening tools, published 4/20/82, FR vol. 47, p. 16984; 5/24/96, FR vol. 61, no. 102, p. 26351.
- (f) 29 CFR 1915.136. Internal combustion engines other than ship's equipment, published 4/20/82, FR vol. 47, p. 16984.
- (9) Subdivision I
- (a) 29 CFR 1915.151. Scope, application and definitions, published 5/24/96, FR vol. 61, no. 102, p. 26352.
- (b) 29 CFR 1915.152. General requirements, published 5/24/96, FR vol. 61, no. 102, p. 26352; 6/13/96, FR vol. 61, p. 29957; amended 7/3/02, FR vol. 67, no. 128, p. 44541.
- (c) 29 CFR 1915.153. Eye and face protection, published 5/24/96, FR vol. 61, no. 102, p. 26353.
- (d) 29 CFR 1915.154. Respiratory protection, published 5/24/96, FR vol. 61, no. 102, p. 26354.
- (e) 29 CFR 1915.155. Head protection, published 5/24/96, FR vol. 61, no. 102, p. 26354.
- (f) 29 CFR 1915.156. Foot protection, published 5/24/96, FR vol. 61, no. 102, p. 26354.
- (g) 29 CFR 1915.157. Hand and body protection, published 5/24/96, FR vol. 61, no. 102, p. 26354.
- (h) 29 CFR 1915.158. Lifesaving equipment, published 5/24/96, FR vol. 61, no. 102, p. 26354; amended 7/3/02, FR vol. 67, no. 128, p. 44541.
- (i) 29 CFR 1915.159. Personal fall arrest systems (PFAS), published 5/24/96, FR vol. 61, no. 102, p. 26355; amended 7/3/02, FR vol. 67, no. 128, p. 44541.
- (j) 29 CFR 1915.160. Positioning device systems, published 5/24/96, FR vol. 61, no. 102, p. 26356; amended 7/3/02, FR vol. 67, no. 128, p. 44541.
- Appendix A to Subpart I, published 5/24/96, FR vol. 61, no. 102, p. 26356; amended 7/3/02, FR vol. 67, no. 128, p. 44541.
- Appendix B to Subpart I, published 5/24/96, FR vol. 61, no. 102, p. 26358; amended 7/3/02, FR vol. 67, no. 128, p. 44541.
- (10) Subdivision J
- (a) 29 CFR 1915.161. Scope and application of subdivision, published 4/20/82, FR vol. 47, p. 16984.
- (b) 29 CFR 1915.162. Ship's boilers, published 4/20/82, FR vol. 47, p. 16984.
- (c) 29 CFR 1915.163. Ship's piping systems, published 4/20/82, FR vol. 47, p. 16984; amended 7/3/02, FR vol. 67, no. 128, p. 44541.
- (d) 29 CFR 1915.164. Ship's propulsion machinery, published 4/20/82, FR vol. 47, p. 16984.
- (e) 29 CFR 1915.165. Ship's decking machinery, published 4/20/82, FR vol. 47, p. 16984; amended 7/3/02, FR vol. 67, no. 128, p. 44541.
- (11) Subdivision K
- (a) 29 CFR 1915.171. Scope and application of subdivision, published 4/20/82, FR vol. 47, p. 16984.
- (b) 29 CFR 1915.172. Portable air receiver and other unfired pressure vessels, published 4/20/82, FR vol. 47, p. 16984; amended 9/29/86, FR vol. 51, p. 34562; amended 7/3/02, FR vol. 67, no. 128, p. 44541.
- (c) 29 CFR 1915.173. Drums and containers, published 4/20/82, FR vol. 47, p. 16984.
- (12) Subdivision L
- (a) 29 CFR 1915.181. Electrical circuits and distribution boards, published 4/20/82, FR vol. 47, p. 16984; amended 7/3/02, FR vol. 67, no. 128, p. 44541.
- (13) Subdivisions M-O (Reserved)
- (14) Subdivision P
- (a) 29 CFR 1915.501. General provisions, published 9/15/04, FR vol. 69, p. 55667.
- (b) 29 CFR 1915.502. Fire safety plan, published 9/15/04, FR vol. 69, p. 55667.
- (c) 29 CFR 1915.503. Precautions for hot work, published 9/15/04, FR vol. 69, p. 55667.
- (d) 29 CFR 1915.504. Fire watches, published 9/15/04, FR vol. 69, p. 55667.
- (e) 29 CFR 1915.505. Fire response, published 9/15/04, FR vol. 69, p. 55667; 10/17/06, FR vol. 71, no. 200, p. 60843.
- (f) 29 CFR 1915.506. Hazards of fixed extinguishing systems on board vessels and vessel sections, published 9/15/04, FR vol. 69, p. 55667.
- (g) 29 CFR 1915.507. Land-side fire protection systems, published 9/15/04, FR vol. 69, p. 55667; 10/17/06, FR vol. 71, no. 200, p. 60843.
- (h) 29 CFR 1915.508. Training, published 9/15/04, FR vol. 69, p. 55667.
- (i) 29 CFR 1915.509. Definitions applicable to this subpart, published 9/15/04, FR vol. 69, p. 55667.
- Appendix A to Subpart P, published 9/15/04, FR vol. 69, p. 55667.
- (15) Subdivision Q-Y (Reserved)
- (16) Subdivision Z
- (a) 29 CFR 1915.1000. Air Contaminants, published 7/1/93, FR vol. 58, no. 125, p. 35514; 11/4/96, FR vol. 61, p. 56856; 1/10/97, FR vol. 62, p. 1619; amended 7/3/02, FR vol. 67, no. 128, p. 44541.
- (b) 29 CFR 1915.1001. Asbestos, published 7/1/93, FR vol. 58, no. 125, p. 35514; 8/10/94, FR vol. 59, no. 153, p. 41080; 6/29/95, FR vol. 60, no. 125, pp. 33974-34002; 7/13/95, FR vol. 60, p. 36043; 9/29/95, FR vol. 60, p. 50411; 8/23/96, FR vol. 61, p. 43454; 6/29/98, FR vol. 63, no. 124, p. 35137; amended 7/3/02, FR vol. 67, no. 128, p. 44541; 1/5/05, FR vol. 69, p. 1111; 4/3/06, FR vol. 71, no. 63, p. 16669; 8/24/06, FR vol. 71, no. 164, p. 50122.
- Appendix A to 1915.1001, published 7/1/93, FR vol. 58, p. 35553; amended 8/10/94, FR vol. 59, p. 40964; amended 6/29/95, FR vol. 60, p. 33972.
- Appendix B to 1915.1001, published 7/1/93, FR vol. 58, p. 35553; amended 8/10/94, FR vol. 59, p. 40964; amended 6/29/95, FR vol. 60, p. 33972.
- Appendix C to 1915.1001, published 7/1/93, FR vol. 58, p. 35553; amended 8/10/94, FR vol. 59, p. 40964; amended 7/3/02, FR vol. 67, no. 128, p. 44541.
- Appendix D to 1915.1001, published 7/1/93, FR vol. 58, p. 35553; amended 8/10/94, FR vol. 59, p. 40964.
- Appendix E to 1915.1001, published 7/1/93, FR vol. 58, p. 35553; amended 8/10/94, FR vol. 59, p. 40964; amended 6/29/95, FR vol. 60, p. 33972.
- Appendix F to 1915.1001, published 7/1/93, FR vol. 58, p. 35553; amended 8/10/94, FR vol. 59, p. 40964; amended 6/29/95, FR vol. 60, p. 33972.
- Appendix G to 1915.1001, published 7/1/93, FR vol. 58, p. 35553; amended 8/10/94, FR vol. 59, p. 40964.
- Appendix H to 1915.1001, published 7/1/93, FR vol. 58, p. 35553; amended 8/10/94, FR vol. 59, p. 40964; amended 6/29/95, FR vol. 60, p. 33972.
- Appendix I to 1915.1001, published 7/1/93, FR vol. 58, p. 35553; amended 8/10/94, FR vol. 59, p. 40964.
- Appendix J to 1915.1001, published 8/10/94, FR vol. 59, p. 40964.
- Appendix K to 1915.1001, published 8/10/94, FR vol. 59, p. 40964; amended 6/29/95, FR vol. 60, p. 33972.
- Appendix L to 1915.1001, published 7/1/93, FR vol. 58, p. 35553; amended 8/10/94, FR vol. 59, p. 40964; amended 2/21/95, FR vol. 60, p. 9624; amended 6/28/95, FR vol. 60, p. 33343; amended 6/29/95, FR vol. 60, p. 33972; amended 7/13/95, FR vol. 60, p. 36043; amended 9/29/95, FR vol. 60, p. 50411; amended 2/13/96, FR vol. 61, p. 5507; amended 8/23/96, FR vol. 61, p. 43454.
- (c) 29 CFR 1915.1002. Coal tar pitch volatiles; interpretation of term, published 7/1/93, FR vol. 58, no. 125, p. 35514; 6/20/96, FR vol. 61, p. 31427.
- (d) 29 CFR 1915.1003. 13 Carcinogens (4-Nitrophenyl, etc.), published 7/1/93, FR vol. 58, no. 125, p. 35514; 3/7/96, FR vol. 61, no. 46, p. 9245; 6/20/96, FR vol. 61, p. 31427.
- (e) 29 CFR 1915.1004. alpha-Naphthylamine, published 7/1/93, FR vol. 58, no. 125, p. 35514; 3/7/96, FR vol. 61, no. 46, p. 9245; 6/20/96, FR vol. 61, p. 31427.
- (f) 29 CFR 1915.1005. (Reserved)
- (g) 29 CFR 1915.1006. Methyl chloromethyl ether, published 7/1/93, FR vol. 58, no. 125, p. 35514; 3/7/96, FR vol. 61, no. 46, p. 9245; 6/20/96, FR vol. 61, p. 31427.
- (h) 29 CFR 1915.1007. 3,3'-Dichlorobenzidene (and its salts), published 7/1/93, FR vol. 58, no. 125, p. 35514; 3/7/96, FR vol. 61, no. 46, p. 9245; 6/20/96, FR vol. 61, p. 31427.
- (i) 29 CFR 1915.1008. bis-Chloromethyl ether, published 7/1/93, FR vol. 58, no. 125, p. 35514; 3/7/96, FR vol. 61, no. 46, p. 9245; 6/20/96, FR vol. 61, p. 31427.

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ef. 8-30-06; OSHA 10-2006, f. & cert. ef. 11-30-06; OSHA 1-2007, f. 1-9-07 cert. ef. 1-16-07

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(j) 29 CFR 1915.1009. beta-Naphthylamine, published 7/1/93, FR vol. 58, no. 125, p. 35514; 3/7/96, FR vol. 61, no. 46, p. 9245; 6/20/96, FR vol. 61, p. 31427.

(k) 29 CFR 1915.1010. Benzidine, published 7/1/93, FR vol. 58, no. 125, p. 35514; 3/7/96, FR vol. 61, no. 46, p. 9245; 6/20/96, FR vol. 61, p. 31427.

(l) 29 CFR 1915.1011. 4-Aminodiphenyl, published 7/1/93, FR vol. 58, no. 125, p. 35514; 3/7/96, FR vol. 61, no. 46, p. 9245; 6/20/96, FR vol. 61, p. 31427.

(m) 29 CFR 1915.1012. Ethyleneimine, published 7/1/93, FR vol. 58, no. 125, p. 35514; 3/7/96, FR vol. 61, no. 46, p. 9245; 6/20/96, FR vol. 61, p. 31427.

(n) 29 CFR 1915.1013. beta-Propiolactone, published 7/1/93, FR vol. 58, no. 125, p. 35514; 3/7/96, FR vol. 61, no. 46, p. 9245; 6/20/96, FR vol. 61, p. 31427.

(o) 29 CFR 1915.1014. 2-Acetylaminofluorene, published 7/1/93, FR vol. 58, no. 125, p. 35514; 3/7/96, FR vol. 61, no. 46, p. 9245; 6/20/96, FR vol. 61, p. 31427.

(p) 29 CFR 1915.1015. 4-Dimethylaminoazobenzene, published 7/1/93, FR vol. 58, no. 125, p. 35514; 3/7/96, FR vol. 61, no. 46, p. 9245; 6/20/96, FR vol. 61, p. 31427.

(q) 29 CFR 1915.1016. N-Nitrosodimethylamine, published 7/1/93, FR vol. 58, no. 125, p. 35514; 3/7/96, FR vol. 61, no. 46, p. 9245; 6/20/96, FR vol. 61, p. 31427.

(r) 29 CFR 1915.1017. Vinyl chloride, published 7/1/93, FR vol. 58, no. 125, p. 35514; 6/20/96, FR vol. 61, p. 31427.

(s) 29 CFR 1915.1018. Inorganic arsenic, published 7/1/93, FR vol. 58, no. 125, p. 35514; 6/20/96, FR vol. 61, p. 31427.

(t) 29 CFR 1915.1020 Access to employee exposure and medical records, published 7/1/93, FR vol. 58, no. 125, p. 35514; 6/20/96, FR vol. 61, p. 31427.

(u) 29 CFR 1915.1025. Lead, published 7/1/93, FR vol. 58, no. 125, p. 35514; 6/20/96, FR vol. 61, p. 31427.

(v) 29 CFR 1915.1026 Chromium (VI), published 2/28/06, Federal Register, vol. 71, no. 39, p. 10100; 6/23/06, FR vol. 71, no. 121, p. 36008.

(w) 29 CFR 1915.1027. Cadmium, published 9/14/92, FR vol. 57, no. 178, pp. 42388-42452; amended 4/23/93, FR vol. 58, no. 177, p. 21778; 1/3/94, FR vol. 59, no. 1, pp. 146-215; 6/20/96, FR vol. 61, p. 31427.

(x) 29 CFR 1915.1028. Benzene, published 7/1/93, FR vol. 58, no. 125, p. 35514; 6/20/96, FR vol. 61, p. 31427.

(y) 29 CFR 1915.1030. Bloodborne pathogens, published 7/1/93, FR vol. 58, no. 125, p. 35514; 6/20/96, FR vol. 61, p. 31427.

(z) 29 CFR 1915.1044. 1,2 dibromo-3-chloropropane, published 7/1/93, FR vol. 58, no. 125, p. 35514; 6/20/96, FR vol. 61, p. 31427.

(aa) 29 CFR 1915.1045. Acrylonitrile, published 7/1/93, FR vol. 58, no. 125, p. 35514; 6/20/96, FR vol. 61, p. 31427.

(bb) 29 CFR 1915.1047. Ethylene oxide, published 7/1/93, FR vol. 58, no. 125, p. 35514; 6/20/96, FR vol. 61, p. 31427.

(cc) 29 CFR 1915.1048. Formaldehyde, published 7/1/93, FR vol. 58, no. 125, p. 35514; 6/20/96, FR vol. 61, p. 31427.

(dd) 29 CFR 1915.1050. Methylenedianiline, published 7/1/93, FR vol. 58, no. 125, p. 35514; 6/20/96, FR vol. 61, p. 31427.

(ee) 29 CFR 1915.1052 Methylene Chloride, published 1/10/97, Federal Register, vol. 62, no. 7, p. 1619.

(ff) 29 CFR 1915.1120 Access to employee exposure and medical records has been redesignated to §1915.1020.

(Note: 29 CFR 1915.99, Hazard Communication was redesignated as 1915.1200 on 7/1/93, FR vol. 58, no. 125, p. 35514.)

(gg) 29 CFR 1915.1200. Hazard communication, published 9/24/87, FR vol. 52, p. 31886; amended 4/27/88, FR vol. 53, p. 15035; 2/15/89, FR vol. 54, p. 6888; 6/7/89, FR vol. 54, p. 24334; 7/1/93, FR vol. 58, no. 125, p. 35514; 2/9/94, FR vol. 59, no. 27, pp. 6126-6184; 4/13/94, FR vol. 59, no. 71, pp. 17478-17479; 12/22/94, FR vol. 59, no. 245, p. 65947; 6/20/96, FR vol. 61, p. 31427.

(hh) 29 CFR 1915.1450. Occupational exposure to hazardous chemicals in laboratories, published 7/1/93, FR vol. 58, no. 125, p. 35514; 6/20/96, FR vol. 61, p. 31427.

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

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 10-1992, f. 9-24-92, cert. ef. 11-1-92; OSHA 1-1993, f. & cert. ef. 1-22-93; OSHA 19-1993, f. & cert. ef. 12-29-93; OSHA 4-1994 f. & cert. ef. 8-4-94; OSHA 1-1995, f. & cert. ef. 1-19-95; OSHA 2-1995, f. & cert. ef. 1-25-95; OSHA 4-1995, f. & cert. ef. 3-29-95; OSHA 5-1995, f. & cert. ef. 4-6-95; OSHA 8-1995, f. & cert. ef. 8-25-95; OSHA 5-1996, f. & cert. ef. 11-29-96; OSHA 6-1996, f. & cert. ef. 11-29-96; OSHA 3-1997, f. & cert. ef. 3-28-97; OSHA 4-1997, f. & cert. ef. 4-2-97; OSHA 6-1997, f. & cert. ef. 5-2-97; OSHA 7-1998, f. & cert. ef. 12-18-98; OSHA 6-1999, f. & cert. ef. 5-26-99; OSHA 4-2001, f. & cert. ef. 2-5-01; OSHA 4-2003, f. & cert. ef. 5-6-03; OSHA 8-2004, f. & cert. ef. 12-30-04; OSHA 1-2005, f. & cert. ef. 4-12-05; OSHA 4-2006, f. & cert. ef. 7-24-06; OSHA 6-2006, f. & cert.

Rule Caption: Religious Activities for Inmates in ODOC Facilities.

Adm. Order No.: DOC 14-2006(Temp)

Filed with Sec. of State: 12-18-2006

Certified to be Effective: 12-18-06 thru 6-15-07

Notice Publication Date:

Rules Amended: 291-143-0010, 291-143-0130, 291-143-0140

Subject: Temporary amendment of the rules is necessary in order to immediately clarify Department policies regarding inmate religious exercise and activities, and religious programming in Department of Corrections facilities, consistent with applicable legal standards.

Rules Coordinator: Janet R. Worley—(503) 945-0933

291-143-0010

Definitions

(1) Administrator of Religious Services: The chaplain assigned responsibility for administering religious programming and services for the Department of Corrections. The Administrator of Religious Services reports directly to the Assistant Director for Institutions.

(2) Chaplain: A person employed full time or contracted by the Department of Corrections to provide religious programming and services to inmates in Department of Corrections facilities.

(3) Department of Corrections Facility: Any institution, facility or staff office, including the grounds, operated by the Department of Corrections.

(4) Functional Unit Manager: Any person within the Department of Corrections who reports to either the Director, an Assistant Director or administrator and has responsibility for delivery of program services or coordination of program operations.

(5) Inmate: Any person under the supervision of the Department of Corrections who is not on parole, post-prison supervision or probation status.

(6) Religious Activity: Any rite, ceremony, event or program that is customarily associated with the practices of a religion, including but not limited to, corporate gatherings of adherents of a religion for purposes of worship, prayer, teaching and/or sharing.

(7) Religious Representative: A member of the clergy, medicine person, Imam, Rabbi, spiritual advisor, or other person qualified to provide authoritative information to the Department of Corrections regarding their religion. For purposes of this rule, a religious representative shall not be an inmate or on probation, parole or post-prison supervision, or otherwise disqualified from acting as a volunteer in a Department of Corrections facility under Department rules and procedures.

(8) Religious Volunteer: A member of the clergy, medicine person, Imam, Rabbi, spiritual advisor, or other religious authority qualified to direct, lead and/or conduct others in the rites, ceremonies or other practices of a religion who has been approved by the Department of Corrections to assist inmates in requested religious activities in Department of Corrections facilities. Before acting as a religious volunteer to inmates in a Department of Corrections facility, the volunteer shall have received:

(a) Appropriate training in accordance with the Department's procedure on Employee Training; and

(b) A Department of Corrections identification card in accordance with the Department's procedure on Identification Cards (Employees, Contractors and Volunteers).

(9) Special Housing: Housing for an inmate whose assignment is administrative segregation, disciplinary segregation, Special Management Unit, Intensive Management Unit, infirmary or Death Row.

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

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

Hist.: CD 28-1978, f. 9-13-78, ef. 9-15-78; CD 19-1981(Temp), f. & ef. 6-30-81; CD 47-1981, f. & ef. 10-30-81; CD 20-1985, f. & ef. 8-2-85; CD 2-1987, f. & ef. 1-5-87; CD 19-1992, f. 8-12-92, cert. ef. 8-20-92; CD 17-1995, f. 8-30-95, cert. ef. 9-11-95; DOC 14-2006(Temp), f. & cert. ef. 12-18-06 thru 6-15-07

291-143-0130

Restriction of Religious Activity/Items

(1) An inmate's participation in approved religious activities and possession of approved religious items may be restricted by the Department of Corrections when deemed necessary to maintain facility security, safety,

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health and/or order, or to further inmate rehabilitation or other penological interest, consistent with applicable legal standards.

(2) If, in the opinion of the Department, denying or otherwise limiting an inmate's participation in approved religious activities and/or possession of approved religious items would substantially burden the inmate's religious exercise, the Department must use the least restrictive means necessary in the functional unit manager's or designee's judgment to protect facility concerns.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: CD 17-1995, f. 8-30-95, cert. ef. 9-11-95; DOC 14-2006(Temp), f. & cert. ef. 12-18-06 thru 6-15-07

291-143-0140

Religious Exercise Dispute Resolution

(1) Issues of a religious nature (e.g., the significance of a requested religious item or activity to the practice of a particular religion, etc.) will be resolved by the facility chaplain or designee, in consultation with the Administrator of Religious Services, to ensure consistency of interpretation and application of Department policy and procedures regarding inmate religious exercise and religious programming, consistent with applicable legal standards.

(2) The Administrator of Religious Services will consult with appropriate religious representatives and/or other authorities as needed to clarify issues of religious doctrine and practice.

(3) The functional unit manager or designee shall determine whether the requested religious activity and/or item in question is consistent with the maintenance of facility security, safety, health or order, inmate rehabilitation or other penological interests, including budgetary or other administrative concerns.

(4) Whenever there is a conflict between a legitimate religious exercise request and a facility interest relating to security, safety, health or order, inmate rehabilitation or other penological interests, including budgetary and other administrative concerns, the matter will be resolved by the functional unit manager in consultation with the Department's Assistant Director for Operations and Administrator of Religious Services, consistent with legal standards.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: CD 17-1995, f. 8-30-95, cert. ef. 9-11-95; DOC 14-2006(Temp), f. & cert. ef. 12-18-06 thru 6-15-07

Department of Energy
Chapter 330

Rule Caption: Rule changes to update standards for several alternative energy devices and technician certification.

Adm. Order No.: DOE 4-2006

Filed with Sec. of State: 12-29-2006

Certified to be Effective: 1-1-07

Notice Publication Date: 11-1-06

Rules Amended: 330-070-0010, 330-070-0013, 330-070-0020, 330-070-0026, 330-070-0045, 330-070-0059, 330-070-0060, 330-070-0064, 330-070-0070, 330-070-0073

Subject: The Oregon Department of Energy is proposing amendments to its rules governing Residential Energy Tax Credit (RETC) program to:

- Clarify the requirement that tax-credit certified technicians be employed by a company with a Construction Contractors Board license.
- Clarify the requirement for minimum installations for tax-credit certified technicians to state the installations have to be made in the previous calendar year.
- Clarify the requirements for tax-credit certified geothermal technicians.
- Clarify that homeowner-installed systems will be verified by ODOE on a case-by-case basis.
- Delete the requirement that solar pool and spa alternative energy devices ("AEDs") be verified by a tax-credit certified solar technician.
- Increase the co-efficient of performance (COP) standard for ground water heat pump system and ground loop AEDs to at least 3.3 for closed loop systems and 3.5 for direct expansion systems.

- Add a requirement that when multiple ground water heat pump system and ground loop AEDs systems are installed, the pipes for each system must have their own trench or well.

- Increase the minimum Modified Energy Factor (MEF) for qualifying clothes washers to a minimum of 2.0 and a maximum Water Factor of 6.5 gal/cubic foot/cycle.

- Clarify the requirement concerning very high efficiency warm air furnaces to state that they must use ducted outside air for combustion.

- Increase the minimum Modified Energy Factor (MEF) for qualifying dishwashers.

- Clarify the water heater standards.

- Consider housekeeping changes.

Rules Coordinator: Kathy Stuttaford—(503) 378-4040

330-070-0010

Purpose

(1) ORS 469.160 through 469.180 offer tax credits for Alternate Energy Devices (AEDs).

(2) These rules are OAR 330-070-0010 through 330-070-0097. They govern the way tax credits for AEDs will be granted or denied. None of these rules replace any building code requirements.

(3) Effective Date: January 1, 2007. All decisions made by the Oregon Department of Energy (ODOE) regarding AED eligibility, issuance of tax-credit technician certification, complaints regarding performance of tax-credit certified technician, revocation of technician tax-credit certification and other matters relating to the administration of this program after the effective date of these rules will be made consistent with the criteria and standards contained in these rules.

(4) These rules apply to tax years beginning on or after January 1, 2007. For all prior tax years, the law and rules applicable to those years remain in full force.

(5) ODOE grants or denies AED tax credits. By granting a tax credit, neither ODOE nor the state implies that the AED will save more money than it will cost. Meeting standards in these rules does not assure that an AED is safe or reliable.

Stat. Auth.: ORS 469.086
Stats. Implemented: ORS 316.116
Hist.: DOE 12(Temp), f. & ef. 10-14-77; DOE 3-1978, f. & ef. 3-7-78; DOE 5-1978, f. & ef. 9-27-78; DOE 6-1979, f. & ef. 11-13-79; DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 6-1983, f. 12-16-83, ef. 1-1-84; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1989, f. & cert. ef. 6-15-89; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-1990; DOE 1-1995, f. & cert. ef. 1-17-95; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2000, f. 12-29-00, cert. ef. 1-1-01; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2006, f. 12-29-06, cert. ef. 1-1-07

330-070-0013

Definitions

As used in OAR 330-070-0010 through 330-070-0097:

(1) "AED" — Alternative Energy Device.

(2) "Active Solar Heating" — A solar system that uses air or water that is moved by pumps or fans to collect, store and distribute the sun's energy to a dwelling or part of a dwelling.

(3) "AFUE" (Annual Fuel Utilization Efficiency) — The efficiency rating for furnaces and boilers expressed as the ratio of the energy output to the energy (fuel) input, including part load and cycling effects, but not including fan or pump electrical energy use.

(4) "Alternative Energy Device" ("AED") — A device or system that reduces the amount of conventional energy used by a dwelling. AEDs include, but are not limited to, systems that collect and use solar energy; ground source heat pump systems; energy efficient appliances, energy efficient heating, ventilating and air conditioning systems; fuel cell systems; alternative fuel vehicles and related alternative fuel devices or wind devices that supply, offset or supplement electricity used for a dwelling or that supply electricity to a utility.

(5) "Alternative Fuel" — Electricity, natural gas, ethanol, methanol, propane, and any other fuel approved by the Director of ODOE.

(6) "Alternative Fuel Vehicle" — An alternative fuel vehicle, equipment necessary to convert a vehicle to use an alternative fuel, or a fueling system necessary to operate an alternative fuel vehicle.

(7) "Applicant" — A person who applies for a residential alternative energy device tax credit under this section.

(a) A person who files an Oregon tax return and applies for a residential alternative energy device tax credit under this section, or

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(b) An Oregon Investor Owned Utility (IOU) as defined in ORS 757.005 or its subsidiaries and affiliated interests as defined in ORS 757.015 that is designated by an applicant under OAR 330-070-0013 (7)(a) to receive the residential tax credit certificate for a qualifying alternative fuel device on behalf of the designated applicant.

(c) Any other entity qualified to receive the residential tax credit certificate for a qualifying alternative fuel device on behalf of the designated applicant, as determined by ODOE.

(d) An individual or business that provides the tax credit pass-through amount to the eligible AED owner, and is assigned the tax credit by the AED owner.

(8) "ARI" — Air Conditioning and Refrigeration Institute.

(9) "ASHRAE" — American Society of Heating, Refrigerating and Air Conditioning Engineers.

(10) "AWEA" — American Wind Energy Association.

(11) "Btu" — British Thermal Unit.

(12) "CEF" — Energy Factor for Combined Systems. A non-dimensional descriptor of efficiency for combined space and water heating systems during operation in the water-heating mode only. This part of the three-part rating (space heating efficiency and combined efficiency being the other two) takes into account the standby losses from the storage tank, if any. A higher energy factor denotes better efficiency. Testing is accomplished using the ANSI/ASHRAE 124 test method.

(13) "CAFUE" — Annual Fuel Utilization Efficiency for Combined Systems. A descriptor of efficiency for combined space and water heating systems during operation in the space heating mode only. This part of the three-part rating (water heating efficiency and combined efficiency being the other two) does not count any standby losses from the storage tank, if any. A higher AFUE denotes better efficiency. Testing is accomplished using the ANSI/ASHRAE 124 test method.

(14) "Consumer Disclosure" — A form approved and provided by ODOE describing some AEDs. The technician fills this form out and gives it to the buyer of an AED. It shows estimated energy savings of the AED, required conservation items, required maintenance, freeze protection information and other data required by ODOE. Exclusions: energy efficient appliances and alternative fuel devices.

(15) "COP" — Coefficient of Performance. The ratio calculated by dividing the usable output energy by the electrical input energy. Both energy values must be expressed in equivalent units.

(16) "Department", "Energy Office", or "Office" — The Oregon Department of Energy.

(17) "Director" — Director of ODOE or the Director's representative.

(18) "Domestic Water Heating" — The heating of water used in a dwelling for bathing, clothes washing, dishwashing and other related functions.

(19) "Dwelling" — means real or personal property inhabited as a principal or secondary residence and located within this state. "Dwelling" includes, but is not limited to, an individual unit within multiple unit residential housing.

(a) Principal residence — The dwelling owned by the applicant who on the date of the application has legal title to a dwelling, including the mortgagor under a duly recorded mortgage of real property, the trust or under a duly recorded deed of trust or a purchaser under a duly recorded contract for the purchase of real property, and who inhabits the dwelling for no fewer than 14 days in the calendar year for which the credit is claimed;

(b) Secondary residence — Vacation property owned by the applicant; and

(c) Not qualifying — Primary or secondary residences do not include motor homes or recreational vehicles as defined in ORS 446.003.

(20) "EER" (Energy Efficiency Ratio) — A measure of a cooling system's instantaneous efficiency (cooling capacity divided by the power consumption), at DOE "A" test conditions, expressed in Btu/hr per watt.

(21) "Electric Load" — Appliance and lighting exclusive of any water or space heating use.

(22) "Energy Efficient Appliance" — A clothes washer, clothes dryer, water heater, refrigerator, freezer, dishwasher, space conditioning system, solar electric alternating current (AC) module, or any other major household appliance that has been certified by ODOE to have premium energy efficiency characteristics. Lists of certified energy efficient appliances are available from ODOE.

(23) "Energy Factor"(EF) — The non-dimensional efficiency rating for water heaters. It can be loosely translated as a percentage (e.g. EF 0.93 = 93 percent). A higher energy factor denotes better efficiency.

(24) "Energy Yield Chart" — Chart developed by ODOE showing first year energy yield of an AED.

(25) "Energy Recovery Ventilator" (ERV) — A device or system designed and installed to provide balanced fresh air ventilation for homes with the ability to transfer energy from the outgoing air stream to the incoming air stream that is also capable of at least 30 percent Latent Recovery/Moisture Transfer (LRMT) at 32 degrees F when operating at the lowest fan speed.

(26) "EUI(FURNACE)" — The Energy Use Index for a furnace, used to determine its electric efficiency, and calculated by the following formula, with inputs derived from the appropriate values in the Gas Appliance Manufacturers Association (GAMA) Directory of Certified Efficiency Ratings for Heating and Water Heating Equipment: $3.412 \times \text{EAE} / (3.412 \times \text{EAE} + 1,000 \times \text{EF}) = 2.0$ percent.

(27) "EUI(HERV)" — The Energy Use Index for an HRV or ERV, used to determine its electric efficiency, and calculated by dividing a model's power consumption, in watts, by the net supply air delivered, in cubic feet per minute (cfm), while the unit is operating in the lowest speed for which performance data is provided in the Home Ventilating Institute (HVI) Directory.

(28) "FERC" — Federal Energy Regulatory Commission.

(29) "First Year Energy Yield" — Usable energy produced under average conditions by an AED in one year. Expressed in kWh, usable energy is the gross energy contribution minus any parasitic energy used to operate the system.

(30) "Fuel Cell Stack" — The portion of a fuel cell system where the electrochemical reactions take place, generally consisting of an anode, an electrolyte, and a cathode and supporting systems bringing fuel to the stack and carrying away the electricity, electrochemical products and thermal energy generated.

(31) "Fuel Cell System" — A system for producing electricity electrochemically and non-reversibly, using a hydrogen rich fuel and oxygen, and producing an electric current, water, and thermal energy. Systems using reformed fossil fuels will also produce carbon dioxide.

(32) "Ground Source Heat Pump" — A heating, ventilating and air-conditioning system, also known as a ground water heat pump, earth-coupled heat pump, geothermal heat pump or ground loop AED, that utilizes a subsurface closed loop heat exchanger to extract or reject heat to the earth.

(33) "Heating Season" — September 1 through March 31.

(34) "Heat Recovery Ventilator" (HRV) — A device or system designed and installed to provide balanced fresh air ventilation for homes with the ability to transfer energy from the outgoing air stream to the incoming air stream.

(35) "HSPF" (Heating Season Performance Factor) — A measure of the heating efficiency of a heat pump system over the entire heating season (heating accomplished divided by power used), expressed as a ratio of Btu per watt-hour.

(36) "HUD" — U.S. Department of Housing and Urban Development.

(37) "Hybrid Vehicle" — An alternative fuel vehicle which draws propulsion energy from on-board sources of stored energy which include both an internal combustion or heat engine and a rechargeable energy storage system.

(38) "Hydronic Space Heating System" — A system that uses hot or warm water to deliver heat from a boiler or water heater to the living spaces in a home.

(39) "IREC" — Interstate Renewable Energy Council.

(40) "kWh" — kilowatt-hour; 1 kWh = 3413 BTUs for purposes of ODOE calculations.

(41) "Latent Recovery Moisture Transfer" (LRMT) — In an HRV or ERV, moisture recovered to the ventilation supply air stream divided by moisture being exhausted, corrected for cross leakage, if any. LRMT = 0 would indicate that no exhausting moisture is recovered for the incoming supply air stream. LRMT = 1 would indicate that all exhausting moisture is transferred.

(42) "MCFC" — Molten carbonate fuel cell.

(43) "Modified Energy Factor" (MEF) — The non-dimensional efficiency rating for clothes washers. This measure, unlike the EF, takes into account the moisture removed from the wash load in the spin cycle, thereby changing energy use in the drying cycle. A higher MEF denotes a more efficient clothes washer.

(44) "MM" — Million.

(45) "Net Cost" — What the applicant paid to design, acquire, build and install the AED. Net cost includes permit and inspection fees. Net cost may include the value of federal tax credits or utility incentives. Net cost does not include service contracts, rebates, discounts or refunds.

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(46) "Net Generation" — The gross kWh produced minus internal losses and parasitic loads. The net generation is the amount available to serve dwelling loads, to provide to the utility, or both.

(47) "OG" — Operating guidelines developed by the Solar Rating and Certification Corporation (SRCC) including system performance or component characteristics defined by SRCC in its directory. Operating guidelines shall be from the directory in effect at the date the rules are adopted.

(48) "ODOE" — Oregon Department of Energy.

(49) "Owner-Built" — An AED that is assembled and installed on an owner's personal property and with an owner's labor only.

(50) "Parasitic Power" — The electrical energy the system uses to operate.

(51) "Passive" — A solar AED that relies on heated liquid or air rising to collect, store and move heat without mechanical devices.

(52) "Passive Solar Space Heating" — This refers to a system or building design that collects and stores solar energy received directly through south facing windows. The system/design is without powered moving parts and includes provisions to collect, store and distribute the sun's energy using only convection, radiation and conduction of energy. See section 330-070-0062 for details.

(53) "Pass-Through Amount" — The minimum amount required to be passed through to an eligible AED owner in exchange for the right to claim the tax credit. The pass-through amount shall be determined on an annual basis by the Director.

(54) "Pass-Through Provider" — An individual or business that pays the pass-through amount to an eligible system owner and applies for the tax credit in place of the system owner.

(55) "Pass-Through Verification" — Information collected by ODOE verifying that the approved pass-through amount has been provided, that the AED owner has relinquished his or her claim to a tax credit and has assigned the credit to the pass-through provider.

(56) "Peak Power Ratio" — In the case of a hybrid vehicle, the maximum power available from the electric motor providing propulsion energy when powered by the rechargeable energy storage system, divided by the total of such maximum power and the SAE net power of the internal combustion or heat engine.

(57) "Performance Checked Duct System" — A forced air duct system whose premium efficiency characteristics are that it has been tested for duct leakage by a tax credit certified technician using ODOE-approved testing procedures, and that it has been repaired or constructed using ODOE-approved materials to reduce duct air leakage. For purposes of the tax credit, performance checked ducts are considered energy efficient appliances.

(58) "Performance Checked Heat Pumps and Air Conditioners" — A heat pump or air conditioner whose premium efficiency characteristics are that it has been tested using approved procedures and repaired or serviced as needed by a tax-credit certified technician to assure that refrigerant charge and system air flow are within ranges recommended by the equipment manufacturer. For purposes of the tax credit, performance tested heat pumps and air conditioners are considered energy efficient appliances.

(59) "Placed in Service" — The date when an AED is ready and available to produce usable energy.

(60) "PV System" — A complete solar electric power system capable of delivering power to either the main or sub-panel in a residence. Necessary components include: solar electric modules, inverter, mounting system, and disconnection equipment.

(61) "SEER" (Seasonal Energy Efficiency Ratio) — a measure of the efficiency of a cooling system over the entire cooling season (cooling accomplished divided by power used), expressed in Btu/kWh.

(62) "Solar Attic Fan" — A device that uses photovoltaics to power a fan that pulls hot air out of an attic or roof space. Such a device may either be a complete, all-in-one unit or be comprised of a small photovoltaic panel and a DC powered attic fan designed to be run by photovoltaic panel.

(63) "Solar Domestic Water Heating System" — A configuration of solar collectors, pump, heat exchanger and storage tank designed to heat water. System types include forced circulation, integral collector storage, thermosyphon, and self-pumping. For the purpose of determining system yields, a configuration of components is considered a new system if changes occur in any of the following: type or size of collectors, heat exchanger type or effectiveness, size of storage tank, or system type.

(64) "Solar Electric AC Module" — A solar photovoltaic module coupled with a utility interactive inverter. The combined system must be Underwriters Laboratory (UL) listed and meet all current Institute of Electronic and Electrical Engineers (IEEE) 929 requirements.

(65) "SRCC" — Solar Rating and Certification Corporation.

(66) "Sensible Recovery Efficiency" (SRE) — In an HRV or ERV, the sensible (measurable) energy recovered to the ventilation supply air stream minus supply fan and preheat coil energy use divided by the total sensible energy being exhausted plus exhaust fan energy. This measure of efficiency accounts for the effects of cross leakage between air streams, purchased energy for fan controls, and defrost system energy use.

(67) "STC" — Standard Test Conditions, which are 25 degrees Celsius cell temperature and 1000 watts per square meter.

(68) "Sunchart" — A chart or form issued or approved by ODOE showing the plotted path of the sun and any objects which block the sun from the AED. This shall include plant life and structures. The viewpoint shall be from the center of the lower edge of the collector. It shall show whether the plant life is made up of evergreen or leafy trees. If there is no shading on the AED, technicians shall indicate this in writing on the chart and shall include their signature and the date of the analysis.

(69) "System Certification" — Certification that an AED as described in the application meets criteria for the tax credit.

(70) "System Owner" — A person who owns the AED.

(71) "Tax-Credit Certified Technician" — A technician who has been approved by ODOE as sufficiently knowledgeable about the tax credit program. A tax-credit certified technician is responsible for assuring that the system installed is according to ODOE rules and verifying system installation quality and performance. A tax-credit certified technician must ensure that the applicant or system owner is knowledgeable about ODOE's AED rules.

(72) "Tax-Credit Listed Company" — A company that employs at least one tax-credit certified technician.

(73) "Total Solar Resource Fraction" — the fraction of usable solar energy that is received by the solar panel/collector throughout the year. This accounts for impacts due to external shading, collector tilt and collector orientation.

(74) "Unheated Spaces" — Attics, garages, and any space with an average ambient temperature of 50 degrees Fahrenheit or below during the heating season.

(75) "Used Equipment" — Any solar tank or collector which previously has been installed or any piece of equipment not under current manufacturers' warranty.

(76) "Wastewater Heat Recovery Device" — A device designed to recover thermal energy from household wastewater streams for the purpose of returning a portion of this energy to the dwelling's hot water supply system.

(77) "Water Factor" (WF) — The measure of water efficiency in clothes washers. Measured in gallons per cubic foot of tub capacity, per cycle (gal/ft³/cycle).

(78) "Wind AED" — A wind alternative energy device. A qualifying wind energy conversion system that uses wind to produce mechanical or electrical power or energy. This includes turbines, towers and their associated components needed to form a complete system.

Stat. Auth.: ORS 469.086

Stats. Implemented: ORS 316.116

Hist.: DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88, Renumbered from 330-070-0023; DOE 1-1989, f. & cert. ef. 6-15-89; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1995, f. & cert. ef. 1-17-95; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2000, f. 12-29-00, cert. ef. 1-1-01; DOE 2-2000, f. 12-29-00, cert. ef. 1-1-01; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2006, f. 12-29-06, cert. ef. 1-1-07

330-070-0020

Who Is Eligible

(1) To qualify for a credit, a person must:

- (a) Have an income tax liability in Oregon; and
- (b) Purchase, construct, install and certify an AED in accordance with these rules (OAR 330-070-0010 to 330-070-0097); and
- (c) Be the owner or contract buyer of an Oregon dwelling served by the AED, or be a tenant of the dwelling owner; and

(A) Use the dwelling as a primary or secondary residence; or
(B) Rent or lease the dwelling to a tenant who uses the dwelling or dwellings as a principal or secondary residence.

(2) If the basis for the credit is the installation of an energy efficient appliance, the credit shall be allowed only to the taxpayer who actually occupies the dwelling as a principal or secondary residence.

(3) If the basis for the credit is a fueling station necessary to operate an alternative fuel vehicle, unless the certificate is transferred, the company that constructs the dwelling that incorporates the fueling station or who installs the fueling station in the dwelling may claim the credit. If the alternative energy device is an alternative fuel vehicle or related equipment, the credit must be claimed by the owner.

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(4) A tax credit may be transferred. Any person that pays the present value of the tax credit for a qualified alternative energy device to the person who originally purchases the device shall be entitled to claim the credit in place of the original credit owner.

(5) For a qualified vehicle owned by lessor during period of first new use, the lessor may pass-through the right to claim the credit to the lessee exercising the first new use.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.160

Hist.: DOE 12(Temp), f. & ef. 10-14-77; DOE 3-1978, f. & ef. 3-7-78; DOE 5-1978, f. & ef. 9-27-78; DOE 6-1979, f. & ef. 11-13-79; DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 6-1983, f. 12-16-83, ef. 1-1-84; DOE 7-1984, f. & ef. 12-19-84; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2006, f. 12-29-06, cert. ef. 1-1-07

330-070-0026

Technician Tax Credit Certification

(1) Technicians may on a voluntary basis apply for ODOE tax-credit certification for a particular technology on an annual basis. Certification is intended to assist consumers with the state tax credit program, ensure that the systems are installed according to ODOE rules, and verify system installation quality and performance.

(2) A tax-credit certified technician applies only to the following products:

- (a) Solar water heating systems;
 - (b) Ground source heat pumps (geothermal);
 - (c) Photovoltaic systems;
 - (d) Performance-tested ducts; and
 - (e) Air source heat pumps/air conditioning systems.
- (3) The tax-credit certified technician's status is based on the following:

(a) Knowledge and understanding of the tax credit program requirements and expectations;

(b) Ability to provide systems that are designed and installed with a focus on performance and longevity;

(c) Ability to deal with both ODOE and consumers in a professional manner; and

(d) Employment by a company with a Construction Contractors Board (CCB) license. Failure to meet any of these criteria are grounds for removal from being certified. (See Section 330-070-0045(2)).

(4) Tax-credit certified technician entitles a technician to:

(a) Inform the owner that he or she has attended an ODOE-required training class and is familiar with the rules and requirements of the Residential Energy Tax Credit Program.

(b) Verify that installation of tax-credit qualified equipment and systems meet ODOE standards for performance and longevity.

(5) Tax-credit certified technician status requires that the technicians must follow ODOE requirements including:

(a) Duct and air-source heat pump/air conditioning technicians must acquire training required by the Director for providing the services necessary for that technology and pass a competency test with a score of 70 percent or above.

(b) Solar technicians must show licensure (North American Board of Certified Energy Practitioners-NABCEP or Limited Renewable Energy Technician — LRT for solar electric and Solar Thermal License (STL) for solar thermal) or pass a competency testing with a score of 70 or above for the technology.

(c) First-time geothermal technician applicants must show proof of successful completion within the previous 5 years of International Ground Source Heat Pump Association training (IGSHPA) or IGSHPA certified manufacturer's installer training program or other training approved by the ODOE Director. If IGSHPA or other certification is more than 5 years old, applicant must also complete two-hour relevant installer training, community college HVAC course, or other training approved by the Director within the previous year.

(d) Participate in ODOE tax-credit training and annual ODOE update telephone conference calls.

(e) Assure owner has user manual for equipment/system.

(f) Provide the customer with a completed application and a copy of the final itemized dated invoice for the system that is marked "inspected and paid for." Assure owner has a written full warranty for the system that lasts no less than 12 months after the system is installed.

(g) Maintain tax-credit certification status by completing the following technology-specific requirements during the previous calendar year:

(6) For solar technology — Complete at least two (2) hours of Oregon Solar Energy Industries Association (OSEIA)-approved solar-related train-

ing and either have submitted and approved two (2) tax credit applications for systems in technology in which technician is certified or score 70 percent or above on an ODOE competency test for appropriate solar technology.

(7) For air source heat pumps/air conditioning — Maintain current requisite technical certification and licensing; complete and either have submitted and approved four (4) tax credit applications or score 70 percent or above on competency test.

(8) For performance tested duct systems — Have submitted and approved a minimum of four (4) tax credit applications or score 70 percent or above on competency test.

(9) For ground-source heat pumps — Have submitted and approved a minimum of one (1) tax credit application or proof of having completed at least two hours of relevant installer training, community college HVAC course, or other training approved by the Director.

(10) Tax credits for installation of air source heat pumps/air conditioning systems, performance-tested ducts, geothermal systems, solar electric and solar thermal systems must be verified by an ODOE tax-credit certified technician. Homeowner-installed systems will be verified by ODOE on a case-by-case basis.

(11) A tax-credit certified technician must notify ODOE within 30 days if changes are made in any of the information in the certification application.

(12) ODOE may reject any application if the AED does not comply with ORS 469.160 through 469.180 and OAR 330-070-0010 through 330-070-0097. ODOE will explain all rejected applications in writing. Approved requests for lesser cost than claimed by the applicant will also include written reasons.

Stat. Auth.: ORS 469.086

Stats. Implemented: ORS 316.116

Hist.: DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 6-1983, f. 12-16-83, ef. 1-1-84; DOE 7-1984, f. & ef. 12-19-84; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1989, f. & cert. ef. 6-15-89; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1995, f. & cert. ef. 1-17-95; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2006, f. 12-29-06, cert. ef. 1-1-07

330-070-0045

Enforcement

(1) Applicant's actions that are cause for revocation of a residential alternate energy tax credit:

(a) A system certification may be revoked pursuant to ORS 469.180 if the Director finds that:

(A) The applicant obtained the system certification by fraud or misrepresentation;

(B) The AED has not been installed or operated in substantial compliance with the plans, specifications or procedures specified in the application or certificate, such as:

(i) Failure to follow applicable standards;

(ii) Failure to comply with required codes or obtain required permits or inspections;

(iii) Return of the AED to the seller or installer for a refund;

(iv) Sale or removal of the device so that it no longer operates on the property of the applicant; or

(C) The applicant refuses to allow ODOE to inspect the AED after a reasonable written request by the Department. A reasonable request must allow applicant to choose a day within three weeks of the request from the Department.

(b) Following revocation, the applicant must forfeit the tax credit, and the Department of Revenue must proceed to collect any taxes not paid by the taxpayer because of this credit.

(2) Technician's actions that are cause for revocation of technician's tax credit certification:

(a) A technician tax-credit certification may be revoked pursuant to ORS 469.180 if the Director finds that the system or technician tax-credit certification was obtained by fraud or misrepresentation by the technician. The Director may find that fraud or misrepresentation occurred if: False statements were made regarding the technician's licenses held, products or warranties carried by the tax-credit certified technician's employing company, the company's range of product cost, personnel employed in the business, or any other item in the application for technician tax-credit certification as defined in OAR 330-070-0026.

(b) A technician tax-credit certification may be revoked pursuant to ORS 469.180 if the Director finds that the technician's performance regarding sales or installation of the alternative energy device for which the technician is issued a tax credit certificate under ORS 469.170 does not meet

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industry standards. The Director may find that the technician's performance does not meet industry standards under the following conditions:

(A) The technician's employing company is not registered with the Construction Contractors Board or does not carry the required level of insurance, licensure or bonding; or

(B) The technician and/or employing company fails to obtain the required state, federal or local permits required to install the AED as defined in OAR 330-070-0040; or

(C) The technician fails to install the AED system in compliance with standards adopted under OAR 330-070-0060 through 330-070-0097; or

(D) The technician fails to install the AED system in a professional manner; or

(E) The technician fails to install the AED system to comply with manufacturers' published specifications; or

(F) The technician and employing company fail to honor contract provisions when there is no legitimate excuse for nonperformance of the obligation; or

(G) The technician and employing company fail to honor a warranty which they are contractually obligated to perform; and

(H) The technician and/or employing company fail to make corrections to remedy failure to comply with paragraphs (A) through (G) of this subsection requested by ODOE within 30 days of written notification from ODOE of the problem, unless a time extension is granted by ODOE.

(I) A tax credit for an AED sold or installed under the technician tax-credit certification is ordered revoked under subsection (2)(a) of this rule; or

(J) New information indicates that the AEDs installed under the technician tax-credit certification and his or her employing company do not meet eligibility requirements.

(c) A technician's tax-credit certification may be revoked pursuant to ORS 469.180 if the Director finds that the technician or employing company has misrepresented to the customer either the tax credit program or the nature or quality of the alternative energy device. The Director may find that the technician or employing company has misrepresented the tax credit program or the AED under the following conditions:

(A) The technician or employing company has provided false or misleading information to the customer regarding the availability of the tax credit, amount and nature of the tax credit, procedures for tax credit application, eligibility standards for credit, or any other misleading information about the program implemented under ORS 469.160 through 469.180; or

(B) The technician or employing company has misrepresented the nature of the performance of the AED or claimed savings in excess of those on a yield chart without providing accurate calculations to the customer and to ODOE to substantiate the yield. For geothermal heat pumps, the technician or employing company has claimed savings higher than other units of similar efficiency; or

(C) The technician or employing company has misrepresented the cost of a system. For example, the technician or employing company omits costs in the contract for features necessary for basic installation and/or operation of the system and/or costs to comply with the AED eligibility under ORS 469.160 through 469.180; or

(D) The technician or employing company has misrepresented a competitor's product or service; and

(E) The technician or employing company fails to make corrections requested in writing by ODOE to remedy violations of (A) — (D) of this subsection within 30 days, unless more time is allowed by ODOE; or

(F) The technician or employing company fails to remedy the construction and/or warranty claim as directed by order of the Construction Contractors Board.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.180

Hist.: DOE 5-1978, f. & ef. 9-27-78; DOE 6-1979, f. & ef. 11-13-79; DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 6-1983, f. 12-16-83, ef. 1-1-84; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1989, f. & cert. ef. 6-15-89; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1995, f. & cert. ef. 1-17-95; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2006, f. 12-29-06, cert. ef. 1-1-07

330-070-0059

Guidelines for Solar Pool and Spa AEDs

(1) Installations must be of professional quality, be installed according to manufacturer's instructions; comply with all applicable state, county, or local codes and regulations.

(2) Consumers who purchase a solar water heating system must receive written operating and maintenance instructions. These instructions must at a minimum include:

(a) Clear instructions on how to monitor the system performance;

(b) Description and recommended frequency of homeowner maintenance;

(c) Diagram of the system noting location of valves and monitoring devices; and

(d) What to do and who to call in an emergency and when the system needs professional maintenance and repairs;

(3) Pool heating system designs and installations must comply with the following additional requirements:

(a) Collectors and piping must be securely mounted to withstand local wind loads;

(b) Piping and pump sizing must consider collector area, total flow rates, pressure drop across collectors, length of run from collectors to pump, and maximum allowable pressure drop for the system;

(c) Any building insulation disturbed due to the system installation must be restored to previous condition;

(d) Pool collector materials must come with a minimum 10-year full warranty (to ensure that equipment designed for temporary installation is not used).

(e) System must have a method to show that it is operating correctly. This equipment must be a permanent part of the system, not require any special tools, and be in an easily accessible location.

(f) Collector risers must follow the slope of the surface they are mounted on to ensure drainage for proper freeze protection.

(g) Pool collectors must be equal to not less than 40 percent of the pool surface area if equipped with swimming pool blanket or not less than 60 percent if no pool blanket is present.

(4) Spa heating system designs and installations must comply with the following additional requirements:

(a) System design must be approved by the Oregon Department of Energy. Approval is based on complete system design documentation and calculation of annual energy savings.

(b) Controls must be capable of maintaining safe spa temperatures.

(c) Spa or hot tub must be insulated with not less than R-15 perimeter and bottom insulation and have a cover rated to not less than R-5.

(5) ODOE will provide technicians with a simple means of estimating annual energy savings for a pool heating system. Spa heating system performance will be determined on a case-by-case basis. For the purposes of determining the tax credit, the annual energy savings will be reduced by 25 percent if the total solar resource fraction for the site is less than 75 percent, and by 100 percent if the total solar resource fraction for the site is less than 50 percent.

(6) The costs listed in subsection (8)(a) through (h) of this rule are guidelines. They do not include all eligible costs. Other costs will qualify if justified to ODOE's satisfaction as part of a solar water heating AED. Only total systems will qualify for the tax credit. All systems must comply with OAR 330-070-0010 through 330-070-0097.

(7) Eligible costs include:

(a) The cost of solar collectors;

(b) The cost of thermal storage devices;

(c) The cost of monitors, meters and controls;

(d) The cost of photovoltaic devices used to supply electricity to parts of the system;

(e) Installation charges;

(f) Fees paid for design or building;

(g) The cost of swimming pool blankets, if they are installed with a solar pool heating system; and

(h) Up to \$200 of the cost of solar access easements. A certified copy of the recorded easement and proof of the cost must be submitted with an application.

(8) The addition of more energy producing capacity to an existing solar pool heating system may be eligible for an AED tax credit if:

(a) The system addition increases first year energy yield; and

(b) The system addition is built, installed and operated in accord with OAR 330-070-0010 through 330-070-0097.

(9) ODOE will calculate first year energy yield of a system addition by subtracting the estimated savings of the original AED from the increased first year energy yield with the addition.

(a) ODOE will not recalculate the original AED's estimated energy savings, even if the AED produces less than estimated.

(b) Any AED which received an AED tax credit in a prior year shall be assumed to remain in place, for purposes of calculating a tax credit for a system addition.

(10) A tax credit for a system addition must count as a tax credit for the tax year in which the addition is placed in service. The total tax credit of current and previous year credits shall not exceed \$1,500 per year.

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

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Stat. Auth.: ORS 469.086
Stats. Implemented: ORS 316.116
Hist.: DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2006, f. 12-29-06, cert. ef. 1-1-07

330-070-0060

Guidelines for Solar Domestic Water Heating AEDs

(1) Installations must be of professional quality, comply with all applicable state, county, or local codes and regulations and be verified by an ODOE tax-credit certified solar technician.

(2) Consumers who purchase a solar water heating system must receive written operating and maintenance instructions. These instructions must be plainly mounted/displayed on or near the solar storage or backup water-heating tank. These instructions must at a minimum include:

(a) Clear instructions on how to determine if the system is functioning properly;

(b) Description and recommended frequency of homeowner maintenance;

(c) Diagram of the system noting location of valves and monitoring devices;

(d) What to do and who to call in an emergency and when the system needs professional maintenance and repairs; and

(e) How to protect the system from overheating due to stagnation during periods when the system is not in use during the summer months.

(3) System designs and installations must comply with the following additional requirements:

(a) Collectors and piping must be securely mounted to withstand local wind loads;

(b) Piping and pump sizing must consider collector area, total flow rates, pressure drop across collectors, length of run from collectors to pump, and maximum allowable pressure drop for the system;

(c) Pipe insulation must be installed on all solar pipe runs and protected against damage from exposure in outdoor conditions and be rated for design condition temperatures;

(d) Any building insulation disturbed due to the system installation must be restored to previous condition;

(e) For systems using pressurized anti-freeze fluids, a pressure gauge must be installed to indicate pressure in the system; and

(f) Piping containing pressurized water in attics 24 hours a day must be of the appropriate material allowed by applicable Oregon plumbing codes. A minimum number of fittings must be used in the attic, and the fittings shall be copper or brass.

(g) Pipe materials (e.g. copper, PEX, polybutylene) must be capable of handling the temperature ranges that they will be exposed to (e.g. freezing or collector stagnation).

(4) Freeze protection must be provided for systems where the heat transfer fluid may freeze. The freeze protection method shall follow these guidelines:

(a) The method must be clearly stated in the owner's manual.

(b) The method must work in the absence of utility electric power.

(c) Systems using tanks, piping, pumps and other components containing water in unheated spaces must be adequately protected from freezing.

(d) Recirculation is not an acceptable freeze protection measure, unless the collector used is a heat pipe type.

(e) Drain-down or manual drain systems are not acceptable freeze protection methods for solar domestic water heating systems.

(f) Drain-down or manual drain systems for pools or spas must be designed for gravity draining of the collector and piping.

(g) Thermosyphon systems may not connect power to the electric element in roof-mounted tanks as a freeze protection or backup measure.

(5) The annual energy requirement for domestic water heating must be reduced by setting the water heater thermostat to 120 degrees F.

(6) A method to show that the system is operating correctly must be provided.

(a) For passive systems this must be a thermometer in line between solar storage and backup tank.

(b) For an active system this must be a flow meter in the supply line to the collectors and a thermometer on the outlet port of the solar storage tank.

(c) Equipment meeting this requirement must:

(A) Be a permanent part of the system;

(B) Not require any special tools or equipment to monitor; and

(C) Be in an accessible location.

(7) The costs listed in subsection (8)(a) through (j) of this rule are guidelines. They do not include all eligible costs. Other costs will qualify if

justified to ODOE's satisfaction as part of a solar water heating AED. Only total systems will qualify for the tax credit. All systems must comply with OAR 330-070-0010 through 330-070-0097.

(8) Eligible costs include:

(a) The cost of solar collectors;

(b) The cost of thermal storage devices;

(c) The cost of ductwork, piping, fans, pumps and controls that move heat from solar collectors to storage and to heat buildings;

(d) The cost of monitors, meters and controls;

(e) The cost of photovoltaic devices used to supply electricity to parts of the system;

(f) Installation charges;

(g) Fees paid for design or building;

(h) The cost of swimming pool blankets, if they are installed with a solar pool heating system;

(i) The cost of hot water conservation measures installed with a water heating AED; and

(j) Up to \$200 of the cost of solar access easements. A certified copy of the recorded easement and proof of the cost must be submitted with an application.

(9) ODOE will provide a table of estimated annual energy savings or "yield chart" for most OG-300 systems common to Oregon and R&D systems. Annual energy savings will be based on the annual performance simulations provided by the SRCC modified for conditions required under state law.

(a) OG-300 systems that meet ODOE approval do not have to be on the yield chart if there has been no request by a tax-credit certified technician that they appear on the yield chart.

(b) For the purposes of determining the tax credit, the annual energy savings will be reduced by 25 percent if the total solar resource fraction for the site is less than 75 percent, and by 100 percent if the total solar resource fraction for the site is less than 50 percent. Yields must be developed for each of the three weather zones defined by ODOE and updated at least annually.

(10) All systems must meet the standards established by the SRCC OG-300 system certification in effect at the time the rules are adopted, or equivalent requirements as determined by the Director.

(a) Temporary authorization will be granted to non-OG-300 systems under a special "Research & Development" status. ODOE will extend this temporary authorization for up to 12 systems of a specific design. The solar technician will need to submit a complete copy of the system design and operation documents provided to the consumer to ODOE for approval. ODOE shall determine that such system will perform well under the conditions it is designed for and will likely last in excess of 15 years without replacement of major components. Tax credit amounts under this status will be determined by ODOE based on 90 percent of the estimated annual energy output.

(b) Temporary authorization may be extended to non-OG-300 systems under an "OG-300 Applicant" status providing the system manufacturer is currently applying for OG-300 certification from SRCC. ODOE will extend an unlimited quantity of systems to be installed in a 12-month period, providing ODOE has reviewed a copy of the SRCC application and determined it to be reasonably likely to achieve OG-300 certification within the 12-month period.

(11) System yields shown in the yield charts may be increased by a tax-credit certified technician providing they sign a statement of compliance provided by ODOE and meet the following storage tank insulation levels:

(a) A one tank/aux. tanks adjustment of +100 kWh applies to the tank in a solar water heating system that has only one storage tank, such as a thermally stratified active system or ICS systems or the auxiliary tank in two tank systems. Such tanks generally have the ability to heat water by means other than solar energy. To qualify for this yield adjustment the tank must meet the insulation requirements as specified by ODOE.

(b) A solar tank adjustment of +100 kWh applies to the solar storage tank in a solar water heating system. Such a tank does not have a means of heating water other than solar energy and is almost always located upstream of the auxiliary tank. Because of their size and because they are usually not part of the original home design, they are generally located outside the conditioned space of the house. To qualify for this yield adjustment the tank must meet the insulation requirements as specified by ODOE.

(12) All technician tax-credit certified-installed systems must:

(a) Include an O&M manual which specifies installation instructions, operation instructions, maintenance plan, fluid quality, service and replacement parts, hazards, and warranty coverage;

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- (b) Provide clear labeling of on/off/bypass controls and safety issues;
- (c) Have a means of indicating proper operation of the solar water heating system (flow indicators/meter or thermometers);
- (d) Be installed to meet local building codes; and
- (e) Have a tempering valve to prevent greater than 120 degree F. water downstream of the valve.

(13) Systems shall be installed with the OG-300 certification sticker located on the manual cover. The manual and any supporting documentation shall be placed in a waterproof, clear plastic bag located on or near the solar or domestic hot water heater.

(14) Owner-built and site-built domestic water heating systems are exempt from the testing requirements. ODOE will evaluate the system design and assign it a yield based on 50 percent of its estimated annual energy performance.

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

Stat. Auth.: ORS 469.086

Stats. Implemented: ORS 316.116

Hist.: DOE 12(Temp), f. & ef. 10-14-77; DOE 3-1978, f. & ef. 3-7-78; DOE 5-1978, f. & ef. 9-27-78; DOE 6-1979, f. & ef. 11-13-79; DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 6-1983, f. 12-16-83, ef. 1-1-84; DOE 7-1984, f. & ef. 12-19-84; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1989, f. & cert. ef. 6-15-89; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1995, f. & cert. ef. 1-17-95; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2000, f. 12-29-00, cert. ef. 1-1-01; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2006, f. 12-29-06, cert. ef. 1-1-07

330-070-0064

Guidelines for Photovoltaic AEDs

(1) Installations must be professional quality, comply with all applicable Oregon codes, comply with the requirements of the **National Electric Code article 690**, and be verified by an ODOE tax-credit certified solar technician.

(2) A photovoltaic tax credit for a system installed on or after November 4, 2005, shall be limited to \$6,000 per PV system. The amount of the credit shall be based on \$3 per watt. The maximum tax credit given in a calendar year is \$1,500. If a system results in a tax credit larger than \$1,500, the remainder will be applied on to the subsequent year until either the \$6,000 limit or the total tax credit is provided.

(3) System size shall be determined by the sum of all the photovoltaic module DC wattage ratings under standard test conditions (STC).

(4) The minimum system size must be 200 Watts DC output under STC.

(5) Photovoltaic AED costs eligible for the tax credit include the cost of:

- (a) Photovoltaic modules;
- (b) Inverters;
- (c) Storage systems and regulators;
- (d) Monitors, meters, and controls;
- (e) Wiring and framing materials;
- (f) Trackers;
- (g) Installation charges; and
- (h) Permits and fees, including up to \$200 of the cost of solar access easements. A certified copy of the recorded easement and proof of the cost must be submitted with an application.

(6) For the purposes of determining the tax credit, the annual energy savings will be reduced by 25 percent if the total solar resource fraction for the site is less than 75 percent, and by 100 percent if the total solar resource fraction for the site is less than 50 percent.

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

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.170

Hist.: DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2006, f. 12-29-06, cert. ef. 1-1-07

330-070-0070

Guidelines for Ground-Water Heat Pump and Ground Loop AEDs

(1) Only total systems will qualify for a tax credit. All systems must comply with OAR 330-070-0025 and 330-070-0040 and be of closed loop design and operation. See also OAR 330-070-0027.

(2) Systems must limit waste of the resource.

(3) Systems must not have adverse effects on:

- (a) Other systems; and
- (b) Water quality applying the standards of the Department of Environmental Quality.

(4) Systems must not create hazards such as:

- (a) Steam or water vapor;
- (b) Vapors or odors;
- (c) Noise; and

(d) Hazardous wellhead design.

(5) System parts must have adequate:

- (a) Structural strength;
- (b) Resistance to weather and fire;
- (c) Ease of upkeep; and
- (d) Durability.

(6) No system will cause harmful physical effects on people or unwanted tastes or odors.

(7) Some heat transfer fluids need special handling. These include toxic, corrosive, and explosive fluids. Such fluids shall only be used when the system is designed to safely handle them.

(8) Under normal operation, any part of a system that may be touched by people must be cooler than 141 degrees F. If this cannot be done, any part that reaches more than 140 degrees F. must have warning labels. Each system must include a device to limit water for domestic use to 140 degrees F.

(9) Each system and nearby structures must be protected against pressures, vacuums and temperatures.

(10) Systems must fully protect drinking water as specified in the Oregon Plumbing Specialty Code.

(11) Systems must use storage tanks built by accepted methods. Each tank must be tested for leaks.

(12) Expansion and contraction due to changing heat levels must not cause undue strain or distortion.

(13) Systems that use heat transfer fluids that may freeze must have freeze protection.

(14) Systems must use accepted methods to guard against the known corrosion/scaling level of the water.

(15) Systems must also be designed for the least effect on groundwater.

(16) Ground loop systems must cover enough ground to meet total annual heating requirements, as required by manufacturers' recommended design standards. Ground loops used for cooling must restore soil moisture.

(17) Downhole heat exchangers will be reviewed on a case by case basis.

(18) The system COP must be at least 3.3 for closed loop systems and 3.5 for direct expansion (DX) systems, including energy used by pumps. COP shall be determined by the following methods:

(a) For water source heat pumps, the COP must be determined in accordance with ARI Standard 325-85, at an entering water temperature of 50 degrees F.

(b) For water source or ground loop heat pumps using ambient surface water as an energy source and for solar assisted heat pumps, the COP must be the measured ratio of the heating season energy output divided by the heating season energy input. Both energy values must be expressed in the same units.

(19) All other types of ground water heat pumps and ground loop AEDs must be reviewed on their COP.

(20) Bermed or earth covered buildings will not qualify for the geothermal tax credit.

(21) All ground water heat pumps and ground loop water heating AEDs must include setting the water heater thermostat to 120 degrees F as a hot water conservation measure.

(22) A ground source heat pump system may receive a supplemental tax credit amount, determined by ODOE, based on additional energy savings, if the duct system to which it is attached is tested and certified in accordance with the protocols specified in Section 330-070-0073(9)(a) through 330-070-0073(9)(g). This amount is in addition to the tax credit amount for the ground source heat pump system itself, and in addition to the tax credit amount provided for the duct testing and certification itself. In order to earn the supplemental tax credit amount, the ground source system must be installed, the duct system must be tested and certified, and the applications for all tax credit amounts associated with the system must be received, as a single package, at ODOE by April 1st of the tax year following the tax year for which the credits are being claimed.

Stat. Auth.: ORS 469.086

Stats. Implemented: ORS 316.116

Hist.: DOE 12(Temp), f. & ef. 10-14-77; DOE 3-1978, f. & ef. 3-7-78; DOE 5-1978, f. & ef. 9-27-78; DOE 6-1979, f. & ef. 11-13-79; DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 6-1983, f. 12-16-83, ef. 1-1-84; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1989, f. & cert. ef. 6-15-89; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 4-2006, f. 12-29-06, cert. ef. 1-1-07

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330-070-0073

Guidelines for Energy Efficient Appliances and Alternative Fuel Devices

(1) Energy efficient appliances must meet or exceed the following energy efficiency ratings, as measured in accordance with current United States Department of Energy (USDOE) test procedures where applicable, and be currently listed with ODOE as qualifying premium efficiency appliances.

(2) Where USDOE test procedures do not exist, ODOE will designate a nationally recognized test procedure that will apply instead.

(3) Clothes washers

(a) For the purpose of this program, clothes washer efficiency performance is determined using the USDOE Appendix J1 test procedure for residential clothes washers in effect at the time the rules are adopted.

(b) Effective April 1, 2007, clothes washers shall have a minimum Modified Energy Factor (MEF) of 2.0 and a maximum Water Factor (WF) of 6.5 gal/cubic foot/cycle.

(4) Refrigerator-Freezers

(a) Must have at least 20 percent lower energy consumption than that allowed by the July 1, 2001 USDOE standard for refrigerator/freezers;

(b) Must have a total net volume (sum of the fresh food compartment and freezer compartment volumes) of at least 12 cubic feet, but less than 30 cubic feet; and

(c) Must have a fully automatic defrost cycle.

(5) Dishwashers

(a) Effective April 1, 2007, dishwashers must have an Energy Factor of 0.67 cycles/kWh or higher; and

(b) Dishwashers must have tax credit eligibility based on an Energy Factor derived from the DOE Dishwasher Test Procedure effective September 28, 2003.

(c) Dishwashers must have a maximum water use per cycle, as tested, of 6.5 gallons.

(6) Water Heating Appliances

(a) Water heater efficiency requirements:

(A) Equipment efficiency requirements for units of nominal 1-ton or less capacity are based on the USDOE Energy Factor, as derived from the USDOE Appendix E test procedure for residential water heating equipment in effect at the time the rules are adopted. Efficiency requirements for units larger than 1-ton in capacity and smaller than 6-tons in capacity, are based on the system COP at 47 degrees F outdoor air temperature or other rating point appropriate for the system deemed equivalent by ODOE.

(B) Electric units of nominal 1-ton or less shall have an Energy Factor not less than 1.0; units with capacity greater than 1-ton and less than 6-tons shall have a COP rating of not less than 2.5.

(C) Natural gas, propane, or oil-fired units shall have an Energy Factor of 0.80 or greater as tested with natural gas fuel. If tankless, the water heater shall have a maximum firing rate of at least 140,000 Btu/hour and a minimum firing rate no higher than 24,000 Btu/hour.

(b) Combined space/water-heating system efficiency must be based on the water heating Energy Factor for Combined Systems (CEF) as derived from the American National Standards Institute/American Society of Heating, Refrigerating, and Air Conditioning Engineers (ANSI/ASHRAE) 124-1991 test method. Water heaters that are part of a combined space and water heating system may not receive a tax credit for space heating efficiency as a boiler in addition to the tax credit as a water heating appliance.

(7) For Wastewater Heat Recovery Systems, field performance data submitted to and approved by ODOE must be the basis for tax credit qualification. The following rules also apply:

(a) The systems must meet all plumbing code requirements for vented double-wall heat exchangers;

(b) The system must not interfere with the proper operation of the dwelling's wastewater system; and

(c) Energy recovered must be re-introduced into the dwelling's hot water supply system.

(8) Performance Checked Space Conditioning Duct Systems must meet the following requirements:

(a) All joints and seams in duct work outside the conditioned space must be sealed, when accessible, with mastics that meet NFPA class 1 requirements, that are UL 181 listed, and that meet ASTM standards C557 and C919-79.

(b) All closure systems must be applied according to the manufacturer's instructions or as specified by these standards.

(c) If the home serviced by the performance checked duct system is new, or the building envelope is being altered, the house must meet resi-

dential energy conservation requirements of the Oregon Structural Specialty Code or of the Oregon One and Two Family Dwelling Code in effect at the time the home is constructed or structurally altered.

(d) Duct leakage must be tested using ODOE-approved, calibrated duct testing equipment and ODOE approved testing protocols.

(e) Testing to verify that these standards have been achieved must be conducted by technicians approved by ODOE or by an ODOE-designated agent or representative.(f) In addition to general requirements (a) through (e), performance checked duct systems must meet situation specific standards for eligibility, materials, design, installation, air tightness and safety, as specified in the Oregon Department of Energy Premium Efficiency Duct System Standards, dated October 30, 2003.

(g) Measures eligible for the purpose of calculating a performance checked duct system tax credit include:

(A) New construction

(i) Duct sealing labor and materials;

(ii) Heating and cooling load calculations;

(iii) Duct system sizing and design calculations;

(iv) Labor and materials for installing multiple returns;

(v) Labor and materials for installing passive pressure relief grilles;

(vi) Duct testing; and

(vii) Labor and materials for bringing duct systems inside heated space.

(B) New ducts in existing homes

(i) Duct sealing labor and materials;

(ii) Heating and cooling load calculations;

(iii) Duct system sizing and design calculations;

(iv) Labor and materials for installing multiple returns;

(v) Labor and materials for installing passive pressure relief grilles;

and

(vi) Duct testing.

(C) Duct repair and sealing/existing ducts in existing homes

(i) Duct sealing labor and materials;

(ii) Labor and materials for installing multiple returns;

(iii) Labor and materials for installing passive pressure relief grilles;

and

(iv) Duct testing.

(h) To apply for a performance checked duct tax credit, the following information must be submitted in a form approved by ODOE:

(A) Application form;

(B) Test results worksheet for "new construction," "new duct systems in existing homes," or "duct repair and sealing"/existing ducts in existing homes, as applicable;

(C) Copies of heating and cooling load calculations and/or duct sizing calculations, as applicable, shall be made available to ODOE upon request; and

(D) Itemized invoice identifying measures detailed in (g).

(i) The amount of the tax credit for performance checked duct systems must be 25 percent of the eligible costs detailed in (g), up to \$250.

(9) Performance Checked Heat Pumps and Central Air Conditioners must meet the following standards:

(a) Systems must be tested and serviced as needed to confirm correct refrigerant charge and air flow by technicians certified by ODOE or its approved agent, based on procedures approved by ODOE.

(b) Approved supplemental air flow test methods must be used, including: flow grid, duct blaster, strip heat, or flow hood. Supplemental air flow test results must include pre-repair and post repair air flow readings in cubic feet per minute, cfm.

(c) To verify electronically commutated motor (ECM) installation results, the wattage of the existing fan motor and new ECM fan motor must be measured using a wattmeter or by clocking the revenue meter using the following procedure:

(A) Turn off all circuit breakers except the breaker to the AC/HP air handler.

(B) Turn on the air handler fan (cooling speed).

(C) At the meter, use a stopwatch, and for a period of at least 90 seconds, count the number of revolutions of the wheel. Record seconds and number of revolutions.

(D) Record meter data: kWh and multiplier if any.

(E) Calculate the watt draw of the fan: Watts = [kWh x number of revolutions x multiplier x 3600]/seconds.

(d) Eligible measures must be confirmed by the system diagnostic tests using ODOE-approved protocols in use at the time of measure installation. Duplicate tax credits may not be claimed.

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(e) Measures eligible for the purpose of calculating a performance checked heat pump/air conditioner tax credit include:

(A) System diagnostic tests;

(B) Adding or removing refrigerant when initial diagnostic tests indicate need for refrigerant adjustment and post repair tests indicate correct charge has been installed;

(C) Altering the duct system to improve air flow when initial diagnostic tests show low air flow and post repair tests show an air flow improvement of 10 percent or more;

(D) Cleaning the inside coil when initial diagnostic tests indicate low air flow and post repair tests show an air flow improvement of 10 percent or more; and

(E) Replacing an existing inside fan motor with an electronically commutated motor (ECM) when initial diagnostic tests show low air flow and tests after ECM installation show an air flow improvement of 10 percent or more.

(f) To apply for a performance checked heat pump/air conditioner tax credit, the following information must be submitted in a form approved by ODOE:

(A) Application form;

(B) Performance checked heat pump/AC diagnostics data entry form;

(C) Pre and post repair system air flow measurements using approved methods listed in (b), if applicable;

(D) Watt draw of existing fan motor and new ECM, if applicable; and

(E) Itemized labor and materials cost information for applicable measures, testing, and repairs.

(g) The amount of the performance checked heat pump/AC tax credit must be 25 percent of the cost of testing and repair, up to \$250.

(10) Alternative Fuel Vehicles must have equipment installed to make the vehicle capable of storing and utilizing an alternative fuel for vehicle propulsion. Equipment may consist of original equipment manufacturer components; or

(a) Components for natural gas powered vehicles that meet EPA1-A requirements current at the time these rules are adopted; or

(b) Components for hybrid vehicles must provide the hybrid vehicle with a combination of power between propulsion energy systems such that the peak power ratio of the vehicle is 0.10 or greater; or

(c) Other components as recognized by ODOE as necessary for alternative fuel use.

(11) Alternative Fuel Fueling Systems must be installed to meet all state and local fire and life safety codes and be capable of re-fueling/recharging an alternative fuel vehicle within 14 hours. The following rules also apply:

(a) On-board charging systems that feed into the rechargeable energy storage system in a hybrid vehicle must be high-voltage systems of 100 Volts or higher that have an active regenerative braking system integrated into the recharging system of the hybrid vehicle; and

(b) The use of an on-board charging system on a hybrid vehicle must result in significant energy savings as determined by the Director of ODOE.

(12) Energy Recovery Ventilators (ERVs) must:

(a) Be tested, rated and certified through the Home Ventilating Institute (HVI) Division of the Air Movement and Control Association (AMCA) International, Inc., and listed in the HVI directory;

(b) Be capable of at least 30 percent Latent Recovery/Moisture Transfer (LRMT) at 32°F when operating on the lowest fan speed; Have a maximum EUI(HERV) of 1.5 watts/cfm at the lowest fan speed for which performance data is published in the HVI directory; and

(c) Have a minimum Sensible Recovery Efficiency (SRE) of:

(A) 65 percent at 32°F/0°C when operating at the lowest fan speed;

(B) 60 percent at 32°F/0°C when operating at the highest fan speed; and

(C) 60 percent at -13°F/-25°C when operating at the lowest fan speed, if rated at this condition.

(13) Heat Recovery Ventilators must:

(a) Be tested, rated and certified through the Home Ventilating Institute (HVI) Division of the Air Movement and Control Association (AMCA) International, Inc., and listed in the HVI directory;

(b) Have a maximum EUI of 1.5 watts/cfm at the lowest fan speed for which performance data is published in the HVI directory; and

(c) Have a minimum Sensible Recovery Efficiency (SRE) of:

(A) 65 percent at 32°F/0°C when operating at the lowest fan speed;

(B) 60 percent at 32°F/0°C when operating at the highest fan speed; and

(C) 60 percent at -13°F/-25°C when operating at the lowest fan speed, if rated at this condition.

(14) Very High Efficiency Air Conditioning Systems must:

(a) Be a central, split-system designed and installed to operate in conjunction with the air handling unit or furnace of a home's heating system;

(b) Be tested and rated in accordance with the DOE test procedure for residential air-conditioning systems in effect at the time these rules are adopted, and certified by, and listed in the directory of the Air Conditioning and Refrigeration Institute (ARI) in effect at the time these rules are adopted;

(c) Consist of a matched outdoor unit and indoor unit (air handler and coil or furnace and coil), as tested, rated and listed in the ARI Directory;

(d) Have a minimum EER rating at DOE "A" conditions of 13.0; and

(e) Be installed in accordance with the protocols specified in section 330-070-0073(9)(a) through 330-070-0073(9)(g) of these rules.

(15) Very High Efficiency Air Source Heat Pump Systems must:

(a) Be a central, split-system;

(b) Be tested and rated in accordance with the USDOE Appendix M test procedure for residential air-conditioning systems in effect at the time these rules are adopted, and be certified by, and be listed in the directory of the Air Conditioning and Refrigeration Institute (ARI) that is in effect at the time these rules are adopted;

(c) Consist of a matched outdoor unit and indoor unit (air handler and coil or furnace and coil), as tested, rated and listed in the ARI Directory;

(d) Have a minimum DOE Region IV HSPF rating of 9.0;

(e) Have a minimum EER rating at DOE "A" conditions of 12.0; and

(f) Be installed in accordance with the protocols specified in section 330-070-0073(9)(a) through 330-070-0073(9)(g) of these rules.

(16) Very High Efficiency Warm Air Furnace Systems must:

(a) Be tested and rated in accordance with the USDOE Appendix N test procedure for furnaces in effect at the time these rules are adopted, and be certified by and listed in the directory of the Gas Appliance Manufacturers Association (GAMA) in effect at the time these rules are adopted;

(b) Have a minimum AFUE rating of 0.90 (90 percent);

(c) Use ducted outdoor air for combustion; and

(d) The air handler for the unit must have an electronically commutated, permanent magnet variable speed DC (ECPM) motor, or have an EUI(FURNACE) of less than 0.02.

(17) Very High Efficiency Air Handlers must:

(a) Be installed as part of a hydronic space heating system; and

(b) Be equipped with an electronically commutated, permanent magnet variable speed DC (ECPM) motor.

(18) Very High Efficiency Hot Water Boiler Systems must:

(a) Be tested and rated in accordance with the USDOE Appendix N test procedure for furnaces in effect at the time these rules are adopted, and be certified by and listed in the directory of the Gas Appliance Manufacturers Association (GAMA) in effect at the time these rules are adopted; and

(b) Have a minimum AFUE rating of 0.88 (88 percent).

(19) Very High Efficiency Air Conditioning, Air Source Heat Pump or Furnace systems may receive a supplemental tax credit amount, determined by ODOE, based on additional energy savings if the duct system to which it is attached is tested and certified in accordance with the protocols specified in Section 330-070-0073(9)(a) through 330-070-0073(9)(g). This amount is in addition to the tax credit amount for the Very High Efficiency Air Conditioning, Air Source Heat Pump or Furnace system itself, and in addition to the tax credit amount provided for the duct testing and certification itself. In order to earn the supplemental tax credit amount, the air conditioning and/or heating system must be installed, the duct system must be tested and certified, and the applications for all tax credit amounts associated with the system must be received, as a single package, at ODOE by April 1st of the tax year following the tax year for which the credits are being claimed.

(20) Any other standards adopted by ODOE for energy efficient appliances and alternative fuel devices, their components, and/or systems as determined by the Director of the Oregon Department of Energy.

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

Stat. Auth.: ORS 469.086

Stats. Implemented: ORS 316.116

Hist.: DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2000, f. 12-29-00, cert. ef. 1-1-01; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 4-2004, f. & cert. ef. 8-2-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2006, f. 12-29-06, cert. ef. 1-1-07

ADMINISTRATIVE RULES

Department of Environmental Quality Chapter 340

Rule Caption: Adoption of Utility Mercury Rule and Other Federal Air Quality Regulations.

Adm. Order No.: DEQ 13-2006

Filed with Sec. of State: 12-22-2006

Certified to be Effective: 12-22-06

Notice Publication Date: 6-1-06

Rules Adopted: 340-228-0600, 340-228-0602, 340-228-0603, 340-228-0604, 340-228-0605, 340-228-0606, 340-228-0608, 340-228-0610, 340-228-0612, 340-228-0614, 340-228-0616, 340-228-0618, 340-228-0620, 340-228-0622, 340-228-0624, 340-228-0626, 340-228-0628, 340-228-0630, 340-228-0632, 340-228-0634, 340-228-0636, 340-228-0638, 340-228-0640, 340-228-0642, 340-228-0644, 340-228-0646, 340-228-0648, 340-228-0650, 340-228-0652, 340-228-0654, 340-228-0656, 340-228-0658, 340-228-0660, 340-228-0662, 340-228-0664, 340-228-0666, 340-228-0668, 340-228-0670, 340-228-0671, 340-228-0672, 340-228-0673, 340-228-0674, 340-228-0676, 340-228-0678

Rules Amended: 340-228-0300, 340-238-0040, 340-238-0060, 340-244-0030, 340-244-0040

Subject: These rules contain standards that implement the new federal Clean Air Mercury Rule (CAMR). In addition, these rules adopt by reference the federal New Source Performance Standards (NSPS) for Other Solid Waste Incineration Units, incorporate federal NSPS and National Emission Standards for Hazardous Air Pollutants (NESHAP) amendments through July 1, 2006, remove methyl ethyl ketone (MEK) from the list of HAPs, and change the Title V operating permit deferrals for most non-major NESHAP sources to permanent Title V exemptions.

Rules Coordinator: Larry McAllister—(503) 229-6412

340-228-0300

Federal Regulations Adopted by Reference

(1) **40 CFR Parts 72, 75, and 76** (July 1, 2006) are by this reference adopted and incorporated herein, for purposes of implementing an acid rain program that meets the requirements of title IV of the Clean Air Act. The term “permitting authority” means the Oregon Department of Environmental Quality and the term “Administrator” shall mean the Administrator of the United States Environmental Protection Agency.

(2) If the provisions or requirements of **40 CFR Part 72** conflict with or are not included in OAR 340 Divisions 218 or 220, the Part 72 provisions and requirements shall apply and take precedence.

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

Stat. Auth.: ORS 468.020 & 468.310(2)

Stats. Implemented: ORS 468A.025

Hist.: DEQ 32-1994, f. & cert. ef. 12-22-94; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-022-0075; DEQ 22-2000, f. & cert. ef. 12-18-00; DEQ 13-2006, f. & cert. ef. 12-22-06

340-228-0600

Purpose

This rule establishes the designated representative, permitting, allowance, mandatory reduction levels, and monitoring provisions for the mercury (Hg) Budget Trading Program, as a means of reducing Hg emissions nationally and in Oregon. The Department authorizes the Administrator to assist the Department in implementing the interstate Hg Trading Program by carrying out the functions set forth for the Administrator.

Stat. Auth.: ORS 468.020 & 468A.310

Stats. Implemented: ORS 468A.025

Hist.: DEQ 13-2006, f. & cert. ef. 12-22-06

340-228-0602

Definitions

(1) “Account number” means the identification number given by the Administrator to each Hg Allowance Tracking System account.

(2) “Acid rain emissions limitation” means a limitation on emissions of sulfur dioxide or nitrogen oxides under the Acid Rain Program.

(3) “Acid Rain Program” means a multi-state sulfur dioxide and nitrogen oxides air pollution control and emission reduction program established by the Administrator under title IV of the CAA and 40 CFR parts 72 through 78.

(4) “Administrator” means the Administrator of the United States Environmental Protection Agency or the Administrator’s duly authorized representative.

(5) “Allocate or allocation” means the determination by the permitting authority or the Administrator of the amount of Hg allowances to be initially credited to a Hg Budget unit or a new unit set-aside under OAR 340-228-0632 through 0636.

(6) “Allowance transfer deadline” means, for a control period, midnight of March 1, if it is a business day, or, if March 1 is not a business day, midnight of the first business day thereafter immediately following the control period and is the deadline by which a Hg allowance transfer must be submitted for recordation in a Hg Budget source’s compliance account in order to be used to meet the source’s Hg Budget emissions limitation for such control period in accordance with OAR 340-228-0644.

(7) “Alternate Hg designated representative” means, for a Hg Budget source and each Hg Budget unit at the source, the natural person who is authorized by the owners and operators of the source and all such units at the source in accordance with OAR 340-228-0612 through 0620, to act on behalf of the Hg designated representative in matters pertaining to the Hg Budget Trading Program.

(8) “Automated data acquisition and handling system or DAHS” means that component of the continuous emission monitoring system (CEMS), or other emissions monitoring system approved for use under OAR 340-228-0658 through 0670, designed to interpret and convert individual output signals from pollutant concentration monitors, flow monitors, diluent gas monitors, and other component parts of the monitoring system to produce a continuous record of the measured parameters in the measurement units required OAR 340-228-0658 through 0670.

(9) “Boiler” means an enclosed fossil-or other fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium.

(10) “Bottoming-cycle cogeneration unit” means a cogeneration unit in which the energy input to the unit is first used to produce useful thermal energy and at least some of the reject heat from the useful thermal energy application or process is then used for electricity production.

(11) “Clean Air Act” or “CAA” means the Clean Air Act, 42 U.S.C. 7401, et seq.

(12) “Coal” means any solid fuel classified as anthracite, bituminous, subbituminous, or lignite by the American Society of Testing and Materials (ASTM) Standard Specification for Classification of Coals by Rank D388-77, 90, 91, 95, 98a, or 99 (Reapproved 2004) & epsiv; (incorporated by reference, see 40 CFR 60.17).

(13) “Coal-derived fuel” means any fuel (whether in a solid, liquid, or gaseous state) produced by the mechanical, thermal, or chemical processing of coal.

(14) “Coal-fired” means combusting any amount of coal or coal-derived fuel, alone or in combination with any amount of any other fuel, during any year.

(15) “Cogeneration unit” means a stationary, coal-fired boiler or stationary, coal-fired combustion turbine:

(a) Having equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy; and

(b) Producing during the 12-month period starting on the date the unit first produces electricity and during any calendar year after which the unit first produces electricity:

(A) For a topping-cycle cogeneration unit,

(i) Useful thermal energy not less than 5 percent of total energy output; and

(ii) Useful power that, when added to one-half of useful thermal energy produced, is not less than 42.5 percent of total energy input, if useful thermal energy produced is 15 percent or more of total energy output, or not less than 45 percent of total energy input, if useful thermal energy produced is less than 15 percent of total energy output.

(B) For a bottoming-cycle cogeneration unit, useful power not less than 45 percent of total energy input.

(16) “Combustion turbine” means:

(a) An enclosed device comprising a compressor, a combustor, and a turbine and in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine; and

(b) If the enclosed device under paragraph (a) of this definition is combined cycle, any associated heat recovery steam generator and steam turbine.

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(17) "Commence commercial operation" means, with regard to a unit serving a generator:

(a) To have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation, except as provided in OAR 340-228-0605.

(A) For a unit that is a Hg Budget unit under OAR 340-228-0604 on the date the unit commences commercial operation as defined in paragraph (a) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the unit's date of commencement of commercial operation.

(B) For a unit that is a Hg Budget unit under OAR 340-228-0604 on the date the unit commences commercial operation as defined in paragraph (a) of this definition and that is subsequently replaced by a unit at the same source (e.g., repowered), the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in paragraph (a) or (b) of this definition as appropriate.

(b) Notwithstanding paragraph (a) of this definition and except as provided in OAR 340-228-0605, for a unit that is not a Hg Budget unit under OAR 340-228-0604 on the date the unit commences commercial operation as defined in paragraph (a) of this definition, the unit's date for commencement of commercial operation shall be the date on which the unit becomes a Hg Budget unit under OAR 340-228-0604.

(A) For a unit with a date for commencement of commercial operation as defined in paragraph (b) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date remains the unit's date of commencement of commercial operation.

(B) For a unit with a date for commencement of commercial operation as defined in paragraph (b) of this definition and that is subsequently replaced by a unit at the same source (e.g., repowered), the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in paragraph (a) or (b) of this definition as appropriate.

(18) "Commence operation" means:

(a) To have begun any mechanical, chemical, or electronic process, including, with regard to a unit, start-up of a unit's combustion chamber, except as provided in OAR 340-228-0605.

(A) For a unit that is a Hg Budget unit under OAR 340-228-0604 on the date the unit commences operation as defined in paragraph (a) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the unit's date of commencement of operation.

(B) For a unit that is a Hg Budget unit under OAR 340-228-0604 on the date the unit commences operation as defined in paragraph (a) of this definition and that is subsequently replaced by a unit at the same source (e.g., repowered), the replacement unit shall be treated as a separate unit with a separate date for commencement of operation as defined in paragraph (a) or (b) of this definition as appropriate.

(b) Notwithstanding paragraph (a) of this definition and except as provided in OAR 340-228-0605, for a unit that is not a Hg Budget unit under OAR 340-228-0604 on the date the unit commences operation as defined in paragraph (a) of this definition, the unit's date for commencement of operation shall be the date on which the unit becomes a Hg Budget unit under OAR 340-228-0604.

(A) For a unit with a date for commencement of operation as defined in paragraph (b) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the unit's date of commencement of operation.

(B) For a unit with a date for commencement of operation as defined in paragraph (b) of this definition and that is subsequently replaced by a unit at the same source (e.g., repowered), the replacement unit shall be treated as a separate unit with a separate date for commencement of operation as defined in paragraph (a) or (b) of this definition as appropriate.

(19) "Common stack" means a single flue through which emissions from 2 or more units are exhausted.

(20) "Compliance account" means a Hg Allowance Tracking System account, established by the Administrator for a Hg Budget source under OAR 340-228-0638 through 0650, in which any Hg allowance allocations for the Hg Budget units at the source are initially recorded and in which are held any Hg allowances available for use for a control period in order to meet the source's Hg Budget emissions limitation in accordance with OAR 340-228-0644.

(21) "Continuous emission monitoring system" or "CEMS" means the equipment required under OAR 340-228-0658 through 0670 to sample, analyze, measure, and provide, by means of readings recorded at least once every 15 minutes (using an automated data acquisition and handling system (DAHS)), a permanent record of Hg emissions, stack gas volumetric flow rate, stack gas moisture content, and oxygen or carbon dioxide concentration (as applicable), in a manner consistent with 40 CFR part 75. The following systems are the principal types of CEMS required under OAR 340-228-0658 through 0670:

(a) A flow monitoring system, consisting of a stack flow rate monitor and an automated data acquisition and handling system and providing a permanent, continuous record of stack gas volumetric flow rate, in units of standard cubic feet per hour (scfh);

(b) A Hg concentration monitoring system, consisting of a Hg pollutant concentration monitor and an automated data acquisition and handling system and providing a permanent, continuous record of Hg emissions in units of micrograms per dry standard cubic meter ($\mu\text{g}/\text{dscm}$);

(c) A moisture monitoring system, as defined in 40 CFR 75.11(b)(2) and providing a permanent, continuous record of the stack gas moisture content, in percent H₂O.

(d) A carbon dioxide monitoring system, consisting of a CO₂ concentration monitor (or an oxygen monitor plus suitable mathematical equations from which the CO₂ concentration is derived) and an automated data acquisition and handling system and providing a permanent, continuous record of CO₂ emissions, in percent CO₂; and

(e) An oxygen monitoring system, consisting of an O₂ concentration monitor and an automated data acquisition and handling system and providing a permanent, continuous record of O₂, in percent O₂.

(22) "Control period" means the period beginning January 1 of a calendar year and ending on December 31 of the same year, inclusive.

(23) "Emissions" means air pollutants exhausted from a unit or source into the atmosphere, as measured, recorded, and reported to the Administrator by the Hg designated representative and as determined by the Administrator in accordance with OAR 340-228-0658 through 0670.

(24) "Excess emissions" means any ounce of mercury emitted by the Hg Budget units at a Hg Budget source during a control period that exceeds the Hg Budget emissions limitation for the source.

(25) "General account" means a Hg Allowance Tracking System account, established under OAR 340-228-0638, that is not a compliance account.

(26) "Generator" means a device that produces electricity.

(27) "Gross electrical output" means, with regard to a cogeneration unit, electricity made available for use, including any such electricity used in the power production process (which process includes, but is not limited to, any on-site processing or treatment of fuel combusted at the unit and any on-site emission controls).

(28) "Heat input" means, with regard to a specified period of time, the product (in MMBtu/time) of the gross calorific value of the fuel (in Btu/lb) divided by 1,000,000 Btu/MMBtu and multiplied by the fuel feed rate into a combustion device (in lb of fuel/time), as measured, recorded, and reported to the Administrator by the Hg designated representative and determined by the Administrator in accordance with OAR 340-228-0658 through 0670 and excluding the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources.

(29) "Heat input rate" means the amount of heat input (in MMBtu) divided by unit operating time (in hr) or, with regard to a specific fuel, the amount of heat input attributed to the fuel (in MMBtu) divided by the unit operating time (in hr) during which the unit combusts the fuel.

(30) "Hg allowance" means a limited authorization issued by the permitting authority or the Administrator under OAR 340-228-0632 through 0636 to emit one ounce of mercury during a control period of the specified calendar year for which the authorization is allocated or of any calendar year thereafter under the Hg Budget Trading Program. An authorization to emit mercury that is not issued under the provisions of a State plan that adopt the requirements of this rule and are approved by the Administrator in accordance with 40 CFR 60.24(h)(6) shall not be a "Hg allowance."

(31) "Hg allowance deduction or deduct Hg allowances" means the permanent withdrawal of Hg allowances by the Administrator from a compliance account in order to account for a specified number of ounces of total mercury emissions from all Hg Budget units at a Hg Budget source for a control period, determined in accordance with OAR 340-228-0638 through 0650 and 340-228-0658 through 0670, or to account for excess emissions.

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(32) "Hg allowances held or hold Hg allowances" means the Hg allowances recorded by the Administrator, or submitted to the Administrator for recordation, in accordance with OAR 340-228-0638 through 0656, in a Hg Allowance Tracking System account.

(33) "Hg Allowance Tracking System" means the system by which the Administrator records allocations, deductions, and transfers of Hg allowances under the Hg Budget Trading Program. Such allowances will be allocated, held, deducted, or transferred only as whole allowances.

(34) "Hg Allowance Tracking System account" means an account in the Hg Allowance Tracking System established by the Administrator for purposes of recording the allocation, holding, transferring, or deducting of Hg allowances.

(35) "Hg authorized account representative" means, with regard to a general account, a responsible natural person who is authorized, in accordance with OAR 340-228-0640, to transfer and otherwise dispose of Hg allowances held in the general account and, with regard to a compliance account, the Hg designated representative of the source.

(36) "Hg Budget emissions limitation" means, for a Hg Budget source, the equivalent in ounces of the Hg allowances available for deduction for the source under OAR 340-228-0644(1) and (2) for a control period.

(37) "Hg Budget permit" means the legally binding and Federally enforceable written document, or portion of such document, issued by the permitting authority under OAR 340-228-0622 through 0630, including any permit revisions, specifying the Hg Budget Trading Program requirements applicable to a Hg Budget source, to each Hg Budget unit at the source, and to the owners and operators and the Hg designated representative of the source and each such unit.

(38) "Hg Budget source" means a source that includes one or more Hg Budget units.

(39) "Hg Budget Trading Program" means a multi-state Hg air pollution control and emission reduction program approved and administered by the Administrator in accordance with this rule and 40 CFR 60.24(h)(6), as a means of reducing national Hg emissions.

(40) "Hg Budget unit" means a unit that is subject to the Hg Budget Trading Program under OAR 340-228-0604.

(41) "Hg designated representative" means, for a Hg Budget source and each Hg Budget unit at the source, the natural person who is authorized by the owners and operators of the source and all such units at the source, in accordance with OAR 340-228-0612 through 0620, to represent and legally bind each owner and operator in matters pertaining to the Hg Budget Trading Program.

(42) "Life-of-the-unit, firm power contractual arrangement" means a unit participation power sales agreement under which a utility or industrial customer reserves, or is entitled to receive, a specified amount or percentage of nameplate capacity and associated energy generated by any specified unit and pays its proportional amount of such unit's total costs, pursuant to a contract:

(a) For the life of the unit;

(b) For a cumulative term of no less than 30 years, including contracts that permit an election for early termination; or

(c) For a period no less than 25 years or 70 percent of the economic useful life of the unit determined as of the time the unit is built, with option rights to purchase or release some portion of the nameplate capacity and associated energy generated by the unit at the end of the period.

(43) "Lignite" means coal that is classified as lignite A or B according to the American Society of Testing and Materials (ASTM) Standard Specification for Classification of Coals by Rank D338-77, 90, 91, 95, 98a, or 99 (Reapproved 2004)–(incorporated by reference, see 40 CFR 60.17).

(44) "Maximum design heat input" means, starting from the initial installation of a unit, the maximum amount of fuel per hour (in Btu/hr) that a unit is capable of combusting on a steady-state basis as specified by the manufacturer of the unit, or, starting from the completion of any subsequent physical change in the unit resulting in a decrease in the maximum amount of fuel per hour (in Btu/hr) that a unit is capable of combusting on a steady-state basis, such decreased maximum amount as specified by the person conducting the physical change.

(45) "Monitoring system" means any monitoring system that meets the requirements of OAR 340-228-0658 through 0670, including a continuous emissions monitoring system, an alternative monitoring system, or an excepted monitoring system under 40 CFR part 75.

(46) "Nameplate capacity" means, starting from the initial installation of a generator, the maximum electrical generating output (in MWe) that the

generator is capable of producing on a steady-state basis and during continuous operation (when not restricted by seasonal or other deratings) as specified by the manufacturer of the generator or, starting from the completion of any subsequent physical change in the generator resulting in an increase in the maximum electrical generating output (in MWe) that the generator is capable of producing on a steady-state basis and during continuous operation (when not restricted by seasonal or other deratings), such increased maximum amount as specified by the person conducting the physical change.

(47) "Operator" means any person who operates, controls, or supervises a Hg Budget unit or a Hg Budget source and shall include, but not be limited to, any holding company, utility system, or plant manager of such a unit or source.

(48) "Ounce" means 2.84_107 micrograms. For the purpose of determining compliance with the Hg Budget emissions limitation, total ounces of mercury emissions for a control period shall be calculated as the sum of all recorded hourly emissions (or the mass equivalent of the recorded hourly emission rates) in accordance with OAR 340-228-0658 through 0670, but with any remaining fraction of an ounce equal to or greater than 0.50 ounces deemed to equal one ounce and any remaining fraction of an ounce less than 0.50 ounces deemed to equal zero ounces.

(49) "Owner" means any of the following persons:

(a) With regard to a Hg Budget source or a Hg Budget unit at a source, respectively:

(A) Any holder of any portion of the legal or equitable title in a Hg Budget unit at the source or the Hg Budget unit;

(B) Any holder of a leasehold interest in a Hg Budget unit at the source or the Hg Budget unit; or

(C) Any purchaser of power from a Hg Budget unit at the source or the Hg Budget unit under a life-of-the-unit, firm power contractual arrangement; provided that, unless expressly provided for in a leasehold agreement, owner shall not include a passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based (either directly or indirectly) on the revenues or income from such Hg Budget unit; or

(b) With regard to any general account, any person who has an ownership interest with respect to the Hg allowances held in the general account and who is subject to the binding agreement for the Hg authorized account representative to represent the person's ownership interest with respect to Hg allowances.

(50) Permitting authority means the State air pollution control agency, local agency, other State agency, or other agency authorized by the Administrator to issue or revise permits to meet the requirements of the Hg Budget Trading Program in accordance with 40 CFR 340-228-0622 through 0630 or, if no such agency has been so authorized, the Administrator.

(51) "Potential electrical output capacity" means 33 percent of a unit's maximum design heat input, divided by 3,413 Btu/kWh, divided by 1,000 kWh/MWh, and multiplied by 8,760 hr/yr.

(52) "Receive or receipt of" means, when referring to the permitting authority or the Administrator, to come into possession of a document, information, or correspondence (whether sent in hard copy or by authorized electronic transmission), as indicated in an official correspondence log, or by a notation made on the document, information, or correspondence, by the permitting authority or the Administrator in the regular course of business.

(53) "Recordation, record, or recorded" means, with regard to Hg allowances, the movement of Hg allowances by the Administrator into or between Hg Allowance Tracking System accounts, for purposes of allocation, transfer, or deduction.

(54) "Reference method" means any direct test method of sampling and analyzing for an air pollutant as specified in 40 CFR 75.22.

(55) "Repowered" means, with regard to a unit, replacement of a coal-fired boiler with one of the following coal-fired technologies at the same source as the coal-fired boiler:

(a) Atmospheric or pressurized fluidized bed combustion;

(b) Integrated gasification combined cycle;

(c) Magnetohydrodynamics;

(d) Direct and indirect coal-fired turbines;

(e) Integrated gasification fuel cells; or

(f) As determined by the Administrator in consultation with the Secretary of Energy, a derivative of one or more of the technologies under paragraphs (a) through (e) of this definition and any other coal-fired technology capable of controlling multiple combustion emissions simultane-

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ously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of January 1, 2005.

(56) "Serial number" means, for a Hg allowance, the unique identification number assigned to each Hg allowance by the Administrator.

(57) "Sequential use of energy" means:

(a) For a topping-cycle cogeneration unit, the use of reject heat from electricity production in a useful thermal energy application or process; or

(b) For a bottoming-cycle cogeneration unit, the use of reject heat from useful thermal energy application or process in electricity production.

(58) "Source" means all buildings, structures, or installations located in one or more contiguous or adjacent properties under common control for the same person or persons. For purposes of section 502(c) of the CAA, a "source" including "a source" with multiple units, shall be considered a single "facility".

(59) "State" means:

(a) For purposes of referring to a governing entity, one of the States in the United States, the District of Columbia, or, if approved for treatment as a State under 40 CFR part 49, the Navajo Nation or Ute Indian Tribe that adopts the Hg Budget Trading Program pursuant to 40 CFR 60.24(h)(6); or

(b) For purposes of referring to geographic areas, one of the States in the United States, the District of Columbia, the Navajo Nation Indian country, or the Ute Tribe Indian country.

(60) "Subbituminous" means coal that is classified as subbituminous A, B, or C, according to the American Society of Testing and Materials (ASTM) Standard Specification for Classification of Coals by Rank D388-77, 90, 91, 95, 98a, or 99 (Reapproved 2004) & epsiv; (incorporated by reference, see 40 CFR 60.17).

(61) "Submit or serve" means to send or transmit a document, information, or correspondence to the person specified in accordance with the applicable regulation:

(a) In person;

(b) By United States Postal Service; or

(c) By other means of dispatch or transmission and delivery.

Compliance with any "submission" or "service" deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.

(62) "Title V operating permit" means a permit issued under title V of the CAA and 40 CFR part 70 or 71.

(63) "Title V operating permit regulations" means the regulations that the Administrator has approved or issued as meeting the requirements of title V of the CAA and 40 CFR part 70 or 71.

(64) "Topping-cycle cogeneration unit" means a cogeneration unit in which the energy input to the unit is first used to produce useful power, including electricity, and at least some of the reject heat from the electricity production is then used to provide useful thermal energy.

(65) "Total energy input" means, with regard to a cogeneration unit, total energy of all forms supplied to the cogeneration unit, excluding energy produced by the cogeneration unit itself.

(66) "Total energy output" means, with regard to a cogeneration unit, the sum of useful power and useful thermal energy produced by the cogeneration unit.

(67) "Unit" means a stationary coal-fired boiler or a stationary coal-fired combustion turbine.

(68) "Unit operating day" means a calendar day in which a unit combusts any fuel.

(69) "Unit operating hour" or "hour of unit operation" means an hour in which a unit combusts any fuel.

(70) "Useful power" means, with regard to a cogeneration unit, electricity or mechanical energy made available for use, excluding any such energy used in the power production process (which process includes, but is not limited to, any on-site processing or treatment of fuel combusted at the unit and any on-site emission controls).

(71) "Useful thermal energy" means, with regard to a cogeneration unit, thermal energy that is:

(a) Made available to an industrial or commercial process (not a power production process), excluding any heat contained in condensate return or makeup water;

(b) Used in a heat application (e.g., space heating or domestic hot water heating); or

(c) Used in a space cooling application (i.e., thermal energy used by an absorption chiller).

(72) "Utility power distribution system" means the portion of an electricity grid owned or operated by a utility and dedicated to delivering electricity to customers.

Stat. Auth.: ORS 468.020 & 468A.310

Stats. Implemented: ORS 468A.025

Hist.: DEQ 13-2006, f. & cert. ef. 12-22-06

340-228-0603

Untitled

Measurements, abbreviations, and acronyms used in this part are defined as follows:

(1) Btu-British thermal unit.

(2) CO₂-carbon dioxide.

(3) H₂O-water.

(4) Hg-mercury.

(5) hr-hour.

(6) kW-kilowatt electrical.

(7) kWh-kilowatt hour.

(8) lb-pound.

(9) MMBtu-million Btu.

(10) MWe-megawatt electrical.

(11) MWh-megawatt hour.

(12) NO_x-nitrogen oxides.

(13) O₂-oxygen.

(14) ppm-parts per million.

(15) scfh-standard cubic feet per hour.

(16) SO₂-sulfur dioxide.

(17) yr-year.

Stat. Auth.: ORS 468.020 & 468A.310

Stats. Implemented: ORS 468A.025

Hist.: DEQ 13-2006, f. & cert. ef. 12-22-06

340-228-0604

Applicability

(1) Except as provided in section (2) of this rule:

(a) The following units in the State shall be Hg Budget units, and any source that includes one or more such units shall be a Hg Budget source, subject to the requirements of OAR 340-228-0600 through 0678 and 40 CFR part 60 subparts BB through HH: Any stationary, coal-fired boiler or stationary, coal-fired combustion turbine serving at any time, since the later of November 15, 1990 or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe producing electricity for sale.

(b) If a stationary boiler or stationary combustion turbine that, under subsection (1)(a) of this rule, is not a Hg Budget unit begins to combust coal or coal-derived fuel or to serve a generator with nameplate capacity of more than 25 MWe producing electricity for sale, the unit shall become a Hg Budget unit as provided in subsection (1)(a) of this rule on the first date on which it both combusts coal or coal-derived fuel and serves such generator.

(2) The units in the State that meet the requirements set forth in paragraph (2)(a)(A) or subsection (2)(b) of this rule are not Hg Budget units:

(a)(A) Any unit that is a Hg Budget unit under subsection (1)(a) or (b) of this rule:

(i) Qualifying as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and continuing to qualify as a cogeneration unit; and

(ii) Not serving at any time, since the later of November 15, 1990 or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe supplying in any calendar year more than one-third of the unit's potential electric output capacity or 219,000 MWh, whichever is greater, to any utility power distribution system for sale.

(B) If a unit qualifies as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and meets the requirements of paragraph (2)(a)(A) of this rule for at least one calendar year, but subsequently no longer meets all such requirements, the unit shall become a Hg Budget unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a cogeneration unit or January 1 after the first calendar year during which the unit no longer meets the requirements of subparagraph (2)(a)(A)(ii) of this rule.

(b) Any unit that is a Hg Budget unit under subsection (1)(a) or (b) of this rule, is a solid waste incineration unit combusting municipal waste, and is subject to the requirements of:

(A) A State Plan approved by the Administrator in accordance with 40 CFR part 60 subpart Cb (emissions guidelines and compliance times for certain large municipal waste combustors);

ADMINISTRATIVE RULES

(B) 40 CFR part 60 subpart Eb (standards of performance for certain large municipal waste combustors);

(C) 40 CFR part 60 subpart AAAA (standards of performance for certain small municipal waste combustors);

(D) A State Plan approved by the Administrator in accordance with 40 CFR part 60 subpart BBBB (emission guidelines and compliance times for certain small municipal waste combustion units);

(E) 40 CFR part 62 subpart FFF (Federal Plan requirements for certain large municipal waste combustors); or

(F) 40 CFR part 62 subpart JJJ (Federal Plan requirements for certain small municipal waste combustion units).

Stat. Auth.: ORS 468.020 & 468A.310

Stats. Implemented: ORS 468A.025

Hist.: DEQ 13-2006, f. & cert. ef. 12-22-06

340-228-0605

Retired Unit Exemption

(1)(a) Any Hg Budget unit that is permanently retired is exempt from the Hg Budget Trading Program, except for the provisions of this rule, OAR 340-228-0602, 0604, 0606(3)(d) through (h), 0608, and 0638 through 0656.

(b) The exemption under subsection (1)(a) of this rule becomes effective the day on which the Hg Budget unit is permanently retired. Within 30 days of the unit's permanent retirement, the Hg designated representative must submit a statement to the Department and must submit a copy of the statement to the Administrator. The statement must state, in a format prescribed by the Department, that the unit was permanently retired on a specific date and will comply with the requirements of section (2) of this rule.

(c) After receipt of the statement under subsection (1)(b) of this rule, the Department will amend any permit under OAR 340-228-0622 through 0630 covering the source at which the unit is located to add the provisions and requirements of the exemption under subsection (1)(a) and subsection (2) of this rule.

(2) Special provisions.

(a) A unit exempt under section (1) of this rule must not emit any mercury, starting on the date that the exemption takes effect.

(b) The Department will reallocate Hg allowances from a unit exempt under section (1) of this rule in accordance with OAR 340-228-0632 through 0636.

(c) For a period of 5 years from the date the records are created, the owners and operators of a unit exempt under section (1) of this rule must retain at the source that includes the unit, records demonstrating that the unit is permanently retired. The 5-year period for keeping records may be extended for cause, at any time before the end of the period, in writing by the Department or the Administrator. The owners and operators bear the burden of proof that the unit is permanently retired.

(d) The owners and operators and, to the extent applicable, the Hg designated representative of a unit exempt under section (1) of this rule must comply with the requirements of the Hg Budget Trading Program concerning all periods for which the exemption is not in effect, even if such requirements arise, or must be complied with, after the exemption takes effect.

(e) A unit exempt under section (1) of this rule and located at a source that is required, or but for this exemption would be required, to have a title V operating permit must not resume operation unless the Hg designated representative of the source submits a complete Hg Budget permit application under OAR 340-228-0626 for the unit not less than 18 months (or such lesser time provided by the Department) before the later of January 1, 2010 or the date on which the unit resumes operation.

(f) On the earlier of the following dates, a unit exempt under section (1) of this rule will lose its exemption:

(A) The date on which the Hg designated representative submits a Hg Budget permit application for the unit under subsection (2)(e) of this rule;

(B) The date on which the Hg designated representative is required under subsection (2)(e) of this rule to submit a Hg Budget permit application for the unit; or

(C) The date on which the unit resumes operation, if the Hg designated representative is not required to submit a Hg Budget permit application for the unit.

(g) For the purpose of applying monitoring, reporting, and record-keeping requirements under OAR 340-228-0658 through 0670, a unit that loses its exemption under section (1) of this rule will be treated as a unit that commences operation and commercial operation on the first date on which the unit resumes operation.

Stat. Auth.: ORS 468.020 & 468A.310

Stats. Implemented: ORS 468A.025

Hist.: DEQ 13-2006, f. & cert. ef. 12-22-06

340-228-0606

Standard Requirements

(1) Permit Requirements.

(a) The Hg designated representative of each Hg Budget source required to have a title V operating permit and each Hg Budget unit required to have a title V operating permit at the source must:

(A) Submit to the Department a complete Hg Budget permit application under OAR 340-228-0626 in accordance with the deadlines specified in OAR 340-228-0624(1) and (2); and

(B) Submit in a timely manner any supplemental information that the Department determines is necessary in order to review a Hg Budget permit application and issue or deny a Hg Budget permit.

(b) The owners and operators of each Hg Budget source required to have a title V operating permit and each Hg Budget unit required to have a title V operating permit at the source must have a Hg Budget permit issued by the Department under OAR 340-228-0622 through 0630 for the source and operate the source and the unit in compliance with such Hg Budget permit.

(c) The owners and operators of a Hg Budget source that is not required to have a title V operating permit and each Hg Budget unit that is not required to have a title V operating permit are not required to submit a Hg Budget permit application, and to have a Hg Budget permit, under OAR 340-228-0622 through 0630 for such Hg Budget source and such Hg Budget unit.

(2) Monitoring, reporting, and recordkeeping requirements.

(a) The owners and operators, and the Hg designated representative, of each Hg Budget source and each Hg Budget unit at the source must comply with the applicable monitoring, reporting, and recordkeeping requirements of OAR 340-228-0658 through 0670.

(b) The emissions measurements recorded and reported in accordance with OAR 340-228-0658 through 0670 must be used to determine compliance by each Hg Budget source with the Hg Budget emissions limitation under section (3) of this rule.

(3) Mercury emission requirements. The following mercury emission requirements shall apply to each Hg Budget unit for the control periods of 2010 through 2017. For the control periods of 2018 and thereafter, each Hg Budget unit must comply with the applicable emission cap in OAR 340-228-0672.

(a) As of the allowance transfer deadline for a control period, the owners and operators of each Hg Budget source and each Hg Budget unit at the source must hold, in the source's compliance account, Hg allowances available for compliance deductions for the control period under OAR 340-228-0644(1) in an amount not less than the ounces of total mercury emissions for the control period from all Hg Budget units at the source, as determined in accordance with OAR 340-228-0658 through 0670.

(b) A Hg Budget unit is subject to the requirements under subsection (3)(a) of this rule starting on the later of January 1, 2010 or the deadline for meeting the unit's monitor certification requirements under OAR 340-228-0658(2)(a)(A) or (B).

(c) A Hg allowance must not be deducted, for compliance with the requirements under subsection (3)(a) of this rule, for a control period in a calendar year before the year for which the Hg allowance was allocated.

(d) Hg allowances must be held in, deducted from, or transferred into or among Hg Allowance Tracking System accounts in accordance with OAR 340-228-0652 through 0656.

(e) A Hg allowance is a limited authorization to emit one ounce of mercury in accordance with the Hg Budget Trading Program. No provision of the Hg Budget Trading Program, the Hg Budget permit application, the Hg Budget permit, or an exemption under OAR 340-228-0605 and no provision of law can be construed to limit the authority of the State or the United States to terminate or limit such authorization.

(f) A Hg allowance does not constitute a property right.

(g) Upon recordation by the Administrator under OAR 340-228-0638 through 0656, every allocation, transfer, or deduction of a Hg allowance to or from a Hg Budget unit's compliance account is incorporated automatically in any Hg Budget permit of the source that includes the Hg Budget unit.

(4) Excess emissions requirements. The following excess emission requirements shall apply to each Hg Budget unit for the control periods of 2010 through 2017.

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(a) If a Hg Budget source emits mercury during any control period in excess of the Hg allowances in the source's compliance account that are available for compliance deduction in the control period, then:

(A) The owners and operators of the source and each Hg Budget unit at the source must surrender an amount of Hg allowances, allocated for the control period in the immediately following calendar year, equal to 3 times the number of ounces of the source's excess emissions in accordance with OAR 340-228-0644(4)(a) and pay any fine, penalty, or assessment or comply with any other remedy imposed, for the same violations, under the Clean Air Act or applicable State law; and

(B) Each ounce of such excess emissions and each day of such control period constitute a separate violation of the Clean Air Act and applicable State law.

(5) Recordkeeping and reporting requirements.

(a) Unless otherwise provided, the owners and operators of the Hg Budget source and each Hg Budget unit at the source must keep on site at the source each of the following documents for a period of 5 years from the date the document is created. This period may be extended for cause, at any time before the end of 5 years, in writing by the Department or the Administrator.

(A) The certificate of representation under OAR 340-228-0618 for the Hg designated representative for the source and each Hg Budget unit at the source and all documents that demonstrate the truth of the statements in the certificate of representation; provided that the certificate and documents are retained on site at the source beyond such 5-year period until such documents are superseded because of the submission of a new certificate of representation under OAR 340-228-0618 changing the Hg designated representative.

(B) All emissions monitoring information, in accordance with OAR 340-228-0658 through 0670, provided that to the extent that OAR 340-228-0658 through 0670 provides for a 3-year period for recordkeeping, the 3-year period applies.

(C) Copies of all reports, compliance certifications, and other submissions and all records made or required under the Hg Budget Trading Program.

(D) Copies of all documents used to complete a Hg Budget permit application and any other submission under the Hg Budget Trading Program or to demonstrate compliance with the requirements of the Hg Budget Trading Program.

(b) The Hg designated representative of a Hg Budget source and each Hg Budget unit at the source must submit the reports required under the Hg Budget Trading Program, including those under OAR 340-228-0658 through 0670.

(6) Liability.

(a) Each Hg Budget source and each Hg Budget unit must meet the requirements of the Hg Budget Trading Program for the control periods of 2010 through 2017.

(b) Any provision of the Hg Budget Trading Program that applies to a Hg Budget source or the Hg designated representative of a Hg Budget source also applies to the owners and operators of such source and of the Hg Budget units at the source.

(c) Any provision of the Hg Budget Trading Program that applies to a Hg Budget unit or the Hg designated representative of a Hg Budget unit also applies to the owners and operators of such unit.

(7) Effect on other authorities. No provision of the Hg Budget Trading Program, a Hg Budget permit application, a Hg Budget permit, or an exemption under OAR 340-228-0605 must be construed as exempting or excluding the owners and operators, and the Hg designated representative, of a Hg Budget source or Hg Budget unit from compliance with any other provision of the applicable, approved State implementation plan, a Federally enforceable permit, or the CAA.

Stat. Auth.: ORS 468.020 & 468A.310

Stats. Implemented: ORS 468A.025

Hist.: DEQ 13-2006, f. & cert. ef. 12-22-06

340-228-0608

Computation of Time

(1) Unless otherwise stated, any time period scheduled, under the Hg Budget Trading Program, to begin on the occurrence of an act or event must begin on the day the act or event occurs.

(2) Unless otherwise stated, any time period scheduled, under the Hg Budget Trading Program, to begin before the occurrence of an act or event shall be computed so that the period ends the day before the act or event occurs.

(3) Unless otherwise stated, if the final day of any time period, under the Hg Budget Trading Program, falls on a weekend or a State or Federal holiday, the time period will be extended to the next business day.

Stat. Auth.: ORS 468.020 & 468A.310

Stats. Implemented: ORS 468A.025

Hist.: DEQ 13-2006, f. & cert. ef. 12-22-06

340-228-0610

Appeal Procedures

The appeal procedures for decisions of the Administrator under the Hg Budget Trading Program shall be the procedures set forth in 40 CFR part 78. The terms "40 CFR part 60 subpart HHHH," "40 CFR 60.4141(b)(2) or (c)(2)," "40 CFR 60.4154," "40 CFR 60.4156," "40 CFR 60.4161," "40 CFR 60.4175," "Hg allowances," "Hg Allowance Tracking System Account," "Hg designated representative," "Hg authorized account representative," and "40 CFR 60.4106" apply instead of the terms "subparts AA through II of part 96 of this chapter," "Sec. 96.141(b)(2) or (c)(2)," "Sec. 96.154," "Sec. 96.156," "Sec. 96.161," "Sec. 96.175," "CAIR NOX allowances," "CAIR NOX Allowance Tracking System account," "CAIR designated representative," "CAIR authorized account representative," and "Sec. 96.106."

Stat. Auth.: ORS 468.020 & 468A.310

Stats. Implemented: ORS 468A.025

Hist.: DEQ 13-2006, f. & cert. ef. 12-22-06

340-228-0612

Authorization and Responsibilities of Hg Designated Representative

(1) Except as provided under OAR 340-228-0614, each Hg Budget source, including all Hg Budget units at the source, must have one and only one Hg designated representative, with regard to all matters under the Hg Budget Trading Program concerning the source or any Hg Budget unit at the source.

(2) The Hg designated representative of the Hg Budget source must be selected by an agreement binding on the owners and operators of the source and all Hg Budget units at the source and must act in accordance with the certification statement in OAR 340-228-0618(1)(d)(D).

(3) Upon receipt by the Administrator of a complete certificate of representation under OAR 340-228-0618, the Hg designated representative of the source must represent and, by his or her representations, actions, inactions, or submissions, legally bind each owner and operator of the Hg Budget source represented and each Hg Budget unit at the source in all matters pertaining to the Hg Budget Trading Program, notwithstanding any agreement between the Hg designated representative and such owners and operators. The owners and operators must be bound by any decision or order issued to the Hg designated representative by the Department, the Administrator, or a court regarding the source or unit.

(4) No Hg Budget permit will be issued, no emissions data reports will be accepted, and no Hg Allowance Tracking System account will be established for a Hg Budget unit at a source, until the Administrator has received a complete certificate of representation under OAR 340-228-0618 for a Hg designated representative of the source and the Hg Budget units at the source.

(5)(a) Each submission under the Hg Budget Trading Program must be submitted, signed, and certified by the Hg designated representative for each Hg Budget source on behalf of which the submission is made. Each such submission must include the following certification statement by the Hg designated representative: "I am authorized to make this submission on behalf of the owners and operators of the source or units for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

(b) The Department and the Administrator will accept or act on a submission made on behalf of owner or operators of a Hg Budget source or a Hg Budget unit only if the submission has been made, signed, and certified in accordance with subsection (5)(a) of this rule.

Stat. Auth.: ORS 468.020 & 468A.310

Stats. Implemented: ORS 468A.025

Hist.: DEQ 13-2006, f. & cert. ef. 12-22-06

ADMINISTRATIVE RULES

340-228-0614

Alternate Hg Designated Representative

(1) A certificate of representation under OAR 340-228-0618 may designate one and only one alternate Hg designated representative, who may act on behalf of the Hg designated representative. The agreement by which the alternate Hg designated representative is selected must include a procedure for authorizing the alternate Hg designated representative to act in lieu of the Hg designated representative.

(2) Upon receipt by the Administrator of a complete certificate of representation under OAR 340-228-0618, any representation, action, inaction, or submission by the alternate Hg designated representative will be deemed to be a representation, action, inaction, or submission by the Hg designated representative.

(3) Except in this section and OAR 340-228-0602, 0612(1) and (4), 0616, 0618, 0638, and 0670, whenever the term "Hg designated representative" is used in this rule, the term will be construed to include the Hg designated representative or any alternate Hg designated representative.

Stat. Auth.: ORS 468.020 & 468A.310
Stats. Implemented: ORS 468A.025
Hist.: DEQ 13-2006, f. & cert. ef. 12-22-06

340-228-0616

Changing Hg Designated Representative and Alternate Hg Designated Representative; Changes in Owners and Operators

(1) Changing Hg designated representative. The Hg designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation under OAR 340-228-0618. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous Hg designated representative before the time and date when the Administrator receives the superseding certificate of representation will be binding on the new Hg designated representative and the owners and operators of the Hg Budget source and the Hg Budget units at the source.

(2) Changing alternate Hg designated representative. The alternate Hg designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation under OAR 340-228-0618. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate Hg designated representative before the time and date when the Administrator receives the superseding certificate of representation will be binding on the new alternate Hg designated representative and the owners and operators of the Hg Budget source and the Hg Budget units at the source.

(3) Changes in owners and operators.

(a) In the event a new owner or operator of a Hg Budget source or a Hg Budget unit is not included in the list of owners and operators in the certificate of representation OAR 340-228-0618, such new owner or operator will be deemed to be subject to and bound by the certificate of representation, the representations, actions, inactions, and submissions of the Hg designated representative and any alternate Hg designated representative of the source or unit, and the decisions and orders of the Department, the Administrator, or a court, as if the new owner or operator were included in such list.

(b) Within 30 days following any change in the owners and operators of a Hg Budget source or a Hg Budget unit, including the addition of a new owner or operator, the Hg designated representative or any alternate Hg designated representative must submit a revision to the certificate of representation under OAR 340-228-0618 amending the list of owners and operators to include the change.

Stat. Auth.: ORS 468.020 & 468A.310
Stats. Implemented: ORS 468A.025
Hist.: DEQ 13-2006, f. & cert. ef. 12-22-06

340-228-0618

Certificate of Representation

(1) A complete certificate of representation for a Hg designated representative or an alternate Hg designated representative must include the following elements in a format prescribed by the Administrator:

(a) Identification of the Hg Budget source, and each Hg Budget unit at the source, for which the certificate of representation is submitted.

(b) The name, address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the Hg designated representative and any alternate Hg designated representative.

(c) A list of the owners and operators of the Hg Budget source and of each Hg Budget unit at the source.

(d) The following certification statements by the Hg designated representative and any alternate Hg designated representative:

(A) "I certify that I was selected as the Hg designated representative or alternate Hg designated representative, as applicable, by an agreement binding on the owners and operators of the source and each Hg Budget unit at the source."

(B) "I certify that I have all the necessary authority to carry out my duties and responsibilities under the Hg Budget Trading Program on behalf of the owners and operators of the source and of each Hg Budget unit at the source and that each such owner and operator shall be fully bound by my representations, actions, inactions, or submissions."

(C) "I certify that the owners and operators of the source and of each Hg Budget unit at the source shall be bound by any order issued to me by the Administrator, the Department, or a court regarding the source or unit."

(D) "Where there are multiple holders of a legal or equitable title to, or a leasehold interest in, a Hg Budget unit, or where a customer purchases power from a Hg Budget unit under a life-of-the-unit, firm power contractual arrangement, I certify that: I have given a written notice of my selection as the 'Hg designated representative' or 'alternate Hg designated representative,' as applicable, and of the agreement by which I was selected to each owner and operator of the source and of each Hg Budget unit at the source; and Hg allowances and proceeds of transactions involving Hg allowances will be deemed to be held or distributed in proportion to each holder's legal, equitable, leasehold, or contractual reservation or entitlement, except that, if such multiple holders have expressly provided for a different distribution of Hg allowances by contract, Hg allowances and proceeds of transactions involving Hg allowances will be deemed to be held or distributed in accordance with the contract."

(e) The signature of the Hg designated representative and any alternate Hg designated representative and the dates signed.

(2) Unless otherwise required by the Department or the Administrator, documents of agreement referred to in the certificate of representation must not be submitted to the Department or the Administrator. Neither the Department or the Administrator shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

Stat. Auth.: ORS 468.020 & 468A.310
Stats. Implemented: ORS 468A.025
Hist.: DEQ 13-2006, f. & cert. ef. 12-22-06

340-228-0620

Objections Concerning Hg Designated Representative

(1) Once a complete certificate of representation under OAR 340-228-0618 has been submitted and received, the Department and the Administrator will rely on the certificate of representation unless and until a superseding complete certificate of representation under OAR 340-228-0618 is received by the Administrator.

(2) Except as provided in OAR 340-228-0616(1) or (2), no objection or other communication submitted to the Department or the Administrator concerning the authorization, or any representation, action, inaction, or submission, of the Hg designated representative shall affect any representation, action, inaction, or submission of the Hg designated representative or the finality of any decision or order by the Department or the Administrator under the Hg Budget Trading Program.

(3) Neither the Department nor the Administrator will adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of any Hg designated representative, including private legal disputes concerning the proceeds of Hg allowance transfers.

Stat. Auth.: ORS 468.020 & 468A.310
Stats. Implemented: ORS 468A.025
Hist.: DEQ 13-2006, f. & cert. ef. 12-22-06

340-228-0622

General Hg Budget Trading Program Permit Requirements

(1) For each Hg Budget source required to have a title V operating permit, such permit must include a Hg Budget permit administered by the Department for the title V operating permit. The Hg Budget portion of the title V permit must be administered in accordance with the Department's title V operating permits regulations, except as provided otherwise by this section and OAR 340-228-0624 through 0630.

(2) Each Hg Budget permit must contain, with regard to the Hg Budget source and the Hg Budget units at the source covered by the Hg Budget permit, all applicable Hg Budget Trading Program requirements and must be a complete and separable portion of the title V operating permit.

Stat. Auth.: ORS 468.020 & 468A.310
Stats. Implemented: ORS 468A.025
Hist.: DEQ 13-2006, f. & cert. ef. 12-22-06

ADMINISTRATIVE RULES

340-228-0624

Submission of Hg Budget Permit Applications

(1) Duty to apply. The Hg designated representative of any Hg Budget source required to have a title V operating permit must submit to the Department a complete Hg Budget permit application under OAR 340-228-0626 for the source covering each Hg Budget unit at the source at least 18 months (or such lesser time provided by the Department) before the later of January 1, 2010 or the date on which the Hg Budget unit commences operation.

(2) Duty to Reapply. For a Hg Budget source required to have a title V operating permit, the Hg designated representative must submit a complete Hg Budget permit application under OAR 340-228-0626 for the source covering each Hg Budget unit at the source to renew the Hg Budget permit in accordance with the Department's title V operating permits regulations addressing permit renewal.

Stat. Auth.: ORS 468.020 & 468A.310
Stats. Implemented: ORS 468A.025
Hist.: DEQ 13-2006, f. & cert. ef. 12-22-06

340-228-0626

Information Requirements for Hg Budget Permit Applications

A complete Hg Budget permit application must include the following elements concerning the Hg Budget source for which the application is submitted, in a format prescribed by the Department:

- (1) Identification of the Hg Budget source;
- (2) Identification of each Hg Budget unit at the Hg Budget source;

and

- (3) The standard requirements under OAR 340-228-0606.

Stat. Auth.: ORS 468.020 & 468A.310
Stats. Implemented: ORS 468A.025
Hist.: DEQ 13-2006, f. & cert. ef. 12-22-06

340-228-0628

Hg Budget Permit Contents and Term

(1) Each Hg Budget permit will contain, in a format prescribed by the Department, all elements required for a complete Hg Budget permit application under OAR 340-228-0626.

(2) Each Hg Budget permit is deemed to incorporate automatically the definitions of terms under OAR 340-228-0602 and, upon recordation by the Administrator under OAR 340-228-0638 through 0656, every allocation, transfer, or deduction of a Hg allowance to or from the compliance account of the Hg Budget source covered by the permit.

(3) The term of the Hg Budget permit will be set by the Department, as necessary to facilitate coordination of the renewal of the Hg Budget permit with issuance, revision, or renewal of the Hg Budget source's title V operating permit.

Stat. Auth.: ORS 468.020 & 468A.310
Stats. Implemented: ORS 468A.025
Hist.: DEQ 13-2006, f. & cert. ef. 12-22-06

340-228-0630

Hg Budget Permit Revisions

Except as provided in OAR 340-228-0628(2), the Department will revise the Hg Budget permit, as necessary, in accordance with the Department's title V operating permits regulations addressing permit revisions.

Stat. Auth.: ORS 468.020 & 468A.310
Stats. Implemented: ORS 468A.025
Hist.: DEQ 13-2006, f. & cert. ef. 12-22-06

340-228-0632

State Trading Budget

Oregon's trading budget for annual allocations of Hg allowances for the control periods in 2010 through 2017 is 2,432 ounces per year and in 2018 and thereafter is 960 ounces per year.

Stat. Auth.: ORS 468.020 & 468A.310
Stats. Implemented: ORS 468A.025
Hist.: DEQ 13-2006, f. & cert. ef. 12-22-06

340-228-0634

Timing Requirements for Hg Allowance Allocations

(1) By November 17, 2006, the Department will submit to the Administrator the Hg allowance allocations, in a format prescribed by the Administrator and in accordance with OAR 340-228-0636(1) and (2), for the control periods in 2010, 2011, and 2012.

(2)(a) By October 31, 2009 and October 31 of each year thereafter through 2013, the Department will submit to the Administrator the Hg allowance allocations, in a format prescribed by the Administrator and in

accordance with OAR 340-228-0636(1) and (2), for the control period in the fourth year after the year of the applicable deadline for submission under this section.

(b) If the Department fails to submit to the Administrator the Hg allowance allocations in accordance with subsection (2)(a) of this rule for the control periods in 2010 through 2017, the Administrator will assume that the allocations of Hg allowances for the applicable control period are the same as for the control period that immediately precedes the applicable control period.

(3)(a) By October 31, 2010 and October 31 of each year thereafter through 2017, the Department will submit to the Administrator the Hg allowance allocations, in a format prescribed by the Administrator and in accordance with OAR 340-228-0636(1), (3), and (4), for the control period in the year of the applicable deadline for submission under this section.

(b) If the Department fails to submit to the Administrator the Hg allowance allocations in accordance with subsection (3)(a) of this rule, the Administrator will assume that the allocations of Hg allowances for the applicable control period are the same as for the control period that immediately precedes the applicable control period, except that, any Hg Budget unit that would otherwise be allocated Hg allowances under OAR 340-228-0636(1) and (2), as well as under OAR 340-228-0636(1), (3), and (4), for the applicable control period will be assumed to be allocated no Hg allowances under OAR 340-228-0636(1), (3), and (4) for the applicable control period.

Stat. Auth.: ORS 468.020 & 468A.310
Stats. Implemented: ORS 468A.025
Hist.: DEQ 13-2006, f. & cert. ef. 12-22-06

340-228-0636

Hg Allowance Allocations

(1)(a) The baseline heat input (in MMBtu) used with respect to Hg allowance allocations under section (2) of this rule for each Hg Budget unit will be:

(A) For units commencing operation before January 1, 2001, the average of the three highest amounts of the unit's adjusted control period heat input for 2000 through 2004, with the adjusted control period heat input for each year calculated as the sum of the following:

(i) Any portion of the unit's control period heat input for the year that results from the unit's combustion of lignite, multiplied by 3.0;

(ii) Any portion of the unit's control period heat input for the year that results from the unit's combustion of subbituminous coal, multiplied by 1.25; and

(iii) Any portion of the unit's control period heat input for the year that is not covered by subparagraph (1)(a)(A)(i) or (ii) of this rule, multiplied by 1.0.

(B) For units commencing operation on or after January 1, 2001 and operating each calendar year during a period of 5 or more consecutive calendar years, the average of the 3 highest amounts of the unit's total converted control period heat input over the first such 5 years.

(b)(A) A unit's control period heat input for a calendar year under paragraph (1)(a)(A) of this rule, and a unit's total ounces of Hg emissions during a calendar year under subsection (3)(c) of this rule, will be determined in accordance with 40 CFR part 75, to the extent the unit was otherwise subject to the requirements of 40 CFR part 75 for the year, or will be based on the best available data reported to the Department for the unit, to the extent the unit was not otherwise subject to the requirements of 40 CFR part 75. The unit's types and amounts of fuel combusted, under paragraph (1)(a)(A) of this rule, will be based on the best available data reported to the Department for the unit.

(B) A unit's converted control period heat input for a calendar year specified under paragraph (1)(a)(B) of this rule equals:

(i) Except as provided in paragraph (1)(b)(B)(ii) or (iii) of this rule, the control period gross electrical output of the generator or generators served by the unit multiplied by 7,900 Btu/kWh and divided by 1,000,000 Btu/MMBtu, provided that if a generator is served by 2 or more units, then the gross electrical output of the generator will be attributed to each unit in proportion to the unit's share of the total control period heat input of such units for the year;

(ii) For a unit that is a boiler and has equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy, the total heat energy (in Btu) of the steam produced by the boiler during the control period, divided by 0.8 and by 1,000,000 Btu/MMBtu; or

(iii) For a unit that is a combustion turbine and has equipment used to produce electricity and useful thermal energy for industrial, commercial,

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heating, or cooling purposes through the sequential use of energy, the control period gross electrical output of the enclosed device comprising the compressor, combustor, and turbine multiplied by 3,413 Btu/kWh, plus the total heat energy (in Btu) of the steam produced by any associated heat recovery steam generator during the control period divided by 0.8, and with the sum divided by 1,000,000 Btu/MMBtu.

(2) Existing unit Hg allocations.

(a) For each control period in 2010 through 2017, the Department shall allocate to the Hg Budget units in the State that have a baseline heat input (as determined under section (1) of this rule) a total amount of Hg allowances equal to 90 percent of the amount of ounces of Hg emissions in the State trading budget under OAR 340-228-0632.

(b) For each control period in 2018 and thereafter, the Department shall not allocate any Hg allowances to Hg Budget units in the State.

(c) The Department will allocate Hg allowances to each Hg Budget unit under subsection (2)(a) of this rule in an amount determined by multiplying the total amount of Hg allowances allocated under subsection (2)(a) of this rule by the ratio of the baseline heat input of such Hg Budget unit to the total amount of baseline heat input of all such Hg Budget units in the State and rounding to the nearest whole allowance as appropriate.

(d) For each control period in 2013 through 2017, the Department will not allocate more than 1280 ounces to any single Hg Budget unit.

(f) If any unallocated Hg allowances remain, an amount of Hg allowances equal to the total amount of such remaining unallocated Hg allowances will be permanently retired.

(3) New unit set-aside. For each control period in 2010 and thereafter, the Department will allocate Hg allowances to Hg Budget units in the State that commenced operation on or after January 1, 2001 and do not yet have a baseline heat input (as determined under section (1) of this rule), in accordance with the following procedures:

(a) The Department will establish a separate new unit set-aside for each control period according to paragraph (3)(a)(A) and (B) of this rule.

(A) For each control period in 2010 through 2017, the new unit set-aside will be allocated Hg allowances equal to 10 percent of the amount of ounces of Hg emissions in the State trading budget under OAR 340-228-0632.

(B) For each control period in 2018 and thereafter, the new unit set-aside will not be allocated any Hg allowances.

(b) The Hg designated representative of such a Hg Budget unit may submit to the Department a request, in a format specified by the Department, to be allocated Hg allowances, starting with the later of the control period in 2010 or the first control period after the control period in which the Hg Budget unit commences commercial operation and until the first control period for which the unit is allocated Hg allowances under section (2) of this rule. The Hg allowance allocation request must be submitted on or before July 1 of the first control period for which the Hg allowances are requested and after the date on which the Hg Budget unit commences commercial operation.

(c) In a Hg allowance allocation request under subsection (3)(b) of this rule, the Hg designated representative may request for a control period Hg allowances in an amount not exceeding the Hg Budget unit's total ounces of Hg emissions during the control period immediately before such control period.

(d) The Department will review each Hg allowance allocation request under subsection (3)(b) of this rule and will allocate Hg allowances for each control period pursuant to such request as follows:

(A) The Department will accept an allowance allocation request only if the request meets, or is adjusted by the Department as necessary to meet, the requirements of subsections (3)(b) and (c) of this rule.

(B) On or after July 1 of the control period, the Department will determine the sum of the Hg allowances requested (as adjusted under paragraph (3)(d)(A) of this rule) in all allowance allocation requests accepted under paragraph (3)(d)(A) of this rule for the control period.

(C) If the amount of Hg allowances in the new unit set-aside for the control period is greater than or equal to the sum under paragraph (3)(d)(B) of this rule, then the Department will allocate the amount of Hg allowances requested (as adjusted under paragraph (3)(d)(A) of this rule) to each Hg Budget unit covered by an allowance allocation request accepted under paragraph (3)(d)(A) of this rule.

(D) If the amount of Hg allowances in the new unit set-aside for the control period is less than the sum under paragraph (3)(d)(B) of this rule, then the Department will allocate to each Hg Budget unit covered by an allowance allocation request accepted under paragraph (3)(d)(A) of this rule the amount of the Hg allowances requested (as adjusted under para-

graph (3)(d)(A) of this rule), multiplied by the amount of Hg allowances in the new unit set-aside for the control period, divided by the sum determined under paragraph (3)(d)(B) of this rule, rounded to the nearest whole allowance as appropriate.

(E) The Department will notify each Hg designated representative that submitted an allowance allocation request of the amount of Hg allowances (if any) allocated for the control period to the Hg Budget unit covered by the request.

(F) For each control period in 2018 and thereafter, the Department will not allocate to any single Hg Budget unit.

(e) If, after completion of the procedures under subsection (3)(d) of this rule for a control period, any unallocated Hg allowances remain in the new unit set-aside for the control period, an amount of Hg allowances equal to the total amount of such remaining unallocated Hg allowances will be permanently retired.

Stat. Auth.: ORS 468.020 & 468A.310

Stats. Implemented: ORS 468A.025

Hist.: DEQ 13-2006, f. & cert. ef. 12-22-06

340-228-0638

Establishment of Accounts

(1) Compliance accounts. Upon receipt of a complete certificate of representation under OAR 340-228-0618, the Administrator will establish a compliance account for the Hg Budget source for which the certificate of representation was submitted unless the source already has a compliance account.

(2) General accounts.

(a) Application for general account.

(A) Any person may apply to open a general account for the purpose of holding and transferring Hg allowances. An application for a general account may designate one and only one Hg authorized account representative and one and only one alternate Hg authorized account representative who may act on behalf of the Hg authorized account representative. The agreement by which the alternate Hg authorized account representative is selected must include a procedure for authorizing the alternate Hg authorized account representative to act in lieu of the Hg authorized account representative.

(B) A complete application for a general account must be submitted to the Administrator and must include the following elements in a format prescribed by the Administrator:

(i) Name, mailing address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the Hg authorized account representative and any alternate Hg authorized account representative;

(ii) Organization name and type of organization, if applicable;

(iii) A list of all persons subject to a binding agreement for the Hg authorized account representative and any alternate Hg authorized account representative to represent their ownership interest with respect to the Hg allowances held in the general account;

(iv) The following certification statement by the Hg authorized account representative and any alternate Hg authorized account representative: "I certify that I was selected as the Hg authorized account representative or the alternate Hg authorized account representative, as applicable, by an agreement that is binding on all persons who have an ownership interest with respect to Hg allowances held in the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the Hg Budget Trading Program on behalf of such persons and that each such person must be fully bound by my representations, actions, inactions, or submissions and by any order or decision issued to me by the Administrator or a court regarding the general account."

(v) The signature of the Hg authorized account representative and any alternate Hg authorized account representative and the dates signed.

(C) Unless otherwise required by the Department or the Administrator, documents of agreement referred to in the application for a general account shall not be submitted to the Department or the Administrator. Neither the Department nor the Administrator shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

(b) Authorization of Hg authorized account representative.

(A) Upon receipt by the Administrator of a complete application for a general account under section (1) of this rule:

(i) The Administrator will establish a general account for the person or persons for whom the application is submitted.

(ii) The Hg authorized account representative and any alternate Hg authorized account representative for the general account must represent and, by his or her representations, actions, inactions, or submissions, legal-

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ly bind each person who has an ownership interest with respect to Hg allowances held in the general account in all matters pertaining to the Hg Budget Trading Program, notwithstanding any agreement between the Hg authorized account representative or any alternate Hg authorized account representative and such person. Any such person must be bound by any order or decision issued to the Hg authorized account representative or any alternate Hg authorized account representative by the Administrator or a court regarding the general account.

(iii) Any representation, action, inaction, or submission by any alternate Hg authorized account representative shall be deemed to be a representation, action, inaction, or submission by the Hg authorized account representative.

(B) Each submission concerning the general account must be submitted, signed, and certified by the Hg authorized account representative or any alternate Hg authorized account representative for the persons having an ownership interest with respect to Hg allowances held in the general account. Each such submission must include the following certification statement by the Hg authorized account representative or any alternate Hg authorized account representative: "I am authorized to make this submission on behalf of the persons having an ownership interest with respect to the Hg allowances held in the general account. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

(C) The Administrator will accept or act on a submission concerning the general account only if the submission has been made, signed, and certified in accordance with paragraph (2)(b)(B) of this rule.

(c) Changing Hg authorized account representative and alternate Hg authorized account representative; changes in persons with ownership interest.

(A) The Hg authorized account representative for a general account may be changed at any time upon receipt by the Administrator of a superseding complete application for a general account under section (1) of this rule. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous Hg authorized account representative before the time and date when the Administrator receives the superseding application for a general account shall be binding on the new Hg authorized account representative and the persons with an ownership interest with respect to the Hg allowances in the general account.

(B) The alternate Hg authorized account representative for a general account may be changed at any time upon receipt by the Administrator of a superseding complete application for a general account under section (1) of this rule. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate Hg authorized account representative before the time and date when the Administrator receives the superseding application for a general account is binding on the new alternate Hg authorized account representative and the persons with an ownership interest with respect to the Hg allowances in the general account.

(C)(i) In the event a new person having an ownership interest with respect to Hg allowances in the general account is not included in the list of such persons in the application for a general account, such new person is deemed to be subject to and bound by the application for a general account, the representation, actions, inactions, and submissions of the Hg authorized account representative and any alternate Hg authorized account representative of the account, and the decisions and orders of the Administrator or a court, as if the new person were included in such list.

(ii) Within 30 days following any change in the persons having an ownership interest with respect to Hg allowances in the general account, including the addition of persons, the Hg authorized account representative or any alternate Hg authorized account representative must submit a revision to the application for a general account amending the list of persons having an ownership interest with respect to the Hg allowances in the general account to include the change.

(d) Objections concerning Hg authorized account representative.

(A) Once a complete application for a general account under subsection (2)(a) of this rule has been submitted and received, the Administrator will rely on the application unless and until a superseding complete application for a general account under subsection (2)(a) of this rule is received by the Administrator.

(B) Except as provided in paragraph (2)(c)(A) or (B) of this rule, no objection or other communication submitted to the Administrator concerning the authorization, or any representation, action, inaction, or submission of the Hg authorized account representative or any alternative Hg authorized account representative for a general account will affect any representation, action, inaction, or submission of the Hg authorized account representative or any alternative Hg authorized account representative or the finality of any decision or order by the Administrator under the Hg Budget Trading Program.

(C) The Administrator will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of the Hg authorized account representative or any alternative Hg authorized account representative for a general account, including private legal disputes concerning the proceeds of Hg allowance transfers.

(3) Account identification. The Administrator will assign a unique identifying number to each account established under section (1) or (2) of this rule.

Stat. Auth.: ORS 468.020 & 468A.310
Stats. Implemented: ORS 468A.025
Hist.: DEQ 13-2006, f. & cert. ef. 12-22-06

340-228-0640

Responsibilities of Hg Authorized Account Representative

Following the establishment of a Hg Allowance Tracking System account, all submissions to the Administrator pertaining to the account, including, but not limited to, submissions concerning the deduction or transfer of Hg allowances in the account, must be made only by the Hg authorized account representative for the account.

Stat. Auth.: ORS 468.020 & 468A.310
Stats. Implemented: ORS 468A.025
Hist.: DEQ 13-2006, f. & cert. ef. 12-22-06

340-228-0642

Recordation of Hg Allowance Allocations

(1) By December 1, 2006, the Administrator will record in the Hg Budget source's compliance account the Hg allowances allocated for the Hg Budget units at a source, as submitted by the Department in accordance with OAR 340-228-0634(1), for the control periods in 2010, 2011, and 2012.

(2) By December 1, 2009, the Administrator will record in the Hg Budget source's compliance account the Hg allowances allocated for the Hg Budget units at the source, as submitted by the Department or as determined by the Administrator in accordance with OAR 340-228-0634(2), for the control period in 2013.

(3) In 2010 and each year thereafter through 2013, after the Administrator has made all deductions (if any) from a Hg Budget source's compliance account under OAR 340-228-0644, the Administrator will record in the Hg Budget source's compliance account the Hg allowances allocated for the Hg Budget units at the source, as submitted by the Department or determined by the Administrator in accordance with OAR 340-228-0634(2), for the control period in the fourth year after the year of the control period for which such deductions were or could have been made.

(4) By December 1, 2010 and December 1 of each year thereafter through 2017, the Administrator will record in the Hg Budget source's compliance account the Hg allowances allocated for the Hg Budget units at the source, as submitted by the Department or determined by the Administrator in accordance with OAR 340-228-0634(3), for the control period in the year of the applicable deadline for recordation under this section.

(5) Serial numbers for allocated Hg allowances. When recording the allocation of Hg allowances for a Hg Budget unit in a compliance account, the Administrator will assign each Hg allowance a unique identification number that will include digits identifying the year of the control period for which the Hg allowance is allocated.

Stat. Auth.: ORS 468.020 & 468A.310
Stats. Implemented: ORS 468A.025
Hist.: DEQ 13-2006, f. & cert. ef. 12-22-06

340-228-0644

Compliance with Hg Budget Emissions Limitation

(1) Allowance transfer deadline. The Hg allowances are available to be deducted for compliance with a source's Hg Budget emissions limitation for a control period in a given calendar year only if the Hg allowances:

(a) Were allocated for the control period in the year or a prior year;

(b) Are held in the compliance account as of the allowance transfer deadline for the control period or are transferred into the compliance account by a Hg allowance transfer correctly submitted for recordation

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under OAR 340-228-0652 through 0656 by the allowance transfer deadline for the control period; and

(c) Are not necessary for deductions for excess emissions for a prior control period under OAR 340-228-0644(4)(a).

(2) Deductions for compliance. Following the recordation, in accordance with OAR 340-228-0652 through 0656, of Hg allowance transfers submitted for recordation in a source's compliance account by the allowance transfer deadline for a control period, the Administrator will deduct from the compliance account Hg allowances available under section (1) of this rule in order to determine whether the source meets the Hg Budget emissions limitation for the control period, as follows:

(a) Until the amount of Hg allowances deducted equals the number of ounces of total Hg emissions, determined in accordance with OAR 340-228-0658 through 0662 and 340-228-0664 through 0670, from all Hg Budget units at the source for the control period; or

(b) If there are insufficient Hg allowances to complete the deductions in subsection (2)(a) of this rule, until no more Hg allowances available under section (1) of this rule remain in the compliance account.

(3) Identification of Hg allowances by serial number.

(a) The Hg authorized account representative for a source's compliance account may request that specific Hg allowances, identified by serial number, in the compliance account be deducted for emissions or excess emissions for a control period in accordance with section (2) or (4) of this rule. Such request must be submitted to the Administrator by the allowance transfer deadline for the control period and include, in a format prescribed by the Administrator, the identification of the Hg Budget source and the appropriate serial numbers.

(b) First-in, first-out. The Administrator will deduct Hg allowances under section (2) or (4) of this rule from the source's compliance account, in the absence of an identification or in the case of a partial identification of Hg allowances by serial number under subsection (3)(a) of this section, on a first-in, first-out (FIFO) accounting basis in the following order:

(A) Any Hg allowances that were allocated to the units at the source, in the order of recordation; and then

(B) Any Hg allowances that were allocated to any unit and transferred and recorded in the compliance account pursuant to OAR 340-228-0652 through 0656, in the order of recordation.

(4) Deductions for excess emissions.

(a) After making the deductions for compliance under section (2) of this rule for a control period in a calendar year in which the Hg Budget source has excess emissions, the Administrator will deduct from the source's compliance account an amount of Hg allowances, allocated for the control period in the immediately following calendar year, equal to 3 times the number of ounces of the source's excess emissions.

(b) Any allowance deduction required under subsection (4)(1) will not affect the liability of the owners and operators of the Hg Budget source or the Hg Budget units at the source for any fine, penalty, or assessment, or their obligation to comply with any other remedy, for the same violation, as ordered under the Clean Air Act or applicable State law.

(5) Recordation of deductions. The Administrator will record in the appropriate compliance account all deductions from such an account under section (2) or (4) of this rule.

(6) Administrator's action on submissions.

(a) The Administrator may review and conduct independent audits concerning any submission under the Hg Budget Trading Program and make appropriate adjustments of the information in the submissions.

(b) The Administrator may deduct Hg allowances from or transfer Hg allowances to a source's compliance account based on the information in the submissions, as adjusted under subsection (6)(a) of this rule.

Stat. Auth.: ORS 468.020 & 468A.310

Stats. Implemented: ORS 468A.025

Hist.: DEQ 13-2006, f. & cert. ef. 12-22-06

340-228-0646

Banking

(1) Hg allowances may be banked for future use or transfer in a compliance account or a general account in accordance with section (2) of this rule.

(2) Any Hg allowance that is held in a compliance account or a general account will remain in such account unless and until the Hg allowance is deducted or transferred under OAR 340-228-0644, 0648, 0652 through 0656.

Stat. Auth.: ORS 468.020 & 468A.310

Stats. Implemented: ORS 468A.025

Hist.: DEQ 13-2006, f. & cert. ef. 12-22-06

340-228-0648

Account Error

The Administrator may, at his or her sole discretion and on his or her own motion, correct any error in any Hg Allowance Tracking System account. Within 10 business days of making such correction, the Administrator will notify the Hg authorized account representative for the account.

Stat. Auth.: ORS 468.020 & 468A.310

Stats. Implemented: ORS 468A.025

Hist.: DEQ 13-2006, f. & cert. ef. 12-22-06

340-228-0650

Closing of General Accounts

(1) The Hg authorized account representative of a general account may submit to the Administrator a request to close the account, which must include a correctly submitted allowance transfer under OAR 340-228-0652 through 0656 for any Hg allowances in the account to one or more other Hg Allowance Tracking System accounts.

(2) If a general account has no allowance transfers in or out of the account for a 12-month period or longer and does not contain any Hg allowances, the Administrator may notify the Hg authorized account representative for the account that the account will be closed following 20 business days after the notice is sent. The account will be closed after the 20-day period unless, before the end of the 20-day period, the Administrator receives a correctly submitted transfer of Hg allowances into the account under OAR 340-228-0652 through 0656 or a statement submitted by the Hg authorized account representative demonstrating to the satisfaction of the Administrator good cause as to why the account should not be closed.

Stat. Auth.: ORS 468.020 & 468A.310

Stats. Implemented: ORS 468A.025

Hist.: DEQ 13-2006, f. & cert. ef. 12-22-06

340-228-0652

Submission of Hg Allowance Transfers

A Hg authorized account representative seeking recordation of a Hg allowance transfer must submit the transfer to the Administrator. To be considered correctly submitted, the Hg allowance transfer must include the following elements, in a format specified by the Administrator:

(1) The account numbers for both the transferor and transferee accounts;

(2) The serial number of each Hg allowance that is in the transferor account and is to be transferred; and

(3) The name and signature of the Hg authorized account representative of the transferor account and the date signed.

Stat. Auth.: ORS 468.020 & 468A.310

Stats. Implemented: ORS 468A.025

Hist.: DEQ 13-2006, f. & cert. ef. 12-22-06

340-228-0654

EPA Recordation

(1) Within 5 business days (except as provided in section (2) of this rule) of receiving a Hg allowance transfer, the Administrator will record a Hg allowance transfer by moving each Hg allowance from the transferor account to the transferee account as specified by the request, provided that:

(a) The transfer is correctly submitted under OAR 340-228-0652; and

(b) The transferor account includes each Hg allowance identified by serial number in the transfer.

(2) A Hg allowance transfer that is submitted for recordation after the allowance transfer deadline for a control period and that includes any Hg allowances allocated for any control period before such allowance transfer deadline will not be recorded until after the Administrator completes the deductions under OAR 340-228-0644 for the control period immediately before such allowance transfer deadline.

(3) Where a Hg allowance transfer submitted for recordation fails to meet the requirements of section (1) of this rule, the Administrator will not record such transfer.

Stat. Auth.: ORS 468.020 & 468A.310

Stats. Implemented: ORS 468A.025

Hist.: DEQ 13-2006, f. & cert. ef. 12-22-06

340-228-0656

Notification

(1) Notification of recordation. Within 5 business days of recordation of a Hg allowance transfer under OAR 340-228-0654, the Administrator will notify the Hg authorized account representatives of both the transferor and transferee accounts.

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(2) Notification of non-recording. Within 10 business days of receipt of a Hg allowance transfer that fails to meet the requirements of OAR 340-228-0654(1), the Administrator will notify the Hg authorized account representatives of both accounts subject to the transfer of:

- (a) A decision not to record the transfer, and
- (b) The reasons for such nonrecording.

(3) Nothing in this section shall preclude the submission of a Hg allowance transfer for recoding following notification of nonrecording.

Stat. Auth.: ORS 468.020 & 468A.310
Stats. Implemented: ORS 468A.025
Hist.: DEQ 13-2006, f. & cert. ef. 12-22-06

340-228-0658

General Requirements

The owners and operators, and to the extent applicable, the Hg designated representative, of a Hg Budget unit, must comply with the monitoring, recordkeeping, and reporting requirements as provided in this rule, OAR 340-228-0660 through 0670, and **40 CFR part 75 subpart I**. For purposes of complying with such requirements, the definitions in OAR 340-228-0602 and in 40 CFR 72.2 shall apply, and the terms "affected unit," "designated representative," and "continuous emission monitoring system" (or "CEMS") in 40 CFR part 75 shall be deemed to refer to the terms "Hg Budget unit," "Hg designated representative," and "continuous emission monitoring system" (or "CEMS") respectively, as defined in OAR 340-228-0602. The owner or operator of a unit that is not a Hg Budget unit but that is monitored under **40 CFR 75.82(b)(2)(i)** must comply with the same monitoring, recordkeeping, and reporting requirements as a Hg Budget unit.

(1) Requirements for installation, certification, and data accounting. The owner or operator of each Hg Budget unit must:

(a) Install all applicable monitoring systems required under this rule and OAR 340-228-0660 through 0670 for monitoring Hg mass emissions and individual unit heat input (including all systems required to monitor Hg concentration, stack gas moisture content, stack gas flow rate, and CO₂ or O₂ concentration, as applicable, in accordance with **40 CFR 75.81** and **75.82**);

(b) Successfully complete all certification tests required under OAR 340-228-0660 and meet all other requirements of this rule, OAR 340-228-0660 through 0670, and **40 CFR part 75 subpart I** applicable to the monitoring systems under subsection (1)(a) of this rule; and

(c) Record, report, and quality-assure the data from the monitoring systems under subsection (1)(a) of this rule.

(2) Compliance deadlines. The owner or operator must meet the monitoring system certification and other requirements of subsections (1)(a) and (b) of this rule on or before the following dates. The owner or operator must record, report, and quality-assure the data from the monitoring systems under subsection (1)(a) of this rule on and after the following dates.

(a) For the owner or operator of a Hg Budget unit that commences commercial operation before July 1, 2008, by January 1, 2009.

(b) For the owner or operator of a Hg Budget unit that commences commercial operation on or after July 1, 2008, by the later of the following dates:

(A) January 1, 2009; or

(B) 90 unit operating days or 180 calendar days, whichever occurs first, after the date on which the unit commences commercial operation.

(c) For the owner or operator of a Hg Budget unit for which construction of a new stack or flue or installation of add-on Hg emission controls, a flue gas desulfurization system, a selective catalytic reduction system, or a compact hybrid particulate collector system is completed after the applicable deadline under subsection (2)(a) or (b) of this rule, by 90 unit operating days or 180 calendar days, whichever occurs first, after the date on which emissions first exit to the atmosphere through the new stack or flue, add-on Hg emissions controls, flue gas desulfurization system, selective catalytic reduction system, or compact hybrid particulate collector system.

(3) Reporting data.

(a) Except as provided in subsection (3)(b) of this rule, the owner or operator of a Hg Budget unit that does not meet the applicable compliance date set forth in section (2) of this rule for any monitoring system under subsection (1)(a) of this rule must, for each monitoring system, determine, record, and report maximum potential (or, as appropriate, minimum potential) values for Hg concentration, stack gas flow rate, stack gas moisture content, and any other parameters required to determine Hg mass emissions and heat input in accordance with **40 CFR 75.80(g)**.

(b) The owner or operator of a Hg Budget unit that does not meet the applicable compliance date set forth in subsection (2)(c) of this rule for any monitoring system under subsection (1)(a) must, for each such monitoring system, determine, record, and report substitute data using the applicable missing data procedures in **40 CFR part 75 subpart D**, in lieu of the maximum potential (or, as appropriate, minimum potential) values, for a parameter if the owner or operator demonstrates that there is continuity between the data streams for that parameter before and after the construction or installation under subsection (2)(c) of this rule.

(4) Prohibitions.

(a) No owner or operator of a Hg Budget unit shall use any alternative monitoring system, alternative reference method, or any other alternative to any requirement of this rule and OAR 340-228-0660 through 0670 without having obtained prior written approval in accordance with OAR 340-228-0668.

(b) No owner or operator of a Hg Budget unit shall operate the unit so as to discharge, or allow to be discharged, Hg emissions to the atmosphere without accounting for all such emissions in accordance with the applicable provisions of this rule, OAR 340-228-0660 through 0670, and **40 CFR part 75 subpart I**.

(c) No owner or operator of a Hg Budget unit shall disrupt the continuous emission monitoring system, any portion thereof, or any other approved emission monitoring method, and thereby avoid monitoring and recording Hg mass emissions discharged into the atmosphere, except for periods of recertification or periods when calibration, quality assurance testing, or maintenance is performed in accordance with the applicable provisions of this rule, OAR 340-228-0660 through 0670, and **40 CFR part 75 subpart I**.

(d) No owner or operator of a Hg Budget unit shall retire or permanently discontinue use of the continuous emission monitoring system, any component thereof, or any other approved monitoring system under this rule, except under any one of the following circumstances:

(A) During the period that the unit is covered by an exemption under OAR 340-228-0605 that is in effect;

(B) The owner or operator is monitoring emissions from the unit with another certified monitoring system approved, in accordance with the applicable provisions of this rule, OAR 340-228-0660 through 0670, and **40 CFR part 75 subpart I**, by the Department for use at that unit that provides emission data for the same pollutant or parameter as the retired or discontinued monitoring system; or

(C) The Hg designated representative submits notification of the date of certification testing of a replacement monitoring system for the retired or discontinued monitoring system in accordance with OAR 340-228-0660(3)(c)(A).

Stat. Auth.: ORS 468.020 & 468A.310
Stats. Implemented: ORS 468A.025
Hist.: DEQ 13-2006, f. & cert. ef. 12-22-06

340-228-0660

Initial Certification and Recertification Procedures

(1) The owner or operator of a Hg Budget unit shall be exempt from the initial certification requirements of this rule for a monitoring system under OAR 340-228-0658(1)(a) if the following conditions are met:

(a) The monitoring system has been previously certified in accordance with 40 CFR part 75; and

(b) The applicable quality-assurance and quality-control requirements of 40 CFR 75.21 and appendix B to 40 CFR part 75 are fully met for the certified monitoring system described in subsection (1)(a) of this rule.

(2) The recertification provisions of this rule shall apply to a monitoring system under OAR 340-228-0658(1)(a) exempt from initial certification requirements under section (1) of this rule.

(3) Except as provided in section (1) of this rule, the owner or operator of a Hg Budget unit must comply with the following initial certification and recertification procedures for a continuous monitoring system (e.g., a continuous emission monitoring system and an excepted monitoring system (sorbet trap monitoring system) under 40 CFR 75.15) under OAR 340-228-0658(1)(a). The owner or operator of a unit that qualifies to use the Hg low mass emissions excepted monitoring methodology under 40 CFR 75.81(b) or that qualifies to use an alternative monitoring system under 40 CFR part 75 subpart E must comply with the procedures in section (4) or (5) of this rule respectively.

(a) Requirements for initial certification. The owner or operator must ensure that each monitoring system under OAR 340-228-0658(1)(a) (including the automated data acquisition and handling system) successfully completes all of the initial certification testing required under 40 CFR

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75.20 by the applicable deadline in OAR 340-228-0658(2). In addition, whenever the owner or operator installs a monitoring system to meet the requirements of this rule in a location where no such monitoring system was previously installed, initial certification in accordance with 40 CFR 75.20 is required.

(b) Requirements for recertification. Whenever the owner or operator makes a replacement, modification, or change in any certified continuous emission monitoring system, or an excepted monitoring system (sorbet trap monitoring system) under 40 CFR 75.15, under OAR 340-228-0658(1)(a) that may significantly affect the ability of the system to accurately measure or record Hg mass emissions or heat input rate or to meet the quality-assurance and quality-control requirements of 40 CFR 75.21 or appendix B to 40 CFR part 75, the owner or operator must recertify the monitoring system in accordance with 40 CFR 75.20(b). Furthermore, whenever the owner or operator makes a replacement, modification, or change to the flue gas handling system or the unit's operation that may significantly change the stack flow or concentration profile, the owner or operator must recertify each continuous emission monitoring system, and each excepted monitoring system (sorbet trap monitoring system) under 40 CFR 75.15, whose accuracy is potentially affected by the change, in accordance with 40 CFR 75.20(b). Examples of changes to a continuous emission monitoring system that require recertification include replacement of the analyzer, complete replacement of an existing continuous emission monitoring system, or change in location or orientation of the sampling probe or site.

(c) Approval process for initial certification and recertification. Paragraphs (3)(c)(A) through (D) of this rule apply to both initial certification and recertification of a continuous monitoring system under OAR 340-228-0658(1)(a). For recertifications, apply the word "recertification" instead of the words "certification" and "initial certification" and apply the word "recertified" instead of the word "certified," and follow the procedures in 40 CFR 75.20(b)(5) in lieu of the procedures in paragraph (3)(c)(E) of this rule.

(A) Notification of certification. The Hg designated representative must submit to the Department, the EPA Region 10 Office, and the Administrator written notice of the dates of certification testing, in accordance with OAR 340-228-0668.

(B) Certification application. The Hg designated representative must submit to the Department a certification application for each monitoring system. A complete certification application must include the information specified in 40 CFR 75.63.

(C) Provisional certification date. The provisional certification date for a monitoring system must be determined in accordance with 40 CFR 75.20(a)(3). A provisionally certified monitoring system may be used under the Hg Budget Trading Program for a period not to exceed 120 days after receipt by the Department of the complete certification application for the monitoring system under paragraph (3)(c)(B) of this rule. Data measured and recorded by the provisionally certified monitoring system, in accordance with the requirements of 40 CFR part 75, will be considered valid quality-assured data (retroactive to the date and time of provisional certification), provided that the Department does not invalidate the provisional certification by issuing a notice of disapproval within 120 days of the date of receipt of the complete certification application by the Department.

(D) Certification application approval process. The Department will issue a written notice of approval or disapproval of the certification application to the owner or operator within 120 days of receipt of the complete certification application under paragraph (3)(c)(B) of this rule. In the event the Department does not issue such a notice within such 120-day period, each monitoring system that meets the applicable performance requirements of 40 CFR part 75 and is included in the certification application will be deemed certified for use under the Hg Budget Trading Program.

(i) Approval notice. If the certification application is complete and shows that each monitoring system meets the applicable performance requirements of 40 CFR part 75, then the Department will issue a written notice of approval of the certification application within 120 days of receipt.

(ii) Incomplete application notice. If the certification application is not complete, then the Department will issue a written notice of incompleteness that sets a reasonable date by which the Hg designated representative must submit the additional information required to complete the certification application. If the Hg designated representative does not comply with the notice of incompleteness by the specified date, then the Department may issue a notice of disapproval under subparagraph

(3)(c)(D)(iii) of this rule. The 120-day review period must not begin before receipt of a complete certification application.

(iii) Disapproval notice. If the certification application shows that any monitoring system does not meet the performance requirements of 40 CFR part 75 or if the certification application is incomplete and the requirement for disapproval under subparagraph (3)(c)(D)(ii) of this rule is met, then the Department will issue a written notice of disapproval of the certification application. Upon issuance of such notice of disapproval, the provisional certification is invalidated by the Department and the data measured and recorded by each uncertified monitoring system must not be considered valid quality-assured data beginning with the date and hour of provisional certification (as defined under 40 CFR 75.20(a)(3)). The owner or operator must follow the procedures for loss of certification in paragraph (3)(c)(E) of this rule for each monitoring system that is disapproved for initial certification.

(iv) Audit decertification. The Department may issue a notice of disapproval of the certification status of a monitor in accordance with OAR 340-228-0662(2).

(E) Procedures for loss of certification. If the Department issues a notice of disapproval of a certification application under subparagraph (3)(c)(D)(iii) of this rule or a notice of disapproval of certification status under subparagraph (3)(c)(D)(iv) of this rule, then:

(i) The owner or operator must substitute the following values, for each disapproved monitoring system, for each hour of unit operation during the period of invalid data specified under 40 CFR 75.20(a)(4)(iii), 40 CFR 75.21(e) and continuing until the applicable date and hour specified under 40 CFR 75.20(a)(5)(i):

(I) For a disapproved Hg pollutant concentration monitors and disapproved flow monitor, respectively, the maximum potential concentration of Hg and the maximum potential flow rate, as defined in sections 2.1.7.1 and 2.1.4.1 of appendix A to 40 CFR part 75; and

(II) For a disapproved moisture monitoring system and disapproved diluent gas monitoring system, respectively, the minimum potential moisture percentage and either the maximum potential CO₂ concentration or the minimum potential O₂ concentration (as applicable), as defined in sections 2.1.5, 2.1.3.1, and 2.1.3.2 of appendix A to 40 CFR part 75.

(III) For a disapproved excepted monitoring system (sorbet trap monitoring system) under 40 CFR 75.15 and disapproved flow monitor, respectively, the maximum potential concentration of Hg and maximum potential flow rate, as defined in sections 2.1.7.1 and 2.1.4.1 of appendix A to 40 CFR part 75.

(ii) The Hg designated representative must submit a notification of certification retest dates and a new certification application in accordance with paragraphs (3)(c)(A) and (B) of this rule.

(iii) The owner or operator must repeat all certification tests or other requirements that were failed by the monitoring system, as indicated in the Department's notice of disapproval, no later than 30 unit operating days after the date of issuance of the notice of disapproval.

(4) Initial certification and recertification procedures for units using the Hg low mass emission excepted methodology under 40 CFR 75.81(b). The owner or operator of a unit qualified to use the Hg low mass emissions (HgLME) excepted methodology under 40 CFR 75.81(b) must meet the applicable certification and recertification requirements in 40 CFR 75.81(c) through (f).

(5) Certification/recertification procedures for alternative monitoring systems. The Hg designated representative of each unit for which the owner or operator intends to use an alternative monitoring system approved by the Administrator and, if applicable, the Department under 40 CFR part 75 subpart E must comply with the applicable notification and application procedures of 40 CFR 75.20(f).

Stat. Auth.: ORS 468.020 & 468A.310

Stats. Implemented: ORS 468A.025

Hist.: DEQ 13-2006, f. & cert. ef. 12-22-06

340-228-0662

Out of Control Periods

(1) Whenever any monitoring system fails to meet the quality-assurance and quality-control requirements or data validation requirements of 40 CFR part 75, data must be substituted using the applicable missing data procedures in 40 CFR part 75 subpart D.

(2) Audit decertification. Whenever both an audit of a monitoring system and a review of the initial certification or recertification application reveal that any monitoring system should not have been certified or recertified because it did not meet a particular performance specification or other requirement under OAR 340-228-0660 or the applicable provisions of 40

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CFR part 75, both at the time of the initial certification or recertification application submission and at the time of the audit, the Department will issue a notice of disapproval of the certification status of such monitoring system. For the purposes of this paragraph, an audit must be either a field audit or an audit of any information submitted to the Department or the Administrator. By issuing the notice of disapproval, the Department revokes prospectively the certification status of the monitoring system. The data measured and recorded by the monitoring system must not be considered valid quality-assured data from the date of issuance of the notification of the revoked certification status until the date and time that the owner or operator completes subsequently approved initial certification or recertification tests for the monitoring system. The owner or operator must follow the applicable initial certification or recertification procedures in OAR 340-228-0660 for each disapproved monitoring system.

Stat. Auth.: ORS 468.020 & 468A.310
Stats. Implemented: ORS 468A.025
Hist.: DEQ 13-2006, f. & cert. ef. 12-22-06

340-228-0664 Notifications

The Hg designated representative for a Hg Budget unit must submit written notice to the Department and the Administrator in accordance with 40 CFR 75.61, except that if the unit is not subject to an Acid Rain emissions limitation, the notification is only required to be sent to the Department.

Stat. Auth.: ORS 468.020 & 468A.310
Stats. Implemented: ORS 468A.025
Hist.: DEQ 13-2006, f. & cert. ef. 12-22-06

340-228-0666 Recordkeeping and Reporting

(1) General provisions.

(a) The Hg designated representative must comply with all recordkeeping and reporting requirements in this section and the requirements of OAR 340-228-0612(5)(a).

(b) If a Hg Budget unit is subject to an Acid Rain emission limitation and the Hg designated representative who signed and certified any submission made under 40 CFR part 75 subpart F or G and that includes data and information required under this section, OAR 340-228-0658 through 0664, 0668, 0670, or 40 CFR part 75 subpart I is not the same person as the designated representative or alternative designated representative, or for the unit under 40 CFR part 72, then the submission must also be signed by the designated representative or alternative designated representative, as applicable.

(2) Monitoring plans. The owner or operator of a Hg Budget unit must comply with the applicable requirements of 40 CFR 63.7521(b) and 40 CFR 75.84(e).

(3) Certification applications. The Hg designated representative must submit an application to the Department within 45 days after completing all initial certification or recertification tests required under OAR 340-228-0660, including the information required under 40 CFR 75.63.

(4) Quarterly reports. The Hg designated representative must submit quarterly reports, as follows:

(a) The Hg designated representative must report the Hg mass emissions data and heat input data for the Hg Budget unit, in an electronic quarterly report in a format prescribed by the Administrator, for each calendar quarter beginning with:

(A) For a unit that commences commercial operation before July 1, 2008, the calendar quarter covering January 1, 2009 through March 31, 2009; or

(B) For a unit that commences commercial operation on or after July 1, 2008, the calendar quarter corresponding to the earlier of the date of provisional certification or the applicable deadline for initial certification under OAR 340-228-0658(2), unless that quarter is the third or fourth quarter of 2008, in which case reporting must commence in the quarter covering January 1, 2009 through March 31, 2009.

(b) On and after January 1, 2019, the first quarterly report in a calendar year must include calendar year mercury emission totals.

(c) The Hg designated representative must submit each quarterly report to the Administrator within 30 days following the end of the calendar quarter covered by the report. Quarterly reports must be submitted in the manner specified in 40 CFR 75.84(f).

(d) For Hg Budget units that are also subject to an Acid Rain emissions limitation, quarterly reports must include the applicable data and information required by 40 CFR part 75 subparts F through H as applicable, in addition to the Hg mass emission data, heat input data, and other

information required by this section, OAR 340-228-0658 through 0664, 0668, and 0670.

(5) Compliance certification. The Hg designated representative must submit to the Administrator a compliance certification (in a format prescribed by the Administrator) in support of each quarterly report based on reasonable inquiry of those persons with primary responsibility for ensuring that all of the unit's emissions are correctly and fully monitored. The certification must state that:

(a) The monitoring data submitted were recorded in accordance with the applicable requirements of this rule, OAR 340-228-0658 through 0664, 0668, 0670, and 40 CFR part 75, including the quality assurance procedures and specifications; and

(b) For a unit with add-on Hg emission controls, a flue gas desulfurization system, a selective catalytic reduction system, or a compact hybrid particulate collector system and for all hours where Hg data are substituted in accordance with 40 CFR 75.34(a)(1), the Hg add-on emission controls, flue gas desulfurization system, selective catalytic reduction system, or compact hybrid particulate collector system were operating within the range of parameters listed in the quality assurance/quality control program under appendix B to 40 CFR part 75, or quality-assured SO₂ emission data recorded in accordance with 40 CFR part 75 document that the flue gas desulfurization system, or quality-assured NO_x emission data recorded in accordance with 40 CFR part 75 document that the selective catalytic reduction system, was operating properly, as applicable, and the substitute data values do not systematically underestimate Hg emissions.

Stat. Auth.: ORS 468.020 & 468A.310
Stats. Implemented: ORS 468A.025
Hist.: DEQ 13-2006, f. & cert. ef. 12-22-06

340-228-0668 Petitions

The Hg designated representative of a Hg unit may submit a petition under 40 CFR 75.66 to the Administrator requesting approval to apply an alternative to any requirement of OAR 340-228-0658 through 0666 and 0670. Application of an alternative is in accordance with this section and OAR 340-228-0658 through 0666 and 0670 only to the extent that the petition is approved in writing by the Administrator, in consultation with the Department.

Stat. Auth.: ORS 468.020 & 468A.310
Stats. Implemented: ORS 468A.025
Hist.: DEQ 13-2006, f. & cert. ef. 12-22-06

340-228-0670 Additional Requirements to Provide Heat Input Data

The owner or operator of a Hg Budget unit that monitors and reports Hg mass emissions using a Hg concentration monitoring system and a flow monitoring system must also monitor and report heat input rate at the unit level using the procedures set forth in 40 CFR part 75.

Stat. Auth.: ORS 468.020 & 468A.310
Stats. Implemented: ORS 468A.025
Hist.: DEQ 13-2006, f. & cert. ef. 12-22-06

340-228-0671 Emission Standards

(1) Mercury reduction plan. By July 1, 2009 or 1-year prior to commencement of commercial operation, whichever is later, the owner or operator of each Hg Budget unit must develop and submit for Department approval a mercury reduction plan for each Hg Budget unit. The plan must propose a control strategy for mercury that is most likely to result in the capture of at least 90 percent of the mercury emitted from the unit or that will limit mercury emissions to 0.60 pounds per trillion BTU of heat input. The owner or operator must demonstrate that the plan reflects technology that could reasonably be expected to meet the limits in this section if the technology operates as anticipated by the manufacturer. The plan must provide a timeframe for implementation of the selected control strategy including major milestones, installation and operation requirements, and work practice standards for the selected technology. The owner and operator of the Hg Budget unit may proceed with the plan within 60 days of submittal unless, within the 60 day period, the Department notifies the owner or operator of the Hg Budget unit that the plan must be revised.

(2) Mercury emission standards. On and after July 1, 2012 or at commencement of commercial startup, whichever is later, except as allowed under section (3) of this rule, each Hg Budget unit must have implemented the approved control strategy projected to achieve at least 90 percent mercury capture or that will limit mercury emissions to 0.60 pounds per trillion BTU of heat input.

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(3) Compliance extension. Up to a 1-year extension of the requirement to implement the approved control strategy may be granted by the Department if the owner or operator of a Hg Budget unit demonstrates that it is not practical to install mercury control equipment by July 1, 2012 due to supply limitations or other extenuating circumstances that are beyond the control of the owner or operator.

(4) Compliance demonstration. Commencing in July 2013 or 12 months after commercial startup or 12 months after expiration of the extension granted under section (3) of this rule, whichever is later, each Hg Budget unit must thereafter demonstrate compliance with one of the standards in subsections (4)(a) or (4)(b) of this rule for each compliance period, except as allowed under sections (5) and (6) of this rule. A compliance period consists of twelve months. Each month commencing with June 2013 or the twelfth month after commencement of commercial operation or twelfth month after expiration of the extension granted under section (3) of this rule, whichever is later, is the end of a compliance period consisting of that month and the previous 11 months.

(a) A mercury emission standard of 0.60 pounds per trillion BTU of heat input calculated by dividing the Hg emissions determined using a mercury CEMS or sorbent trap monitoring system by heat input as determined according to OAR 340-228-0674; or

(b) A minimum 90-percent capture of inlet mercury determined as follows:

(A) Inlet mercury must be determined as follows:

(i) The owner or operator must test coal for mercury consistent with a coal sampling and analysis plan prepared according to OAR 340-228-0676; or

(ii) The owner or operator must measure mercury emissions prior to any control device(s) according to OAR 340-228-0678.

(B) The mercury capture efficiency must be calculated using the Hg emissions determined using a mercury CEMS or sorbent trap monitoring system and the inlet mercury determined using the coal mercury content data obtained in accordance with subparagraph (1)(b)(A)(i) of this rule or the measured inlet mercury data obtained in accordance with subparagraph (1)(b)(A)(ii) of this rule and a calculation methodology approved by the Department.

(5) Temporary compliance alternative. If the owner or operator of a Hg Budget unit properly implements the approved control strategy and the strategy fails to achieve at least 90 percent mercury capture or limit mercury emissions to 0.60 pounds per trillion BTU of heat input:

(a) The owner or operator must notify the Department of the failure within 30 days of the end of the initial compliance period; and

(b) The owner or operator must file an application with the Department for a permit or permit modification in accordance with OAR 340 division 216 to establish a temporary alternative mercury emission limit. The application must be filed within 60 days of the end of the initial compliance period, and must include a continual program of mercury control progression able to achieve at least 90 percent mercury capture or to limit mercury emissions to 0.60 pounds per trillion BTU of heat input and all monitoring and operating data for the Hg Budget unit.

(c) The Department may establish a temporary alternative mercury emission limit only if the owner or operator applies for a permit or permit modification, that includes a control strategy that the Department determines constitutes a continual program of mercury control progression able to achieve at least 90 percent mercury capture or to limit mercury emissions to 0.60 pounds per trillion BTU of heat input.

(d) Establishment of a temporary alternative mercury emission limit requires public notice in accordance with OAR 340 division 209 for Category III permit actions

(e) If the owner or operator files an application under subsection (5)(b) of this rule, the Hg Budget unit must operate according to the temporary alternative mercury emission limit proposed in the permit or permit modification application until the Department either denies the application or issues the permit or permit modification. Compliance with the proposed temporary alternative mercury emission limit prior to final Department action on the application shall constitute compliance with the limits in section (4) of this rule.

(f) A temporary alternative mercury emission limit established in a permit expires July 1, 2015 or within 2 years of commencement of commercial operation, whichever is later.

(6) Permanent compliance alternative. If the owner or operator of a Hg Budget unit is unable to achieve at least 90 percent mercury capture or an emission level of 0.60 pounds per trillion BTU of heat input by July 1, 2015 or within 2 years of commencement of commercial operation,

whichever is later, despite properly implementing the continual program of mercury progression required in section (5) of this rule:

(a) The owner or operator of the Hg Budget unit may file an application with the Department for a permit modification in accordance with OAR 340 division 216 to establish a permanent alternative mercury emission limit that comes as near as technically possible to achieving 90 percent mercury capture or an emission level of 0.60 pounds per trillion BTU of heat input.

(b) The Department may establish a permanent alternative mercury emission limit only if the owner or operator applies for a permit modification, that proposes an alternative mercury emission limit that the Department determines comes as near as technically possible to achieving 90 percent mercury capture or an emission level of 0.60 pounds per trillion BTU of heat input.

(c) Establishment of a permanent alternative mercury emission limit requires public notice in accordance with OAR 340 division 209 for Category IV permit actions.

(d) If the owner or operator files an application under subsection (6)(a) of this rule, the Hg Budget unit must operate according to the permanent alternative mercury emission limit proposed in the permit modification application until the Department either denies the application or modifies the permit. Compliance with the proposed permanent alternative mercury emission limit prior to final Department action on the application shall constitute compliance with the limits in section (4) of this rule.

Stat. Auth.: ORS 468.020 & 468A.310

Stats. Implemented: ORS 468A.025

Hist.: DEQ 13-2006, f. & cert. ef. 12-22-06

340-228-0672

Emission Caps

Beginning in calendar year 2018, the state's annual allowable mercury emissions from electric generating units shall apply as the following Hg Budget unit specific emission caps.

(1) Existing Boardman Hg Budget unit. The existing Hg Budget unit in Boardman shall emit no more than:

(a) 60 pounds of mercury in any calendar year in which there are no new Hg Budget units operated in Oregon.

(b) 35 pounds of mercury in any calendar year in which there are new Hg Budget units operated in Oregon.

(2) New Hg Budget units. New Hg Budget units, in aggregate, shall emit no more than:

(a) 25 pounds of mercury in any calendar year in which the existing Hg Budget unit in Boardman is operated.

(b) 60 pounds of mercury in any calendar year in which the existing Hg Budget unit in Boardman is not operated.

(c) The Department will allocate the emission cap under subsection (2)(a) or (b) of this rule to each new Hg Budget unit in an amount determined by multiplying the total amount of Hg allowances allocated under subsection (2)(a) or (b) of this rule by the ratio of the design heat input of such Hg Budget unit to the total amount of design heat input of all such new Hg Budget units in the State and rounding to the nearest pound as appropriate.

(3) Compliance demonstration. Each Hg Budget unit must demonstrate compliance with the applicable calendar year emission cap in sections (1) or (2) of this rule using a mercury CEMS or sorbent trap monitoring system.

Stat. Auth.: ORS 468.020 & 468A.310

Stats. Implemented: ORS 468A.025

Hist.: DEQ 13-2006, f. & cert. ef. 12-22-06

340-228-0673

Monitoring Requirements for the Hg Emission Standards

(1) Requirements for installation, certification, and data accounting. The owners and operators of a Hg Budget unit must:

(a) Install all applicable monitoring systems required under OAR 340-228-0674 through 0678 for monitoring individual unit heat input and inlet Hg.

(b) Successfully complete certification tests under OAR 340-228-0660 and meet all other requirements of this rule, OAR 340-228-0660 through 0670, and 40 CFR part 75 subpart I for the monitoring systems under subsection (1)(a) of this rule.

(c) Record, report, and quality-assure the data from the monitoring systems under subsection (1)(a) of this rule.

(d) Reports and petitions required in subsections (1)(b) and (1)(c) of this rule must be submitted to the Department, not to the Administrator.

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(2) Compliance deadlines. The owner or operator must meet the monitoring system certification and other requirements of subsections (1)(a) and (b) of this rule on or before the following dates. The owner or operator must record, report, and quality-assure the data from the monitoring systems under subsection (1)(a) of this rule on and after the following dates.

(a) Heat input. For monitoring systems used to monitor heat input in accordance with OAR 340-228-0611(1), if applicable, by the later of the following dates:

(A) July 1, 2012 or the date established under OAR 340-228-0671(3);

or

(B) The date on which the unit commences commercial operation.

(b) Inlet Hg. If required to perform coal sampling and analysis in accordance with OAR 340-228-0611(2)(a)(A) and 340-228-0676 or measure Hg emission prior to any control device(s) in accordance with OAR 340-228-0611(2)(a)(B) and 340-228-0678, if applicable, by the later of the following dates:

(A) July 1, 2012 or the date established under OAR 340-228-0671(3);

or

(B) The date on which the unit commences commercial operation.

(3) Reporting data.

(a) The owner or operator of a Hg Budget unit that does not meet the applicable compliance date set forth in section (2) of this rule for any monitoring system under subsection (1)(a) of this rule must, for each monitoring system, determine, record, and report maximum potential (or, as appropriate, minimum potential) values for heat input, inlet Hg, and any other parameters required to determine heat input and Hg inlet in accordance with OAR 340-228-0674 through 0678.

(b) On and after January 1, 2018, the owner or operator of a Hg Budget unit must submit to the Department quarterly reports of monthly and 12-month rolling average mercury emissions per trillion Btu of energy input and/or mercury capture efficiency, for each month in the calendar quarter.

(4) Prohibitions. No owner or operator of a Hg Budget unit shall disrupt any emission monitoring method, and thereby avoid monitoring and recording heat input, and/or inlet Hg, except for periods of recertification or periods when calibration, quality assurance testing, or maintenance is performed in accordance with the applicable provisions of this rule, OAR 340-228-0660 through 0670, and 40 CFR part 75 subpart I.

Stat. Auth.: ORS 468.020 & 468A.310

Stats. Implemented: ORS 468A.025

Hist.: DEQ 13-2006, f. & cert. ef. 12-22-06

340-228-0674

Heat Input Determination

To demonstrate compliance with OAR 340-228-0611(1) for each Hg Budget unit, the owner or operator of such Hg Budget unit must determine the heat input according to **40 CFR part 75, appendix F** (procedures 5 and 9).

Stat. Auth.: ORS 468.020 & 468A.310

Stats. Implemented: ORS 468A.025

Hist.: DEQ 13-2006, f. & cert. ef. 12-22-06

340-228-0676

Coal Sampling and Analysis

To demonstrate compliance with OAR 340-228-0611(2) with coal sampling and analysis for each Hg Budget unit, the owner or operator of such Hg Budget unit must test its coal for mercury consistent with a coal sampling and analysis plan. The coal sampling and analysis plan must be consistent with the requirements of **40 CFR 63.7521**.

Stat. Auth.: ORS 468.020 & 468A.310

Stats. Implemented: ORS 468A.025

Hist.: DEQ 13-2006, f. & cert. ef. 12-22-06

340-228-0678

Hg Mass Emissions Measurement Prior to Any Control Device(s)

To demonstrate compliance with OAR 340-228-0611(2) by measuring Hg mass emissions for each Hg Budget unit, the owner or operator of such Hg Budget unit must measure mercury emissions prior to any control device(s) according to **40 CFR part 75 subpart I** or **40 CFR 75.15**.

Stat. Auth.: ORS 468.020 & 468A.310

Stats. Implemented: ORS 468A.025

Hist.: DEQ 13-2006, f. & cert. ef. 12-22-06

340-238-0040

Definitions

The definitions in OAR 340-200-0020 and this rule apply to this division. If the same term is defined in this rule and OAR 340-200-0020, the definition in this rule applies to this division.

(1) "Administrator" means the Administrator of the EPA or authorized representative.

(2) "Alternative method" means any method of sampling and analyzing for an air pollutant that is not a reference or equivalent method but that has been demonstrated to the Department's satisfaction to, in specific cases, produce results adequate for determination of compliance.

(3) "Capital expenditures" means an expenditure for a physical or operational change to an existing facility that exceeds the product of the applicable "annual asset guideline repair allowance percentage" specified in **Internal Revenue Service (IRS) Publication 534** and the existing facility's basis, as defined by section 1012 of the Internal Revenue Code. However, the total expenditure for a physical or operational change to an existing facility must not be reduced by any "excluded additions" as defined in IRS Publication 534, as would be done for tax purposes.

(4) "CFR" means Code of Federal Regulations and, unless otherwise expressly identified, refers to the July 1, 2006 edition.

(5) "Closed municipal solid waste landfill" (closed landfill) means a landfill in which solid waste is no longer being placed, and in which no additional solid wastes will be placed without first filing a notification of modification as prescribed under 40 CFR 60.7(a)(4). Once a notification of modification has been filed, and additional solid waste is placed in the landfill, the landfill is no longer closed. A landfill is considered closed after meeting the criteria of 40 CFR 258.60.

(6) "Commenced", with respect to the definition of "new source" in section 111(a)(2) of the federal Clean Air Act, means that an owner or operator has undertaken a continuous program of construction or modification or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction or modification.

(7) "Construction" means fabrication, erection, or installation of a facility.

(8) "Department" means the Department of Environmental Quality or, in the case of Lane County, the Lane Regional Air Pollution Authority.

(9) "Environmental Protection Agency" or "EPA" means the United States Environmental Protection Agency.

(10) "Existing municipal solid waste landfill" (existing landfill) means a municipal solid waste landfill that began construction, reconstruction or modification before 5/30/91 and has accepted waste at any time since 11/08/87 or has additional design capacity available for future waste deposition.

(11) "Equivalent method" means any method of sampling and analyzing for an air pollutant that has been demonstrated to the Department's satisfaction to have a consistent and quantitatively known relationship to the reference method, under specified conditions.

(12) "Existing facility", with reference to a stationary source, means any apparatus of the type for which a standard is promulgated in 40 CFR Part 60, and the construction or modification of which commenced before the date of proposal by EPA of that standard; or any apparatus that could be altered in such a way as to be of that type.

(13) "Facility" means all or part of any public or private building, structure, installation, equipment, vehicle or vessel, including, but not limited to, ships.

(14) "Fixed capital cost" means the capital needed to provide all the depreciable components.

(15) "Large municipal solid waste landfill" (large landfill) means a municipal solid waste landfill with a design capacity greater than or equal to 2.5 million megagrams or 2.5 million cubic meters.

(16) "Modification:"

(a) except as provided in subsection (b) of this section, means any physical change in, or change in the method of operation of, an existing facility that increases the amount of any air pollutant (to which a standard applies) emitted into the atmosphere by that facility or that results in the emission of any air pollutant (to which a standard applies) into the atmosphere not previously emitted;

(b) As used in OAR 340-238-0100 means an action that results in an increase in the design capacity of a landfill.

(17) "Municipal solid waste landfill" (landfill) means an entire disposal facility in a contiguous geographical space where household waste is placed in or on land. A municipal solid waste landfill may also receive other

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types of RCRA Subtitle D wastes such as commercial solid waste, nonhazardous sludge, conditionally exempt small quantity generator waste, and industrial solid waste. Portions of a municipal solid waste landfill may be separated by access roads and may be publicly or privately owned. A municipal solid waste landfill may be a new municipal solid waste landfill, an existing municipal solid waste landfill, or a lateral expansion (modification).

(18) "New municipal solid waste landfill" (new landfill) means a municipal solid waste landfill that began construction, reconstruction or modification or began accepting waste on or after 5/30/91.

(19) "Particulate matter" means any finely divided solid or liquid material, other than uncombined water, as measured by an applicable reference method, or an equivalent or alternative method.

(20) "Reconstruction" means the replacement of components of an existing facility to such an extent that:

(a) The fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable entirely new facility; and

(b) It is technologically and economically feasible to meet the applicable standards set forth in 40 CFR Part 60.

(21) "Reference method" means any method of sampling and analyzing for an air pollutant as specified in 40 CFR Part 60.

(22) "Small municipal solid waste landfill" (small landfill) means a municipal solid waste landfill with a design capacity less than 2.5 million megagrams or 2.5 million cubic meters.

(23) "Standard" means a standard of performance proposed or promulgated under 40 CFR Part 60.

(24) "State Plan" means a plan developed for the control of a designated pollutant provided under 40 CFR Part 60.

(25) "Stationary source" means any building, structure, facility, or installation that emits or may emit any air pollutant subject to regulation under the federal Clean Air Act.

(26) "Volatile organic compounds" or "VOC" means any organic compounds that participate in atmospheric photochemical reactions; or that are measured by a reference method, an equivalent method, an alternative method, or that are determined by procedures specified under any applicable rule.

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

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: DEQ 97, f. 9-2-75, ef. 9-25-75; DEQ 22-1982, f. & ef. 10-21-82; DEQ 17-1983, f. & ef. 10-19-83; DEQ 16-1984, f. & ef. 8-21-84; DEQ 15-1985, f. & ef. 10-21-85; DEQ 19-1986, f. & ef. 11-7-86; DEQ 17-1987, f. & ef. 8-24-87; DEQ 24-1989, f. & cert. ef. 10-26-89; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 17-1993, f. & cert. ef. 11-4-93; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 27-1996, f. & cert. ef. 12-11-96; DEQ 8-1997, f. & cert. ef. 5-6-97; DEQ 22-1998, f. & cert. ef. 10-21-98; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-025-0510; DEQ 22-2000, f. & cert. ef. 12-18-00; DEQ 4-2003, f. & cert. ef. 2-06-03; DEQ 2-2005, f. & cert. ef. 2-10-05; DEQ 2-2006, f. & cert. ef. 3-14-06; DEQ 13-2006, f. & cert. ef. 12-22-06

340-238-0060

Federal Regulations Adopted by Reference

(1) Except as provided in section (2) of this rule, **40 CFR Part 60 Subparts D through XX, BBB through NNN, PPP through WWW, AAAA, CCCC, and EEEE** are by this reference adopted and incorporated herein, and **40 CFR Part 60 Subpart OOO** is by this reference adopted and incorporated herein for major sources only.

(2) Where "Administrator" or "EPA" appears in 40 CFR Part 60, "Department" is substituted, except in any section of 40 CFR Part 60 for which a federal rule or delegation specifically indicates that authority must not be delegated to the state.

(3) **40 CFR Part 60** Subparts adopted by this rule are titled as follows:

(a) Subpart D — Fossil-fuel-fired steam generators for which construction is commenced after August 17, 1971;

(b) Subpart Da — Electric utility steam generating units for which construction is commenced after September 18, 1978;

(c) Subpart Db — Industrial-commercial-institutional steam generating units;

(d) Subpart Dc — Small industrial-commercial-institutional steam generating units;

(e) Subpart E — Incinerators;

(f) Subpart Ea — Municipal waste combustors for which construction is commenced after December 20, 1989 and on or before September 20, 1994;

(g) Subpart Eb — Municipal waste combustors for which construction is commenced after September 20, 1994;

(h) Subpart Ec — Hospital/Medical/Infectious waste incinerators that commenced construction after June 20, 1996, or for which modification is commenced after March 16, 1998;

(i) Subpart F — Portland cement plants;

(j) Subpart G — Nitric acid plants;

(k) Subpart H — Sulfuric acid plants;

(l) Subpart I — Hot mix asphalt facilities;

(m) Subpart J — Petroleum refineries;

(n) Subpart K — Storage vessels for petroleum liquids for which construction, reconstruction, or modification commenced after June 11, 1973, and before May 19, 1978;

(o) Subpart Ka — Storage vessels for petroleum liquids for which construction, reconstruction, or modification commenced after May 18, 1978, and before July 23, 1984;

(p) Subpart Kb — Volatile organic liquid storage vessels (including petroleum liquid storage vessels) for which construction, reconstruction, or modification commenced after July 23, 1984;

(q) Subpart L — Secondary lead smelters;

(r) Subpart M — Secondary brass and bronze production plants;

(s) Subpart N — Primary emissions from basic oxygen process furnaces for which construction is commenced after June 11, 1973;

(t) Subpart Na — Secondary emissions from basic oxygen process steelmaking facilities for which construction is commenced after January 20, 1983;

(u) Subpart O — Sewage treatment plants;

(v) Subpart P — Primary copper smelters;

(w) Subpart Q — Primary Zinc smelters;

(x) Subpart R — Primary lead smelters;

(y) Subpart S — Primary aluminum reduction plants;

(z) Subpart T — Phosphate fertilizer industry: wet-process phosphoric acid plants;

(aa) Subpart U — Phosphate fertilizer industry: superphosphoric acid plants;

(bb) Subpart V — Phosphate fertilizer industry: diammonium phosphate plants;

(cc) Subpart W — Phosphate fertilizer industry: triple superphosphate plants;

(dd) Subpart X — Phosphate fertilizer industry: granular triple superphosphate storage facilities;

(ee) Subpart Y — Coal preparation plants;

(ff) Subpart Z — Ferroalloy production facilities;

(gg) Subpart AA — Steel plants: electric arc furnaces constructed after October 21, 1974 and on or before August 17, 1983;

(hh) Subpart AAA — Steel plants: electric arc furnaces and argon-oxygen decarburization vessels constructed after August 7, 1983;

(ii) Subpart BB — Kraft pulp mills;

(jj) Subpart CC — Glass manufacturing plants;

(kk) Subpart DD — Grain elevators.

(ll) Subpart EE — Surface coating of metal furniture;

(mm) Subpart GG — Stationary gas turbines;

(nn) Subpart HH — Lime manufacturing plants;

(oo) Subpart KK — Lead-acid battery manufacturing plants;

(pp) Subpart LL — Metallic mineral processing plants;

(qq) Subpart MM — Automobile and light-duty truck surface coating operations;

(rr) Subpart NN — Phosphate rock plants;

(ss) Subpart PP — Ammonium sulfate manufacture;

(tt) Subpart QQ — Graphic arts industry: publication rotogravure printing;

(uu) Subpart RR — pressure sensitive tape and label surface coating operations;

(vv) Subpart SS — Industrial surface coating: large appliances;

(ww) Subpart TT — Metal coil surface coating;

(xx) Subpart UU — Asphalt processing and asphalt roofing manufacture;

(yy) Subpart VV — Equipment leaks of VOC in the synthetic organic chemicals manufacturing industry;

(zz) Subpart WW — Beverage can surface coating industry;

(aaa) Subpart XX — Bulk gasoline terminals;

(bbb) Subpart BBB — Rubber tire manufacturing industry;

(ccc) Subpart DDD — Volatile organic compound (VOC) emissions for the polymer manufacture industry;

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(ddd) Subpart FFF — Flexible vinyl and urethane coating and printing;

(eee) Subpart GGG — equipment leaks of VOC in petroleum refineries;

(fff) Subpart HHH — Synthetic fiber production facilities;

(ggg) Subpart III — Volatile organic compound (VOC) emissions from the synthetic organic chemical manufacturing industry (SOCMI) air oxidation unit processes;

(hhh) Subpart JJJ — Petroleum dry cleaners;

(iii) Subpart KKK — Equipment leaks of VOC from onshore natural gas processing plants;

(jjj) Subpart LLL — Onshore natural gas processing; SO₂ emissions;

(kkk) Subpart NNN — Volatile organic compound (VOC) emissions from synthetic organic chemical manufacturing industry (SOCMI) distillation operations;

(lll) Subpart OOO — Nonmetallic mineral processing plants (adopted by reference for major sources only);

(mmm) Subpart PPP — Wool fiberglass insulation manufacturing plants;

(nnn) Subpart QQQ — VOC emissions from petroleum refinery wastewater systems;

(ooo) Subpart RRR — Volatile organic compound emissions from synthetic organic chemical manufacturing industry (SOCMI) reactor processes;

(ppp) Subpart SSS — Magnetic tape coating facilities;

(qqq) Subpart TTT — Industrial surface coating: surface coating of plastic parts for business machines;

(rrr) Subpart UUU — Calciners and dryers in mineral industries;

(sss) Subpart VVV — Polymeric coating of supporting substrates facilities;

(ttt) Subpart WWW — Municipal solid waste landfills, as clarified by OAR 340-238-0100;

(uuu) Subpart AAAA — Small municipal waste combustion units;

(vvv) Subpart CCCC — Commercial and industrial solid waste incineration units;

(www) Subpart EEEE — Other Solid Waste Incineration Units.

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

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: DEQ 97, f. 9-2-75, ef. 9-25-75; DEQ 16-1981, f. & ef. 5-6-81; sections (1) thru (12) of this rule renumbered to 340-025-0550 thru 340-025-0605; DEQ 22-1982, f. & ef. 10-21-82; DEQ 17-1983, f. & ef. 10-19-83; DEQ 16-1984, f. & ef. 8-21-84; DEQ 15-1985, f. & ef. 10-21-85; DEQ 19-1986, f. & ef. 11-7-86; DEQ 17-1987, f. & ef. 8-24-87; DEQ 24-1989, f. & cert. ef. 10-26-89; DEQ 17-1993, f. & cert. ef. 11-4-93; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 27-1996, f. & cert. ef. 12-11-96; DEQ 8-1997, f. & cert. ef. 5-6-97; DEQ 22-1998, f. & cert. ef. 10-21-98; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-025-0535; DEQ 22-2000, f. & cert. ef. 12-18-00; DEQ 4-2003, f. & cert. ef. 2-06-03; DEQ 2-2005, f. & cert. ef. 2-10-05; DEQ 2-2006, f. & cert. ef. 3-14-06; DEQ 13-2006, f. & cert. ef. 12-22-06

340-244-0030

Definitions

The definitions in OAR 340-200-0020, 340-218-0030 and this rule apply to this division. If the same term is defined in this rule and OAR 340-200-0020 or 340-218-0030, the definition in this rule applies to this division.

(1) “Accidental Release” means an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source.

(2) “Act” and “FAAA” mean the Federal Clean Air Act, Public Law 88-206 as last amended by Public Law 101-549.

(3) “Actual Emissions” means the mass emissions of a pollutant from an emissions source during a specified time period.

(a) Actual emissions shall equal the average rate at which the source actually emitted the pollutant and which is representative of normal source operation. Actual emissions shall be directly measured with a continuous monitoring system or calculated using a material balance or verified emission factor in combination with the source’s actual operating hours, production rates and types of materials processed, stored, or combusted during the specified time period;

(b) For any source which had not yet begun normal operation in the specified time period, actual emissions shall equal the potential to emit of the source;

(c) For purposes of OAR 340-244-0100 through 340-244-0180 actual emissions shall equal the actual rate of emissions of a pollutant, but does not include excess emissions from a malfunction, or startups and shutdowns associated with a malfunction.

(4) “Area Source” means any stationary source which has the potential to emit hazardous air pollutants but is not a major source of hazardous air pollutants.

(5) “Artificially or Substantially Greater Emissions” means abnormally high emissions such as could be caused by equipment malfunctions, accidents, unusually high production or operating rates compared to historical rates, or other unusual circumstances.

(6) “Base Year Emissions” for purposes of Early Reductions only (OAR 340-244-0100), means actual emissions in the calendar year 1987 or later.

(7) “CFR” means Code of Federal Regulations and, unless otherwise expressly identified, refers to the July 1, 2006 edition.

(8) “Commission” means the Oregon Environmental Quality Commission.

(9) “Construct a major Source” means to fabricate, erect, or install at any greenfield site a stationary source or group of stationary sources which is located within a contiguous area and under common control and which emits or has the potential to emit 10 tons per year of any HAPs or 25 tons per year of any combination of HAP, or to fabricate, erect, or install at any developed site a new process or production unit which in and of itself emits or has the potential to emit 10 tons per year of any HAP or 25 tons per year of any combination of HAP, unless the process or production unit satisfies criteria a through f of this paragraph:

(a) All HAP emitted by the process or production unit that would otherwise be controlled under the requirements of this subpart will be controlled by emission control equipment which was previously installed at the same site as the process or production unit;

(b)(A) The permitting authority has determined within a period of 5 years prior to the fabrication, erection, or installation of the process or production unit that the existing emission control equipment represented the best available control technology (BACT), lowest achievable emission rate (LAER) under 40 CFR part 51 or 52, toxics-best available control technology (T-BACT) or MACT based on State air toxic rules for the category of pollutants which includes those HAP to be emitted by the process or production unit; or

(B) The permitting authority determines that the control of HAP emissions provided by the existing equipment will be equivalent to that level of control currently achieved by other well-controlled similar sources (i.e., equivalent to the level of control that would be provided by a current BACT, LAER, T-BACT, or State air toxic rule MACT determination).

(c) The permitting authority determines that the percent control efficiency for emission of HAP from all sources to be controlled by the existing control equipment will be equivalent to the percent control efficiency provided by the control equipment prior to the inclusion of the new process or production unit;

(d) The permitting authority has provided notice and an opportunity for public comment concerning its determination that criteria in paragraphs (a), (b), and (c) of this definition apply and concerning the continued adequacy of any prior LAER, BACT, T-BACT, or State air toxic rule MACT determination;

(e) If any commenter has asserted that a prior LAER, BACT, T-BACT, or State air toxic rule MACT determination is no longer adequate, the permitting authority has determined that the level of control required by that prior determination remains adequate; and

(f) Any emission limitations, work practice requirements, or other terms and conditions upon which the above determinations by the permitting authority are predicated will be construed by the permitting authority as applicable requirements under section 504(a) and either have been incorporated into any existing title V permit for the affected facility or will be incorporated into such permit upon issuance.

(10) “Department” means the Department of Environmental Quality.

(11) “Director” means the Director of the Department or Regional authority, and authorized deputies or officers.

(12) “Early Reductions Unit” means a single emission point or group of emissions points defined as a unit for purposes of an alternative emissions limit issued under OAR 340-244-0100 through 340-244-0180.

(13) “Emission” means a release into the atmosphere of any regulated pollutant or air contaminant.

(14) “Emissions Limitation” and “Emissions Standard” mean a requirement adopted by the Department or regional authority, or proposed or promulgated by the Administrator of the EPA, which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirements which limit the level of opacity, prescribe

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equipment, set fuel specifications, or prescribe operation or maintenance procedures for a source to assure continuous emission reduction.

(15) "Emissions Unit" means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant.

(a) A part of a stationary source is any machine, equipment, raw material, product, or by-product that produces or emits air pollutants. An activity is any process, operation, action, or reaction (e.g., chemical) at a stationary source that emits air pollutants. Except as described in subsection (d) of this section, parts and activities may be grouped for purposes of defining an emissions unit provided the following conditions are met:

(A) The group used to define the emissions unit may not include discrete parts or activities to which a distinct emissions standard applies or for which different compliance demonstration requirements apply; and

(B) The emissions from the emissions unit are quantifiable.

(b) Emissions units may be defined on a pollutant by pollutant basis where applicable;

(c) The term "emissions unit" is not meant to alter or affect the definition of the term "unit" for purposes of Title IV of the FCAA;

(d) Parts and activities shall not be grouped for purposes of determining emissions increases from an emissions unit under OAR 340-244-0050, 340-244-0070, or 340-218-0190, or for purposes of determining the applicability of a New Source Performance Standard (NSPS).

(16) "EPA" means the Administrator of the United States Environmental Protection Agency or the Administrator's designee.

(17) "EPA Conditional Method" means any method of sampling and analyzing for air pollutants which has been validated by the EPA but which has not been published as an EPA reference method.

(18) "EPA Reference Method" means any method of sampling and analyzing for an air pollutant as described in 40 CFR Part 60, 61, or 63.

(19) "Equipment leaks" means leaks from pumps, compressors, pressure relief devices, sampling connection systems, open ended valves or lines, valves, connectors, agitators, accumulator vessels, and instrumentation systems in hazardous air pollutant service.

(20) "Existing Source" means any source, the construction of which commenced prior to proposal of an applicable standard under sections 112 or 129 of the FCAA.

(21) "Facility" means all or part of any public or private building, structure, installation, equipment, or vehicle or vessel, including but not limited to ships.

(22) "Fugitive Emissions" means emissions of any air contaminant that escape to the atmosphere from any point or area that is not identifiable as a stack, vent, duct or equivalent opening.

(23) "Generally Available Control Technology (GACT)" means an alternative emission standard promulgated by EPA for non-major sources of hazardous air pollutants which provides for the use of control technology or management practices which are generally available.

(24) "Hazardous Air Pollutant" (HAP) means an air pollutant listed by the EPA pursuant to section 112(b) of the FCAA or determined by the Commission to cause, or reasonably be anticipated to cause, adverse effects to human health or the environment.

(25) "High-Risk Pollutant" means any air pollutant listed in Table 2 of OAR 340-244-0140 for which exposure to small quantities may cause a high risk of adverse public health effects.

(26) "Major Source" means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants. The EPA may establish a lesser quantity, or in the case of radionuclides different criteria, for a major source on the basis of the potency of the air pollutant, persistence, potential for bioaccumulation, other characteristics of the air pollutant, or other relevant factors.

(27) "Maximum Achievable Control Technology (MACT)" means an emission standard applicable to major sources of hazardous air pollutants that requires the maximum degree of reduction in emissions deemed achievable for either new or existing sources.

(28) "New Source" means a stationary source, the construction of which is commenced after proposal of a federal MACT or January 3, 1993 of this Division, whichever is earlier.

(29) "Not Feasible to Prescribe or Enforce a Numerical Emission Limit" means a situation in which the Department determines that a pollutant or stream of pollutants listed in OAR 340-244-0040 cannot be emitted through a conveyance designed and constructed to emit or capture such pollutant, or that any requirement for, or use of, such a conveyance would be

inconsistent with any state or federal law or regulation; or the application of measurement technology to a particular source is not practicable due to technological or economic limitations.

(30) "Person" means the United States Government and agencies thereof, any state, individual, public or private corporation, political subdivision, governmental agency, municipality, industry, co-partnership, association, firm, trust, estate, or any other legal entity whatsoever.

(31) "Potential to Emit" means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable by the EPA. This section does not alter or affect the use of this section for any other purposes under the Act, or the term "capacity factor" as used in Title IV of the Act or the regulations promulgated thereunder. Secondary emissions shall not be considered in determining the potential to emit of a source.

(32) "Reconstruct a Major Source" means the replacement of components at an existing process or production unit that in and of itself emits or has the potential to emit 10 tons per year of any HAP or 25 tons per year of any combination of HAP, whenever: the fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable process or production unit; and; it is technically and economically feasible for the reconstructed major source to meet the applicable maximum achievable control technology emission limitation for new sources established under 40 CFR Part 63 Subpart B.

(33) "Regional Authority" means Lane Regional Air Pollution Authority.

(34) "Regulated Air Pollutant" as used in this Division means:

(a) Any pollutant listed under OAR 340-200-0400 or 340-244-0230;

or

(b) Any pollutant that is subject to a standard promulgated pursuant to Section 129 of the Act.

(35) "Secondary Emissions" means emissions from new or existing sources which occur as a result of the construction and/or operation of a source or modification, but do not come from the source itself. Secondary emissions shall be specific, well defined, and quantifiable, and impact the same general area as the source associated with the secondary emissions. Secondary emissions may include but are not limited to:

(a) Emissions from ships and trains coming to or from a facility;

(b) Emissions from offsite support facilities which would be constructed or would otherwise increase emissions as a result of the construction of a source or modification.

(36) "Section 111" means that section of the FCAA that includes standards of performance for new stationary sources.

(37) "Section 112(b)" means that subsection of the FCAA that includes the list of hazardous air pollutants to be regulated.

(38) "Section 112(d)" means that subsection of the FCAA that directs the EPA to establish emission standards for sources of hazardous air pollutants. This section also defines the criteria to be used by EPA when establishing the emission standards.

(39) "Section 112(e)" means that subsection of the FCAA that directs the EPA to establish and promulgate emissions standards for categories and subcategories of sources that emit hazardous air pollutants.

(40) "Section 112(n)" means that subsection of the FCAA that includes requirements for the EPA to conduct studies on the hazards to public health prior to developing emissions standards for specified categories of hazardous air pollutant emission sources.

(41) "Section 112(r)" means that subsection of the FCAA that includes requirements for the EPA promulgate regulations for the prevention, detection and correction of accidental releases.

(42) "Section 129" means that section of the FCAA that requires EPA to promulgate regulations for solid waste combustion.

(43) "Solid Waste Incineration Unit" as used in this Division shall have the same meaning as given in Section 129(g) of the FCAA.

(44) "Stationary Source":

(a) As used in OAR 340 division 244 means any building, structure, facility, or installation which emits or may emit any regulated air pollutant;

(b) As used in OAR 340-244-0230 means any buildings, structures, equipment, installations, or substance emitting stationary activities:

(A) That belong to the same industrial group;

(B) That are located on one or more contiguous properties;

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(C) That are under the control of the same person (or persons under common control); and

(D) From which an accidental release may occur.

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

Stat. Auth.: ORS 468.020 & 468A.025

Stats. Implemented: ORS 468A.040

Hist.: DEQ 13-1993, f. & cert. ef. 9-24-93; DEQ 18-1993, f. & cert. ef. 11-4-93; DEQ 24-1994, f. & cert. ef. 10-28-94; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 26-1996, f. & cert. ef. 11-26-96; DEQ 20-1997, f. & cert. ef. 9-25-97; DEQ 18-1998, f. & cert. ef. 10-5-98; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-032-0120; DEQ 2-2005, f. & cert. ef. 2-10-05; DEQ 2-2006, f. & cert. ef. 3-14-06; DEQ 13-2006, f. & cert. ef. 12-22-06

340-244-0040

List of Hazardous Air Pollutants

For purposes of this Division the Commission adopts by reference the pollutants, including groups of substances and mixtures, listed in section 112(b), as Hazardous Air Pollutants (**Table 1**).

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

Stat. Auth.: ORS 468.020 & 468A.025

Stats. Implemented: ORS 468A.040

Hist.: DEQ 13-1993, f. & cert. ef. 9-24-93; DEQ 2-1996, f. & cert. ef. 1-2-96; DEQ 20-1997, f. & cert. ef. 9-25-97; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-032-0130; DEQ 2-2005, f. & cert. ef. 2-10-05; DEQ 2-2006, f. & cert. ef. 3-14-06; DEQ 13-2006, f. & cert. ef. 12-22-06

Department of Fish and Wildlife

Chapter 635

Rule Caption: Set 2007 Columbia and lower Willamette rivers sturgeon and smelt seasons.

Adm. Order No.: DFW 131-2006(Temp)

Filed with Sec. of State: 12-20-2006

Certified to be Effective: 1-1-07 thru 6-29-07

Notice Publication Date:

Rules Amended: 635-017-0095, 635-023-0095, 635-041-0063, 635-042-0130, 635-042-0133, 635-042-0135

Subject: Amend rules to set commercial fishing seasons for smelt and sturgeon in the Columbia River below Bonneville Dam, prohibit retention of green sturgeon in Columbia River recreational fisheries and establish recreational sturgeon fishing seasons in the Columbia River and in the Willamette River downstream of Willamette Falls (including Multnomah Channel). Revisions are consistent with the action taken December 14, 2006 by the Columbia River Compact.

Rules Coordinator: Casaria Tuttle—(503) 947-6033

635-017-0095

Sturgeon Season

(1) The **2007 Oregon Sport Fishing Regulations** provide requirements for the Willamette Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2007 Oregon Sport Fishing Regulations**.

(2) The Willamette River downstream of Willamette Falls (including Multnomah Channel) is open to the retention of white sturgeon three days per week, Thursday, Friday and Saturday, during the following periods:

(a) Monday, January 1, 2007 through Tuesday, July 31, 2007; and

(b) Monday, October 1, 2007 through Monday, December 31, 2007.

(3) The retention of white sturgeon in the area identified in subsection

(2) of this rule is prohibited August 1, 2007 through September 30, 2007.

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

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: DFW 2-2005(Temp), f. & cert. ef. 1-21-05 thru 7-19-05; DFW 55-2005, f. & cert. ef. 6-17-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 145-2005(Temp), f. 12-21-05, cert. ef. 1-1-06 thru 3-31-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 131-2006(Temp), f. 12-20-06, cert. ef. 1-1-07 thru 6-29-07

635-023-0095

Sturgeon Season

(1) The **2007 Oregon Sport Fishing Regulations** provide requirements for the Columbia River Zone and the Snake River Zone. However, additional regulations may be adopted in this rule division from time to time, and, to the extent of any inconsistency, they supersede the **2007 Oregon Sport Fishing Regulations**.

(2) The Columbia River from Wauna powerlines (River Mile 40) upstream to Bonneville Dam is open to the retention of white sturgeon, three days per week, Thursday, Friday, and Saturday, during the following periods:

(a) Monday, January 1, 2007 through Tuesday, July 31, 2007, and

(b) Monday, October 1, 2007 through Monday, December 31, 2007.

(3) The retention of white sturgeon in the area identified in subsection (2) of this rule is prohibited August 1, 2007 through September 30, 2007.

(4) The Columbia River from Wauna powerlines (River Mile 40) downstream to the mouth at Buoy 10, including Youngs Bay is open to the retention of white sturgeon seven days per week during the following periods:

(a) Monday, January 1, 2007 through Monday, April 30, 2007, and

(b) Saturday, May 12, 2007 through Wednesday, July 4, 2007.

(5) The retention of white sturgeon in the area identified in subsection (4) of this rule is prohibited May 1, 2007 through May 11, 2007 and from July 5, 2007 through December 31, 2007.

(6) During the fishing period as identified in subsection (4)(a) of this rule, only white sturgeon between 42-60" in overall length may be retained.

(7) During the fishing period as identified in subsection (4)(b) of this rule, only white sturgeon between 45-60" in overall length may be retained.

(8) Angling for sturgeon is prohibited from Marker 85 upstream to Bonneville Dam, from Highway 395 Bridge upstream to McNary Dam, and from the west end of the grain silo at Rufus upstream to John Day Dam during May 1, 2007 through July 31, 2007.

(9) The retention of green sturgeon is prohibited effective January 1, 2007.

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

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: DFW 129-2004(Temp), f. 12-23-04, cert. ef. 1-1-05 thru 2-28-05; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 22-2005(Temp), f. 4-1-05, cert. ef. 4-30-05 thru 7-31-05; DFW 50-2005(Temp), f. 6-3-05, cert. ef. 6-11-05 thru 11-30-05; DFW 60-2005(Temp), f. 6-21-05, cert. ef. 6-24-05 thru 12-21-05; DFW 65-2005(Temp), f. 6-30-05, cert. ef. 7-10-05 thru 12-31-05; DFW 76-2005(Temp), f. 7-14-05, cert. ef. 7-18-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 145-2005(Temp), f. 12-21-05, cert. ef. 1-1-06 thru 3-31-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 19-2006(Temp), f. 4-6-06, cert. ef. 4-8-06 thru 7-31-06; DFW 54-2006(Temp), f. 6-29-06, cert. ef. 7-1-06 thru 12-27-06; DFW 62-2006(Temp), f. 7-14-06, cert. ef. 7-24-06 thru 12-31-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 131-2006(Temp), f. 12-20-06, cert. ef. 1-1-07 thru 6-29-07

635-041-0063

Sturgeon Setline Fishery

(1) Sturgeon may be taken by setline for commercial purposes from 12 Noon January 1 through 12 Noon January 31 in all of Zone 6.

(a) In The Dalles and John Day pools sturgeon taken must be between 48-60 inches in length.

(b) In the Bonneville Pool sturgeon taken must be between 45-60 inches in length.

(c) Sturgeon taken as described in subsections (1)(a) and (1)(b) of this rule may be sold or kept for subsistence use.

(2) Closed areas are set forth under OAR 635-041-0045.

(3) During the sturgeon setline season it shall be unlawful to:

(a) Operate any fishing gear other than setlines except as provided in OAR 635-041-0060;

(b) Operate any setline having more than 100 hooks;

(c) Use other than single hooks size 9/0 or larger;

(d) Operate any setline on which the buoy or marker does not have the tribal identification number of the individual operating the line clearly marked on it and which is attached in a manner that will not allow it to float visibly on the surface at all times.

(4) Notwithstanding OAR 635-041-0045(6)-(11), it is lawful during the open season to fish for sturgeon by means of set lines in the Columbia River within areas at and adjacent to the mouths of rivers.

Stat. Auth.: ORS 183.325, 506.119

Stats. Implemented: ORS 506.129, 507.030

Hist.: FWC 89, f. & ef. 1-28-77; FWC 2-1978, f. & ef. 1-31-78; FWC 7-1978, f. & ef. 2-21-78; FWC 2-1979, f. & ef. 1-25-79, Renumbered from 635-035-0063; FWC 6-1980, f. & ef. 1-28-80; FWC 12-1980, f. & ef. 2-29-80; FWC 64-1980(Temp), f. & ef. 11-7-80; FWC 1-1981, f. & ef. 1-19-81; FWC 6-1982, f. & ef. 1-28-82; FWC 2-1983, f. 1-21-83, ef. 2-1-83; FWC 9-1983(Temp), f. & ef. 3-1-83; FWC 4-1984, f. & ef. 1-31-84; FWC 2-1985, f. & ef. 1-30-85; FWC 4-1986(Temp), f. & ef. 1-28-86; FWC 79-1986(Temp), f. & ef. 12-22-86; FWC 2-1987, f. & ef. 1-23-87; FWC 10-1988, f. & cert. ef. 3-4-88; FWC 48-1988, f. & cert. ef. 6-21-88; FWC 5-1989, f. 2-6-89, cert. ef. 2-7-89; FWC 12-1989(Temp), f. & cert. ef. 3-21-89; FWC 54-1989(Temp), f. & cert. ef. 8-7-89; FWC 9-1991, f. & cert. ef. 1-31-91; FWC 37-1991(Temp), f. & cert. ef. 4-3-91; FWC 4-1992, f. 1-30-92, cert. ef. 2-1-92; FWC 13-1992(Temp), f. & cert. ef. 3-5-92; FWC 41-1992(Temp), f. 6-30-92, cert. ef. 7-1-92; FWC 107-1992(Temp), f. & cert. ef. 10-9-92; FWC 7-1993, f. & cert. ef. 2-1-93; FWC 15-1996(Temp), f. & cert. ef. 4-1-96; FWC 25-1996(Temp), f. 5-14-96, cert. ef. 5-15-96; FWC 23-1997(Temp), f. 4-4-97, cert. ef. 4-7-97; FWC 35-1997(Temp), f. & cert. ef. 6-13-97; FWC 40-1997(Temp), f. 6-20-97, cert. ef. 6-23-97; DFW 23-1998(Temp), f. & cert. ef. 3-20-98 thru 6-30-98; DFW 50-1998(Temp), f. 6-25-98, cert. ef. 6-26-98 thru 7-24-98; DFW 57-1998(Temp), f. & cert. ef. 7-24-98 thru 12-31-98; DFW 22-1999(Temp), f. & cert. ef. 4-1-99 thru 4-23-99; DFW 28-1999(Temp), f. & cert. ef. 4-23-99 thru 7-31-99; DFW 41-1999(Temp), f. & cert. ef. 6-7-99 thru 7-31-99; DFW 79-1999(Temp), f. 10-8-99, cert. ef. 10-11-99 thru 12-31-99; DFW 14-2000(Temp), f. 3-17-00, cert. ef. 3-20-00 thru 7-31-00; DFW 31-2000(Temp), f. 6-9-00, cert. ef. 6-10-00 thru 7-31-00; DMV 43-2000(Temp), f. 8-7-00, cert. ef. 8-8-00 thru 8-20-00; DFW 66-2000(Temp), f. 9-29-00, cert. ef. 10-2-00 thru 12-31-00; DFW 43-2001(Temp), f. 5-23-01, cert. ef. 5-24-01 thru 11-20-01; DFW 65-2001(Temp),

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f. & cert. ef. 7-24-01 thru 12-31-01; DFW 94-2001(Temp), f. 9-26-01, cert. ef. 9-27-01 thru 12-31-01; DFW 114-2001(Temp), f. & cert. ef. 12-13-01 thru 12-31-01; DFW 51-2002(Temp), f. & cert. ef. 5-22-02 thru 9-1-02; DFW 104-2002(Temp), f. & cert. ef. 9-19-02 thru 12-31-02; DFW 121-2002(Temp), f. 10-24-02, cert. ef. 10-27-02 thru 12-31-02; DFW 49-2003(Temp), f. & cert. ef. 6-5-03 thru 9-1-03; DFW 58-2003(Temp), f. & cert. ef. 7-9-03 thru 12-31-03; DFW 67-2003(Temp), f. 7-18-03, cert. ef. 7-21-03 thru 12-31-03; DFW 104-2003(Temp), f. 10-10-03, cert. ef. 10-11-03 thru 12-31-03; DFW 120-2005(Temp), f. & cert. ef. 10-11-05 thru 12-31-05; Administrative correction 1-19-06; DFW 69-2006(Temp), f. 7-28-06, cert. ef. 7-31-06 thru 12-31-06; DFW 131-2006(Temp), f. 12-20-06, cert. ef. 1-1-07 thru 6-29-07

635-042-0130

Smelt Season

(1) Smelt may be taken for commercial purposes from the Columbia River, in Zones 1–5, from:

(a) 12:01 a.m. December 1 thru 11:59 p.m. December 31, 24 hours per day;

(b) 7 a.m. to 4 p.m. (9 hours) on Mondays and Thursdays from January 1, 2007 through March 31, 2007.

(2) It is unlawful to use other than the following gear for the taking of smelt in the Columbia River:

(a) Gill nets of a mesh size not more than two inches. Nets may consist of, but are not limited to, monofilament webbing;

(b) Dip nets having a bag frame no greater than 36 inches in diameter;

(c) Trawl nets with:

(A) Head rope not to exceed 25 feet in length;

(B) Foot rope or groundline not to exceed 25 feet in length;

(C) Door size not to exceed three feet by four feet;

(D) Mesh size not to exceed two inches;

(E) Bag length from the center of the head rope to the terminal end of the bunt not to exceed 35 feet;

(F) Breast rope not to exceed five feet;

(G) Bridle rope from rear of doors to foot rope and head rope not to exceed eight feet.

(3) No more than one trawl net at a time may be fished from any fishing vessel to take smelt.

(4) In the Columbia River upstream from Zone 1, it is unlawful to take smelt from a trawl vessel which exceeds 32 feet in overall length.

(5) For the purposes of this rule, Zone 1 is the area downstream of a straight line from a beacon light at Grays Point on the Washington bank to the flashing 4-second red buoy "44" off the easterly tip of Tongue Point on the Oregon Bank.

Stat. Auth.: ORS 183.325, 506.109 & 506.119

Stats. Implemented: ORS 506.129 & 507.030

Hist.: FWC 2-1985, f. & ef. 1-30-85; FWC 79-1986(Temp), f. & ef. 12-22-86; FWC 2-1987, f. & ef. 1-23-87; FWC 9-1994, f. 2-14-94, cert. ef. 2-15-94; FWC 15-1995, f. & cert. ef. 2-15-95; DFW 82-1998(Temp), f. 10-6-98, cert. ef. 10-7-98 thru 10-23-98; DFW 95-1999(Temp), f. 12-22-99, cert. ef. 12-26-99 thru 1-21-00; DFW 3-2000, f. & cert. ef. 1-24-00; DFW 8-2000(Temp), f. 2-18-00, cert. ef. 2-20-00 thru 2-29-00; Administrative correction 3-17-00; DFW 80-2000(Temp), f. 12-22-00, cert. ef. 1-1-01 thru 3-31-01; DFW 10-2001(Temp), f. & cert. ef. 3-6-01 thru 3-31-01; Administrative correction 6-21-01; DFW 115-2001(Temp), f. 12-13-01, cert. ef. 1-1-02 thru 3-31-02; DFW 9-2002, f. & cert. ef. 2-1-02; DFW 11-2002(Temp), f. & cert. ef. 2-8-02 thru 8-7-02; DFW 134-2002(Temp), f. & cert. ef. 12-19-02 thru 4-1-03; DFW 131-2003(Temp), f. 12-26-03, cert. ef. 1-1-04 thru 4-1-04; DFW 21-2004(Temp), f. & cert. ef. 3-18-04 thru 7-31-04; Administrative correction 8-19-04; DFW 130-2004(Temp), f. 12-23-04, cert. ef. 1-1-05 thru 4-1-05; DFW 8-2005(Temp), f. & cert. ef. 2-24-05 thru 4-1-05; Administrative correction 4-20-05; DFW 145-2005(Temp), f. 12-21-05, cert. ef. 1-1-06 thru 3-31-06; DFW 11-2006(Temp), f. & cert. ef. 3-9-06 thru 7-31-06; Administrative correction 8-22-06; DFW 131-2006(Temp), f. 12-20-06, cert. ef. 1-1-07 thru 6-29-07

635-042-0133

Sturgeon Size

(1) White sturgeon between 48 inches and 60 inches in overall length may be taken for commercial purposes from the Columbia River below Bonneville Dam during commercial salmon and sturgeon fishing seasons with the same fishing gear authorized for the taking of salmon or sturgeon.

(2) Length of a commercially caught sturgeon shall be defined as the shortest distance between the tip of the nose and the extreme tip of the tail while the fish lies on its side on a flat surface with its tail in a normal position.

(3) It is *unlawful* to:

(a) Mutilate or disfigure a sturgeon in any manner which extends or shortens its length to the legal limit, or to possess such sturgeon;

(b) Remove the head or tail of any sturgeon taken for commercial purposes prior to being received at the premises of a wholesale fish dealer or canner;

(c) Have in possession any white or green sturgeon smaller than 48 inches or larger than 60 inches in overall length.

Stat. Auth.: ORS 183.325, 506.109 & 506.119

Stats. Implemented: ORS 506.129 & 507.030

Hist.: FWC 2-1985, f. & ef. 1-30-85; FWC 79-1986(Temp), f. & ef. 12-22-86; FWC 2-1987, f. & ef. 1-23-87; FWC 9-1994, f. 2-14-94, cert. ef. 2-15-94; FWC 15-1995, f. & cert. ef. 2-15-95; DFW 82-1998(Temp), f. 10-6-98, cert. ef. 10-7-98 thru 10-23-98; DFW 42-2000, f. & cert. ef. 8-3-00; DFW 145-2005(Temp), f. 12-21-05, cert. ef. 1-1-06 thru 3-31-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 131-2006(Temp), f. 12-20-06, cert. ef. 1-1-07 thru 6-29-07

635-042-0135

Sturgeon Season

(1) White sturgeon may be taken for commercial purposes from the Columbia River below Bonneville Dam, Zones 1-5, during commercial salmon fishing seasons with the same fishing gear authorized for the taking of salmon.

(2) White sturgeon and adipose fin-clipped salmon may be taken for commercial purposes from the Columbia River below Bonneville Dam during commercial sturgeon/salmon fishing seasons using gill nets with a minimum mesh size of nine inches and a maximum mesh size of 9 3/4 inches. Only white sturgeon and adipose fin-clipped salmon may be sold from this fishery. The open fishing periods are:

6:00 p.m. Tuesday January 9, 2007 to 6:00 p.m. Wednesday January 10, 2007;

6:00 p.m. Tuesday January 16, 2007 to 6:00 p.m. Wednesday January 17, 2007;

6:00 p.m. Tuesday January 23, 2007 to 6:00 p.m. Wednesday January 24, 2007;

6:00 p.m. Tuesday January 30, 2007 to 6:00 p.m. Wednesday February 1, 2007;

6:00 p.m. Tuesday February 6, 2007 to 6:00 p.m. Wednesday February 7, 2007;

6:00 p.m. Tuesday February 13, 2007 to 6:00 p.m. Wednesday February 14, 2007;

6:00 p.m. Tuesday February 20, 2007 to 6:00 p.m. Wednesday February 21, 2007.

(3) Sturgeon and salmon must be delivered to wholesale fish dealers, canners, or fish buyers undressed (in the round).

(4) It is unlawful to:

(a) Take sturgeon and salmon by angling from any vessel that is engaged in commercial fishing (including the period of time the gear is fished) or has been engaged in commercial fishing on that same day or has commercially caught sturgeon or salmon aboard;

(b) Steal or otherwise molest or disturb any lawful fishing gear;

(c) Keep any fish taken under a commercial license for personal use;

(d) Remove the head or tail of any sturgeon taken for commercial purposes prior to being received at the premises of a wholesale fish dealer or canner;

(e) Sell or attempt to sell unprocessed or processed sturgeon eggs that have been taken from the Columbia River below Bonneville Dam;

(f) Purchase from commercial fishermen sturgeon eggs which have been removed from the body cavity prior to sale;

(g) Have in possession any white or green sturgeon smaller than 48 inches or larger than 60 inches in overall length;

(h) Gaff or penetrate sturgeon in any way while landing or releasing it.

(5) The Sandy River closed sanctuary, described in OAR 625-042-0005, is in effect during the fishing periods described in subsection (2) of this rule.

(6) The retention of green sturgeon is prohibited effective January 1, 2007.

Stat. Auth.: ORS 183.325, 506.109 & 506.119

Stats. Implemented: ORS 506.129 & 507.030

Hist.: FWC 85, f. & ef. 1-28-77; FWC 2-1978, f. & ef. 1-31-78; FWC 7-1978, f. & ef. 2-21-78; FWC 2-1979, f. & ef. 1-25-79; Renumbered from 635-035-0320; FWC 6-1980, f. & ef. 1-28-80; FWC 1-1981, f. & ef. 1-19-81; FWC 6-1982, f. & ef. 1-28-82; FWC 20-1982(Temp), f. & ef. 3-25-82; FWC 3-1983, f. & ef. 1-21-83; FWC 4-1984, f. & ef. 1-31-84; FWC 4-1986 (Temp), f. & ef. 1-28-86; FWC 79-1986(Temp), f. & ef. 12-22-86; FWC 2-1987, f. & ef. 1-23-87; FWC 8-1992, f. & cert. ef. 2-11-92; FWC 11-1993, f. 2-11-93, cert. ef. 2-16-93; FWC 9-1994, f. 2-14-94, cert. ef. 2-15-94; FWC 16-1994(Temp), f. & cert. ef. 3-3-94; FWC 3-1997, f. & cert. ef. 1-27-97; FWC 8-1997(Temp), f. & cert. ef. 2-14-97; FWC 42-1997, f. & cert. ef. 8-4-97; DFW 2-1998(Temp), f. 1-9-98, cert. ef. 1-12-98 thru 1-23-98; DFW 58-1998(Temp), f. & cert. ef. 8-4-98 thru 8-21-98; DFW 82-1998(Temp), f. 10-6-98, cert. ef. 10-7-98 thru 10-23-98; DFW 84-1998(Temp), f. & cert. ef. 10-22-98 thru 10-23-98; DFW 86-1998(Temp), f. & cert. ef. 10-28-98 thru 10-30-98; DFW 87-1998(Temp), f. & cert. ef. 11-5-98 thru 11-6-98; DFW 101-1998, f. & cert. ef. 12-24-98; DFW 7-1999(Temp), f. 2-12-99 & cert. ef. 2-15-99 thru 2-19-99; DFW 11-1999(Temp), f. 2-24-99, cert. ef. 2-25-99 thru 2-26-99; DFW 52-1999(Temp), f. & cert. ef. 8-2-99 thru 8-6-99; Administrative correction 11-17-99; DFW 95-1999(Temp), f. 12-22-99, cert. ef. 12-26-99 thru 1-21-00; DFW 3-2000, f. & cert. ef. 1-24-00; DFW 42-2000, f. & cert. ef. 8-3-00; DFW 80-2000(Temp), f. 12-22-00, cert. ef. 1-1-01 thru 3-31-01; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 115-2001(Temp), f. 12-13-01, cert. ef. 1-1-02 thru 3-31-02; DFW 9-2002, f. & cert. ef. 2-1-02; DFW 11-2002(Temp), f. & cert. ef. 2-8-02 thru 8-7-02; DFW 134-2002(Temp), f. & cert. ef. 12-19-02 thru 4-1-03; DFW 8-2003(Temp), f. 1-27-03, cert. ef. 1-28-03 thru 4-1-03; DFW 10-2003(Temp), f. & cert. ef. 2-3-03 thru 4-1-03; DFW 131-2003(Temp), f. 12-26-03, cert. ef. 1-1-04 thru 4-1-04; DFW 7-2004(Temp), f. & cert. ef. 2-2-04 thru 4-1-04; DFW 130-2004(Temp), f. 12-23-04, cert. ef. 1-1-05 thru 4-1-05; DFW 7-2005(Temp), f. & cert. ef. 2-22-05 thru 4-1-05; Administrative correction 4-20-05; DFW 145-2005(Temp), f. 12-21-05, cert. ef. 1-1-06 thru 3-31-06; DFW 3-2006(Temp), f. & cert. ef. 1-27-06 thru 3-31-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 131-2006(Temp), f. 12-20-06, cert. ef. 1-1-07 thru 6-29-07

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Rule Caption: Set the 2007 harvest quota for the commercial roe herring fishery in Yaquina Bay.

ADMINISTRATIVE RULES

Adm. Order No.: DFW 132-2006(Temp)

Filed with Sec. of State: 12-20-2006

Certified to be Effective: 1-1-07 thru 4-15-07

Notice Publication Date:

Rules Amended: 635-004-0027

Subject: Amend rule to set the 2007 harvest quota for the Yaquina Bay commercial roe herring fishery.

Rules Coordinator: Casaria Tuttle—(503) 947-6033

635-004-0027

Inland Waters Herring Season

There is no closed season for the commercial taking of herring in inland waters except:

(1) In all inland waters except Yaquina Bay, herring taken during the period January 1 through April 15 may only be sold for use as bait.

(2) In Yaquina Bay:

(a) The open season for the taking of herring is January 1 through December 31.

(b) The yearly harvest quota for the Yaquina Bay commercial roe herring fishery during the period of January 1 through April 15 shall not exceed 20% of the available spawning biomass as established in the Yaquina River Basin Fish Management Operating Principles and Objectives 635-500-0665(2). The available spawning biomass shall be determined by the ODFW Fish Division's Marine Resources Program. The harvest quota for the Yaquina Bay commercial roe herring fishery during the period January 1, 2007 through April 15, 2007 is 3.5 metric tons. Only fishers with a limited entry permit issued pursuant to ORS 508.765 may participate in this fishery.

(c) The factor used to convert an equivalent amount of "whole fish" resource in the Yaquina Bay commercial roe herring fishery during the period of January 1 through April 15 to the equivalent amount of herring eggs on kelp fishery is 0.2237.

(d) During the period January 1 through April 15 it is unlawful to:

(A) Fish commercially from midnight Friday through midnight Sunday with nets;

(B) Use any fishing gear or method of harvest for the taking of herring other than: a purse seine with a maximum length of 50 fathoms (300 feet), defined as the maximum distance from the first to last pursuing rings on the purse line; lampara net; hook and line "jigging;" or eggs-on-kelp method.

Stat. Auth.: ORS 506.109, 506.119

Stats. Implemented: ORS 506.129

Hist.: FWC 50-1979, f. & ef. 11-1-79; FWC 67-1980, f. & ef. 12-3-80; FWC 4-1983, f. 1-28-83, ef. 2-1-83; FWC 8-1983(Temp), f. & ef. 2-15-83; FWC 8-1984(Temp), f. & ef. 3-5-84, FWC 29-1984, f. & ef. 7-3-84; FWC 9-1985(Temp), f. & ef. 2-20-85; FWC 5-1986(Temp), f. & ef. 2-11-86; FWC 6-1989(Temp), f. 2-15-89, cert. ef. 2-16-89; FWC 18-1990(Temp), f. 2-23-90, cert. ef. 2-24-90; FWC 13-1991(Temp), f. & cert. ef. 2-22-91; FWC 21-1995(Temp), f. 3-7-95, cert. ef. 3-8-95; FWC 10-1996(Temp), f. & cert. ef. 3-5-96; FWC 14-1997(Temp), f. & cert. ef. 3-10-97; DFW 11-2003, f. & cert. ef. 2-10-03; DFW 112-2003, f. & cert. ef. 11-14-03; DFW 124-2004(Temp), f. 12-10-03, cert. ef. 1-1-04 thru 4-15-04; Administrative correction 8-2-04; DFW 119-2004(Temp), f. 12-13-04, cert. ef. 1-1-05 thru 4-15-05; Administrative correction 4-20-05; DFW 143-2005(Temp), f. 12-16-05, cert. ef. 1-1-06 thru 4-15-06; Administrative correction 4-19-06; DFW 132-2006(Temp), f. 12-20-06, cert. ef. 1-1-07 thru 4-15-07

Rule Caption: Interim commercial groundfish fishery harvest regulations for 2007.

Adm. Order No.: DFW 133-2006(Temp)

Filed with Sec. of State: 12-21-2006

Certified to be Effective: 1-1-07 thru 6-29-07

Notice Publication Date:

Rules Amended: 635-004-0018, 635-004-0033

Subject: Amend rules to conform to new federal commercial groundfish regulations and to implement management measures for the Oregon commercial nearshore groundfish fishery for 2007. Changes from 2006 rules include modifications to federal groundfish trip limits and rockfish conservation area boundaries; a reduction of the minimum length for lingcod from 24 to 22 inches; a reduction of the commercial harvest cap for black rockfish by 1.9 metric tons; and revised cumulative trip limits for the commercial nearshore fishery. The Oregon Fish and Wildlife Commission will meet to consider adopting permanent rules specifying 2007 harvest regulations for groundfish fisheries on January 11, 2007.

Rules Coordinator: Casaria Tuttle—(503) 947-6033

635-004-0018

Scope of Rules

Division 004 incorporates into Oregon Administrative Rules, by reference, the groundfish specifications and management measures for 2007 included in the **Biennial Specifications and Management Measures**, Final Rule, published in the **Federal Register** in **December 2006**, and in addition to the extent they are consistent with these rules, **Code of Federal Regulations, Title 50 Part 660, Subpart G (61FR34572)**, July 2, 1996, as amended to incorporate the standards in the Biennial Specifications and Management Measures, Final Rule. Therefore, persons must consult the Federal Regulations in addition to Division 004 to determine all applicable groundfish fishing requirements. Where regulations refer to the fishery management area, that area is extended from shore to three nautical miles from shore coterminous with the Exclusive Economic Zone. A copy of the Federal Regulations may be obtained by contacting the National Oceanic and Atmospheric Administration's National Marine Fisheries Service at www.nwr.noaa.gov or 7600 Sand Point Way NE, Seattle, WA 98115-0070.

Stat. Auth.: ORS 496.138 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: FWC 141-1991, f. 12-31-91, cert. ef. 1-1-92; FWC 95-1994, f. 12-28-94, cert. ef. 1-1-95; FWC 71-1996, f. 12-26-96, cert. ef. 1-1-97; DFW 1-1998, f. & cert. ef. 1-9-98; DFW 91-1998, f. & cert. ef. 11-25-98; DFW 98-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 81-2000, f. 12-22-00, cert. ef. 1-1-01; DFW 118-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 135-2002, f. 12-23-02, cert. ef. 1-1-03; DFW 112-2003, f. & cert. ef. 11-14-03; DFW 128-2003, f. 12-15-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 133-2006(Temp), f. 12-21-06, cert. ef. 1-1-07 thru 6-29-07

635-004-0033

Groundfish Restrictions

(1) The season for most species of ocean food fish is open year-round, until catch quotas are met (where applicable). Regulations for the following species or species groups of ocean food fish change throughout the season and the Oregon Administrative Rules and federal regulations should be consulted before fishing:

- (a) Minor Nearshore Rockfish
- (b) Minor Shelf Rockfish
- (c) Minor Slope Rockfish
- (d) Black Rockfish
- (e) Blue Rockfish
- (f) Cabezon
- (g) Canary Rockfish
- (h) Greenling
- (i) Tiger Rockfish
- (j) Vermilion Rockfish
- (k) Widow Rockfish
- (l) Yelloweye Rockfish
- (m) Yellowtail Rockfish
- (n) Darkblotched Rockfish
- (o) Pacific Ocean Perch
- (p) Longspine Thornyhead
- (q) Shortspine Thornyhead
- (r) Arrowtooth Flounder
- (s) Dover Sole
- (t) Petrale Sole
- (u) Rex Sole
- (v) Other Flatfish
- (w) Lingcod
- (x) Sablefish
- (y) Pacific Whiting

(2) For the purpose of this rule, "Other nearshore rockfish" means: black and yellow (*Sebastes chrysomelas*); brown (*S. auriculatus*); calico (*S. dalli*); China (*S. nebulosus*); copper (*S. caurinus*); gopher (*S. carnatus*); grass (*S. rastelliger*); kelp (*S. atrovirens*); olive (*S. serranoides*); quillback (*S. maliger*); and treefish (*S. serripes*).

(3) For the purpose of this rule a "commercial harvest cap" is defined as the total fishery-related mortality for a given species, or species group, that may occur in a single calendar year in Oregon commercial fisheries. For 2007, the commercial harvest cap for black rockfish is 100.6 metric tons.

(4) For the purpose of this rule a "commercial landing cap" is defined as the total landed catch of a given species, or species group, that may be taken in a single calendar year in Oregon commercial fisheries. For 2007, the commercial landing caps are:

- (a) Black rockfish and blue rockfish combined of 104.6 metric tons.
- (b) Other nearshore rockfish, 12.0 metric tons.
- (c) Cabezon, 31.3 metric tons.
- (d) Greenling, 23.4 metric tons.

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(5) For the purpose of this rule, the periods to which cumulative trip limits apply are: January through February (period 1); March through April (period 2); May through June (period 3); July through August (period 4); September through October (period 5); and November through December (period 6).

(6) For black and blue rockfish combined, no vessel may land more than:

- (a) 600 pounds in period 1;
 - (b) 800 pounds in period 2;
 - (c) 1600 pounds in each of periods 3, 4, and 5; and
 - (d) 800 pounds in period 6.
- (7) In each period, no vessel may land more than:
- (a) 600 pounds of other nearshore rockfish, combined;
 - (b) 2,000 pounds of cabezon; or
 - (c) 400 pounds of greenling species.

Stat. Auth.: ORS 506.109 & 506.119

Stats. Implemented: ORS 506.129

Hist.: FWC 73-1982(Temp), f. & ef. 10-27-82; FWC 1-1983 (Temp), f. & ef. 1-6-83; FWC 10-1983, f. & ef. 3-1-83; FWC 23-1983(Temp), f. & ef. 6-14-83; FWC 41-1983(Temp), f. & ef. 9-6-83; FWC 3-1984, f. & ef. 1-26-84; FWC 18-1984 (Temp), f. 5-4-84, ef. 5-6-84; FWC 36-1984(Temp), f. 7-31-84, ef. 8-1-84; FWC 1-1985(Temp), f. & ef. 1-4-85; FWC 5-1985, f. & ef. 2-19-85; FWC 18-1985(Temp), f. 4-26-85, ef. 4-27-85; FWC 52-1985(Temp), f. 8-30-85, ef. 9-1-85; FWC 65-1985 (Temp), f. & ef. 10-4-85; FWC 82-1985, f. 12-16-85, ef. 1-1-86; FWC 50-1986(Temp), f. & ef. 8-29-86; FWC 81-1986, f. 12-31-86, ef. 1-1-87; FWC 57-1987(Temp), f. & ef. 7-24-87; FWC 104-1987, f. 12-18-87, ef. 1-1-88; FWC 97-1988(Temp), f. & cert. ef. 1-6-88; FWC 103-1988, f. 12-29-88, cert. ef. 1-1-89; FWC 49-1989(Temp), f. & cert. ef. 7-26-89; FWC 69-1990 (Temp), f. 7-24-90, cert. ef. 7-25-90; FWC 122-1990, f. 11-26-90, cert. ef. 11-29-90; FWC 130-1990, f. 12-31-90, cert. ef. 1-1-91; FWC 48-1991(Temp), f. & cert. ef. 5-3-91; FWC 82-1991(Temp), f. 7-30-91, cert. ef. 7-31-91; FWC 83-1991, f. 8-1-91, cert. ef. 7-31-91; FWC 58-1992(Temp), f. & cert. ef. 7-29-92; FWC 141-1991, f. 12-31-91, cert. ef. 1-1-92; FWC 9-1992, f. 2-20-92, cert. ef. 2-21-92; FWC 58-1992(Temp), f. & cert. ef. 7-29-92; FWC 6-1993, f. 1-28-93, cert. ef. 2-1-93; FWC 10-1993, f. & cert. ef. 2-10-93; FWC 1-1994, f. & cert. ef. 1-14-94; FWC 32-1994, f. & cert. ef. 6-3-94; FWC 44-1994, f. 7-26-94, cert. ef. 8-1-94; FWC 95-1994, f. 12-28-94, cert. ef. 1-1-95; FWC 45-1995, f. & cert. ef. 6-1-95; FWC 94-1995(Temp), f. 12-29-95, cert. ef. 1-1-96; FWC 9-1996, f. 3-5-96, cert. ef. 3-8-96; FWC 118-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 119-2002(Temp), f. 10-24-02, cert. ef. 10-25-02 thru 12-31-02; DFW 135-2002, f. 12-23-02, cert. ef. 1-1-03; DFW 14-2003(Temp), f. 2-20-03, cert. ef. 2-21-03 thru 8-19-03; DFW 25-2003, f. & cert. ef. 3-26-03; DFW 60-2003(Temp), f. 7-15-03, cert. ef. 7-16-03 thru 12-31-03; DFW 79-2003(Temp), f. & cert. ef. 8-18-03 thru 12-31-03; DFW 102-2003(Temp), f. 9-30-03, cert. ef. 10-1-03 thru 12-31-03; DFW 128-2003, f. 12-15-03, cert. ef. 1-1-04; DFW 76-2004(Temp), f. 7-23-04, cert. ef. 7-28-04 thru 12-31-04; DFW 100-2004(Temp), f. & cert. ef. 9-28-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 120-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 31-2005(Temp), f. 4-29-05, cert. ef. 5-1-05 thru 10-27-05; DFW 82-2005(Temp), f. 7-29-05, cert. ef. 8-1-05 thru 12-31-05; DFW 86-2005(Temp), f. & cert. ef. 8-3-05 thru 12-31-05; DFW 119-2005(Temp), f. 10-10-05, cert. ef. 10-11-05 thru 12-31-05; DFW 135-2005(Temp), f. 11-30-05, cert. ef. 12-1-05 thru 12-31-05; DFW 138-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 50-2006(Temp), f. 6-28-06, cert. ef. 7-1-06 thru 12-27-06; DFW 83-2006(Temp), f. 8-10-06, cert. ef. 8-11-06 thru 2-6-07; DFW 108-2006(Temp), f. 9-29-06, cert. ef. 10-1-06 thru 12-31-06; DFW 133-2006(Temp), f. 12-21-06, cert. ef. 1-1-07 thru 6-29-07

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Rule Caption: Interim recreational groundfish fishery harvest regulations for 2007.

Adm. Order No.: DFW 134-2006(Temp)

Filed with Sec. of State: 12-21-2006

Certified to be Effective: 1-1-07 thru 6-29-07

Notice Publication Date:

Rules Amended: 635-039-0080, 635-039-0090

Subject: This rule is needed to allow Oregon to conform to federal regulations effective 1-1-07. Adopting these measures will allow Oregon to continue the recreational marine fish daily bag limit at 6 fish; prohibit recreational fishing for groundfish in the Stonewall Bank Yelloweye Rockfish Conservation Area; close the sport groundfish fishery outside 40 fathoms between April 1 and September 30; reduce the 2007 sport harvest cap for black rockfish by 6 metric tons; adopt a separate flatfish daily bag limit of 25 fish; and reduce the minimum length for lingcod from 24 inches to 22 inches.

Rules Coordinator: Casaria Tuttle—(503) 947-6033

635-039-0080

Purpose and Scope

(1) The purpose of division 039 is to provide for management of sport fisheries for marine fish, shellfish, and marine invertebrates in the Pacific Ocean, coastal bays, and beaches over which the State has jurisdiction.

(2) Division 039 incorporates, by reference:

(a) The sport fishing regulations of the State, included in the document entitled **2007 Oregon Sport Fishing Regulations**. Therefore, persons must consult the **2007 Oregon Sport Fishing Regulations** in addition to division 011 and division 039 to determine all applicable sport fishing requirements for marine fish, shellfish and marine invertebrates.

(b) The Pacific Council Decisions or News documents dated June and November 2006 (copy available from agency); and to the extent consistent with that document, Title 50 of the Code of Federal Regulations, Part 300, Subpart E (61FR35550, July 5, 1996) as amended by Federal Regulations, and Title 50 of the Code of Federal Regulations, Part 660 Vol. 71, No. 189, dated September 29, 2006; to determine regulations applicable to this fishery.

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

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; Renumbered from 635-39-105 - 635-39-135; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 25-1997, f. 4-22-97, cert. ef. 5-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 91-1998, f. & cert. ef. 11-25-98; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 98-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 81-2000, f. 12-22-00, cert. ef. 1-1-01; DFW 118-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 120-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 33-2005(Temp), f. 4-29-05, cert. ef. 5-1-05 thru 10-27-05; DFW 54-2005(Temp), f. 6-10-05, cert. ef. 6-12-05 thru 11-30-05; DFW 56-2005, f. 6-21-05, cert. ef. 7-1-05; DFW 71-2005(Temp), f. & cert. ef. 7-7-05 thru 11-30-05; DFW 89-2005(Temp), f. & cert. ef. 8-12-05 thru 12-12-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 138-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 134-2006(Temp), f. 12-21-06, cert. ef. 1-1-07 thru 6-29-07

635-039-0090

Inclusions and Modifications

(1) The **2007 Oregon Sport Fishing Regulations** provide requirements for sport fisheries for marine fish, shellfish, and marine invertebrates in the Pacific Ocean, coastal bays, and beaches, commonly referred to as the Marine Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2007 Oregon Sport Fishing Regulations**.

(2) For the purposes of this rule, a "harvest target" is defined as the Oregon share of the regional recreational harvest guideline for yelloweye rockfish and canary rockfish that may be impacted (combined landings and other fishery related mortality) by the Oregon sport fishery in a single calendar year.

(a) The regional recreational harvest guidelines for these species in 2007 are specified in the Pacific Council Decisions or News documents dated June and November, 2006.

(b) Harvest targets for yelloweye rockfish and canary rockfish effective at the start of the Oregon sport fishery in 2007 are:

(A) Yelloweye rockfish, 3.3 metric tons.

(B) Canary rockfish, 6.6 metric tons.

(c) Harvest targets for yelloweye rockfish and canary rockfish [and lingcod] may be revised inseason following consultation with Washington Department of Fish and Wildlife provided that:

(A) Regional recreational harvest guidelines for these species are not projected to be exceeded as a result of any inseason revisions to a harvest target or targets; and

(B) Inseason revisions to the harvest target or targets benefit the Oregon sport fishery.

(3) For the purposes of this rule, a "sport harvest cap" is defined as the amount that may be impacted (combined landings and other fishery related mortality) by the Oregon sport fishery in a single calendar year.

(a) For 2007, the sport harvest cap for black rockfish is 318 metric tons.

(4) For the purposes of this rule, "Other nearshore rockfish" means the following rockfish species: black and yellow (*Sebastes chrysomelas*); brown (*S. auriculatus*); calico (*S. dalli*); China (*S. nebulosus*); copper (*S. caurinus*); gopher (*S. carnatus*); grass (*S. rastelliger*); kelp (*S. atrovirens*); olive (*S. serranoides*); quillback (*S. maliger*); and treefish (*S. serripes*).

(5) For the purposes of this rule a "sport landing cap" is defined as the total landings for a given species, or species group, that may be taken in a single calendar year by the ocean boat fishery. For 2007 the sport landing caps are:

(a) Black rockfish and blue rockfish combined, 359 metric tons.

(b) Other nearshore rockfish, 11.3 metric tons.

(c) Cabezon, 15.8 metric tons.

(d) Greenling, 5.2 metric tons.

(6) In addition to the regulations for Marine Fish in the **2007 Oregon Sport Fishing Regulations**, the following apply for the sport fishery in the Marine Zone in 2007:

(a) Lingcod (including green colored lingcod): 2 fish daily bag limit.

(b) All rockfish ("sea bass" "snapper"), greenling ("sea trout"), cabezon, skates, and other marine fish species not listed in the **2007 Oregon Sport Fishing Regulations** in the Marine Zone, located under the category of Species Name, Marine Fish: 6 fish daily bag limit in aggregate

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(total sum or number). Retention of yelloweye rockfish and canary rockfish is prohibited.

(c) Flatfish (flounder, sole, sanddabs, turbot, and all halibut species except Pacific halibut): 25 fish daily bag limit in aggregate (total sum or number).

(d) Retention of all marine fish listed under the category of Species Name, Marine Fish, except sablefish, herring, anchovy, smelt, sardine, striped bass, hybrid bass, and offshore pelagic species (excluding leopard shark and soupfin shark), is prohibited when Pacific halibut is retained on the vessel during open days for the all-depth sport fishery for Pacific halibut north of Humbug Mountain. North of Cape Falcon, retention of Pacific cod also is allowed when Pacific halibut is retained on the vessel during open days for the all-depth sport fishery for Pacific halibut. Persons must also consult the Pacific Council Decisions; Title 50 of the Code of Federal Regulations, Part 300, Subpart E (61FR35550, July 5, 1996); and the annual Pacific Halibut Fishery Regulations as amended by Federal Regulations to determine all rules applicable to the taking of Pacific halibut.

(e) Harvest methods and other specifications for marine fish in subsections (6)(a), (b) and (c) including the following:

(A) Minimum length for lingcod, 22 inches.

(B) Minimum length for cabezon, 16 inches.

(C) Minimum length for greenling, 10 inches.

(D) May be taken by angling, hand, bow and arrow, spear, gaff hook, snag hook and herring jigs.

(E) Mutilating the fish so the size or species cannot be determined prior to landing or transporting mutilated fish across state waters is prohibited.

(f) Sport fisheries for species in subsections (6) (a), (b) and (c) and including leopard shark and soupfin shark are open January 1 through December 31, twenty-four hours per day, except that ocean waters are closed for these species during April 1 through September 30, outside of the 40-fathom curve (defined by latitude and longitude) as shown on Title 50 Code of Federal Regulations Part 660 Section 384 Vol. 71, No. 189, dated September 29, 2006. A 20-fathom, 25-fathom, or 30-fathom curve, as shown on Title 50 Code of Federal Regulations Part 660 Section 391 Vol. 71, No. 189, dated September 29, 2006 may be implemented as the management line as in-season modifications necessitate.

(g) The Stonewall Bank Yelloweye Rockfish Conservation Area (YRCA) is defined by coordinates specified in Title 50 Code of Federal Regulations Part 660 Section 390. Within the YRCA, it is unlawful to fish for, take, or retain species listed in subsections (6)(a), (6)(b) and (6)(c) of this rule, leopard shark, soupfin shark, and Pacific halibut using recreational fishing gear. A vessel engaged in recreational fishing within the YRCA is prohibited from possessing any species listed in subsections (6)(a), (6)(b) and (6)(c) of this rule, leopard shark, soupfin shark, and Pacific halibut. Recreational fishing vessels in possession of species listed in subsections (6)(a), (6)(b) and (6)(c) and including leopard shark, soupfin shark, and Pacific halibut may transit the YRCA without fishing gear in the water.

(7) Razor clams may be taken by hand, shovel, or cylindrical gun or tube. The opening of the gun/tube must be either circular or elliptical with the circular gun/tube opening having a minimum outside diameter of 4 inches and the elliptical gun/tube opening having minimum outside diameter dimensions of 4 inches long and 3 inches wide.

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

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

Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119

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

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 22-1994, f. 4-29-94, cert. ef. 5-2-94; FWC 29-1994(Temp), f. 5-20-94, cert. ef. 5-21-94; FWC 31-1994, f. 5-26-94, cert. ef. 6-20-94; FWC 43-1994(Temp), f. & cert. ef. 7-19-94; FWC 83-1994(Temp), f. 10-28-94, cert. ef. 11-1-94; FWC 95-1994, f. 12-28-94, cert. ef. 1-1-95; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 25-1995, f. 3-29-95, cert. ef. 4-1-95; FWC 26-1995, 3-29-95, cert. ef. 4-2-95; FWC 36-1995, f. 5-3-95, cert. ef. 5-5-95; FWC 43-1995(Temp), f. 5-26-95, cert. ef. 5-28-95; FWC 46-1995(Temp), f. & cert. ef. 6-2-95; FWC 58-1995(Temp), f. 7-3-95, cert. ef. 7-5-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 28-1996(Temp), f. 5-24-96, cert. ef. 5-26-96; FWC 30-1996(Temp), f. 5-31-96, cert. ef. 6-2-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 68-1999(Temp), f. & cert. ef. 9-17-99 thru 9-30-99; administrative correction 11-17-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 118-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 114-2003(Temp), f. 11-18-03, cert. ef. 11-21-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 128-2003, f. 12-15-03, cert. ef. 1-1-04; DFW 83-2004(Temp), f. 8-17-04, cert. ef. 8-18-04 thru 12-31-04; DFW 91-2004(Temp), f. 8-31-04, cert. ef. 9-2-04 thru 12-31-04; DFW 97-2004(Temp), f. 9-22-04, cert. ef. 9-30-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 34-2005(Temp), f. 4-29-05, cert. ef. 5-1-05 thru 10-27-05; DFW 75-2005(Temp), f. 7-13-05, cert. ef. 7-16-05 thru 12-31-05; DFW 87-2005(Temp), f. 8-8-05, cert. ef. 8-11-05 thru 12-31-05; DFW 121-2005(Temp), f. 10-12-05, cert. ef. 10-18-05 thru 12-31-05; DFW 129-2005(Temp), f. & cert. ef. 11-29-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 138-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 141-2005(Temp), f. 12-12-05, cert. ef. 12-30-05 thru 12-31-05; Administrative correction 1-19-06; DFW 61-2006, f. 7-13-06, cert.

ef. 10-1-06; DFW 65-2006(Temp), f. 7-21-06, cert. ef. 7-24-06 thru 12-31-06; DFW 105-2006(Temp), f. 9-21-06, cert. ef. 9-22-06 thru 12-31-06; DFW 134-2006(Temp), f. 12-21-06, cert. ef. 1-1-07 thru 6-29-07

Rule Caption: Allow replacement crab buoy tags for extraordinary and unavoidable events.

Adm. Order No.: DFW 135-2006(Temp)

Filed with Sec. of State: 12-26-2006

Certified to be Effective: 12-26-06 thru 6-15-07

Notice Publication Date:

Rules Amended: 635-005-0055

Rules Suspended: 635-005-0055(T)

Subject: Amend rule to provide an opportunity for commercial ocean Dungeness crab permit holders to obtain replacements for crab buoy tags in lieu of provisions already in rule for replacement tags in the event of an extraordinary event that could not have been reasonable avoided. The Director shall appoint a buoy tag replacement advisory board and may seek their advice before making a determination whether replacement tags are issued. Amend rule to require the immediate return of recovered buoy tags, for which replacement tags had previously been issued.

Rules Coordinator: Casaria Tuttle—(503) 947-6033

635-005-0055

Fishing Gear

It is *unlawful* for commercial purposes to:

(1) Take crab by any means other than crab rings or crab pots (ORS 509.415); a crab ring is any fishing device that allows crab unrestricted entry or exit while fishing.

(2) Use any crab pot which is greater than thirteen cubic feet in volume, calculated using external dimensions.

(3) Use any crab pot which does not include a minimum of two circular escape ports of at least 4-1/4 inches inside diameter located on the top or side of the pot. If escape ports are placed on the side of the pot, they shall be located in the upper half of the pot.

(4) Use any crab pot which does not have a release mechanism. Acceptable release mechanisms are:

(a) Iron lid strap hooks constructed of iron or "mild" steel rod (not stainless steel) not to exceed 1/4-inch (6mm) in diameter;

(b) A single loop of untreated cotton or other natural fiber twine, or other twine approved by the Department not heavier than 120 thread size between pot lid tiedown hooks and the tiedown straps; or

(c) Any modification of the wire mesh on the top or side of the pot, secured with a single strand of 120 thread size untreated cotton, natural fiber, or other twine approved by the Department which, when removed, will create an opening of at least five inches in diameter.

(5) Place, operate, or leave crab rings or pots in the Pacific Ocean and Columbia River or in any bay or estuary during the closed season, except that in only the Pacific Ocean and Columbia River, rings or pots may be placed no more than 64 hours immediately prior to the date the Dungeness crab season opens. In addition, unbaited crab rings or pots with open release mechanisms may be left in the Pacific Ocean (not including the Columbia River) for a period not to exceed 14 days following the closure of the Dungeness crab season.

(6) Use commercial crab pots in the Columbia River or Pacific Ocean unless the pots are individually marked with a surface buoy bearing, in a visible and legible manner, the brand of the owner and an ODFW buoy tag, provided that:

(a) The brand is a number registered with and approved by the Department;

(b) Only one unique buoy brand shall be registered to any one permitted vessel;

(c) All crab pots fished by a permitted vessel must use only the Oregon buoy brand number registered to that vessel in the area off of Oregon;

(d) The Department shall issue crab buoy tags to the owner of each commercial crab permit in the amount determined by OAR 635-006-1015(1)(g)(E);

(e) All buoy tags eligible to a permit holder must be purchased from the Department at cost and attached to the gear prior to setting gear; and

(f) Buoys attached to a crab pot must have the buoy tag securely attached to the first buoy on the crab pot line (the buoy closest to the crab pot) at the end away from the crab pot line;

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(g) Additional buoy tags to replace lost tags will be issued by the Department as follows:

(A) After 45 days following the season opening in the area fished, up to ten percent of the tags initially issued for that season; or

(B) For a catastrophic loss, defined as direct loss of non-deployed gear in the event of a vessel being destroyed due to fire, capsizing, or sinking. Documentation of a catastrophic loss may include any information the Department considers appropriate, such as fire department or US Coast Guard reports; or

(C)(i) If the Director finds that the loss of the crab pot buoy tags was due to an extraordinary event and could not have been avoided with the exercise of reasonable diligence.

(ii) The Director shall appoint up to 5 persons familiar with the commercial fishing industry off Oregon to constitute the crab pot buoy tag replacement advisory board (Advisory Board). Three members of the Advisory Board shall constitute a quorum for purposes of making the recommendation. The director may seek the recommendation of the Advisory Board before making a determination under subsection (6)(g)(C)(i) with respect to whether the loss of the pots was due to an extraordinary event and could have been avoided with the exercise of reasonable diligence.

(iii) Upon receipt of the declaration of loss required by subsection (6)(g)(D) of this rule, and a request for replacement tags under subsection (6)(g)(C) of this rule, the Director or his designee may convene the Advisory Board and provide an opportunity for the permit holder requesting the replacement tags to describe to the Advisory Board why the event causing the loss of the tags to be replaced was caused by an extraordinary event and could not have been avoided with the exercise of reasonable diligence. The Director or his designee shall forward the Advisory Board's recommendation along with the Director's order to the permit holder and to ODFW License Services.

(D) Permit holders must obtain, complete, and sign a declaration of loss under penalty of perjury in the presence of an authorized Department employee. The declaration shall state the number of buoy tags lost, the specific tag number of each lost tag, the location and date where lost gear or tags were last observed, and the presumed cause of the loss. All buoy tags identified as lost become null and void upon signing of declaration and remain so even if recovered at a later date. Any lost buoy tags that are recovered shall be immediately returned to ODFW Headquarters.

(7) Remove, damage, or otherwise tamper with crab buoy or pot tags except when lawfully applying or removing tags on the vessel's buoys and pots.

(8) Possess, use, control, or operate any crab pot not bearing a tag identifying the pot as that vessel's, or buoys not bearing tags issued by the Department to that vessel, except:

(a) To set gear as allowed under OAR 635-006-1015; or

(b) Under a waiver granted by the Department to allow one time retrieval of permitted crab gear to shore by another crab permitted vessel provided that:

(A) Vessel is incapacitated due to major mechanical failure or destroyed due to fire, capsizing, or sinking;

(B) Circumstances beyond the control of the permit holder created undue hardship as defined by OAR 635-006-1095(7)(d);

(C) A Request must be in writing and a waiver approved and issued prior to retrieval.

(D) A copy of the waiver must be on board the vessel making the retrieval. (Contact Oregon Department of Fish and Wildlife License Services, Salem for guidelines.)

(c) A vessel may transit through the Columbia River and the Pacific Ocean adjacent to Oregon while possessing crab pots not bearing Oregon buoy tags provided that:

(A) The vessel is authorized to participate in the Dungeness crab fishery of an adjacent state; and

(B) The ODFW Marine Resources Program in Newport has received notice in writing 48 hours prior to transit with vessel name, number of pots, departure location and destination, and approximate time of departure and arrival.

(9) Attach one crab pot to another crab pot or ring net by a common groundline or any other means that connects crab pots together,

(10) Take crabs for commercial purposes by crab pots from any bay or estuary except the Columbia River.

(11) Operate more than 15 crab rings from any one fishing vessel in bays or estuaries, except the Columbia River.

(12) Take or fish for Dungeness crab for commercial purposes in the Columbia River or Pacific Ocean adjacent to the state of Oregon unless a

crab pot allocation has been issued to the permit required under OAR 635-006-1015(1)(g).

(13) Deploy or fish more crab pots than the number of pots assigned by the crab pot allocation certificate or to use any vessel other than the vessel designated on the crab pot allocation, except to set gear as allowed under OAR 635-006-1015.

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.109 & 506.129

Hist.: FC 246, f. 5-5-72, ef. 5-15-72; FC 285(74-20), f. 11-27-74, ef. 12-25-74, Renumbered from 625-010-0160; FWC 49-1978, f. & ef. 9-27-78, Renumbered from 635-036-0130; FWC 56-1982, f. & ef. 8-27-82; FWC 81-1982, f. & ef. 11-4-82; FWC 82-1982(Temp), f. & ef. 11-9-82; FWC 13-1983, f. & ef. 3-24-83; FWC 11-1984, f. 3-30-84, ef. 9-16-84, except section (5) per FWC 45-1984, f. & ef. 8-30-84; FWC 72-1984, f. & ef. 10-22-84; FWC 30-1985, f. 6-27-85, ef. 7-1-85; FWC 78-1986 (Temp), f. & ef. 12-1-86; FWC 97-1987(Temp), f. & ef. 11-17-87; FWC 102-1988, f. 11-29-88, cert. ef. 12-29-88; FWC 107-1990, f. & cert. ef. 10-1-90; FWC 70-1993, f. 11-9-93, cert. ef. 11-11-93; FWC 84-1994, f. 10-31-94, cert. ef. 12-1-94; FWC 68-1996(Temp), f. & cert. ef. 12-5-96; FWC 2-1997, f. 1-27-97, cert. ef. 2-1-97; DFW 45-2006, f. 6-20-06, cert. ef. 12-1-06; DWF 96-2006(Temp), f. & cert. ef. 9-8-06 thru 3-6-07; DFW 97-2006(Temp), f. 9-8-06, cert. ef. 9-9-06 thru 3-7-07; DFW 123-2006(Temp), f. 11-28-06, cert. ef. 12-1-06 thru 3-7-06; DFW 135-2006(Temp), f. & cert. ef. 12-26-06 thru 6-15-07

Rule Caption: Establish average market value of food fish for determining damages related to commercial fishing violations.

Adm. Order No.: DFW 1-2007

Filed with Sec. of State: 1-12-2007

Certified to be Effective: 1-12-07

Notice Publication Date: 12-1-06

Rules Amended: 635-006-0232

Subject: Amend rules to establish the average market value of food fish species used to determine damages for commercial fishing violations.

Rules Coordinator: Casaria Tuttle—(503) 947-6033

635-006-0232

Damages for Commercial Fishing Violations

(1) For purposes of ORS 506.720 the following shall be the 2007 average market value of food fish species. For species not listed, the average market value shall be the price per pound paid to law enforcement officials for any fish or shellfish confiscated from the person being assessed damages, or the average price per pound paid for that species during the month in which the violation occurred, whichever is greater. Unless otherwise noted, the amount given is the price per pound and is based on round weight.

(a) FISH:

(A) Anchovy, Northern \$0.01.

(B) Cabezon, \$3.46.

(C) Carp \$0.50.

(D) Cod, Pacific \$0.49.

(E) Flounder, arrowtooth \$0.11.

(F) Flounder, starry \$0.39.

(G) Greenling, \$4.67.

(H) Grenadier \$0.11.

(I) Hagfish \$0.45.

(J) Hake, Pacific (Whiting) \$0.06.

(K) Halibut, Pacific, dressed weight with head on \$3.52.

(L) Herring, Pacific \$0.20.

(M) Lingcod, \$1.78.

(N) Mackerel, jack \$0.03, Pacific \$0.02.

(O) Opah \$1.00 (2005 price).

(P) Pacific ocean perch, \$0.47.

(Q) Pollock, Walleye \$0.67 (2001 price).

(R) Rockfish:

(i) Black, \$1.96.

(ii) Blue, \$2.17.

(iii) Canary, using trawl gear \$0.50, using line and pot gear, \$0.50.

(iv) Darkblotched, \$0.46.

(v) Nearshore, \$5.86.

(vi) Shelf, \$0.43.

(vii) Shortbelly, using trawl gear \$0.29 (2003 price).

(viii) Slope, using trawl gear, \$0.48 using line and pot gear \$0.58.

(ix) Widow \$0.47.

(x) Yelloweye, using trawl gear \$0.51, using line and pot gear \$1.00.

(xi) Yellowtail, using trawl gear \$0.50, using line and pot gear \$1.17.

(S) Sablefish:

(i) Dressed weight, ungraded \$3.51, extra small \$2.12, small \$3.16, medium \$3.82 and large \$4.16.

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(ii) Round weight, ungraded \$1.95, extra small \$0.95, small \$1.20, medium \$1.50 and large \$1.95.

(T) Salmon, Chinook, Ocean dressed weight: large \$5.47, medium \$5.46, small \$4.78 and mixed size \$5.50.

(U) Salmon, coho, Ocean dressed weight: mixed size \$2.91.

(V) Salmon, pink, ocean dressed weight, ungraded, \$1.25 (2005 price).

(W) Sanddab, Pacific \$0.42.

(X) Sardine, Pacific \$0.05.

(Y) Shad, American:

(i) Coast, ungraded, gill net and set net, \$0.30 (2003 price).

(ii) Columbia, ungraded \$0.22.

(iii) Midwater trawl \$0.01 (2005 price).

(Z) Shark, blue \$0.41, Pacific sleeper \$0.62 (2000 price), shortfin mako \$1.50, sixgill, \$0.50 (2001 price), soupfin \$0.48, spiny dogfish \$0.15, scalloped hammerhead \$0.12 (2001 price), silky \$0.18 (2001 price), thresher dressed weight \$1.50 (1995 price) and round weight \$0.70 and other species \$0.10 (2004 price).

(AA) Skates and Rays \$0.15.

(BB) Smelt, Eulachon (Columbia River), \$2.07 and other species \$2.00 (2004 price).

(CC) Sole, butter \$0.32, curlfin (turbot) \$0.22, Dover \$0.38, English \$0.31, flathead \$0.32, petrale \$1.00, rex \$0.36, rock \$0.36 and sand \$0.63.

(DD) Steelhead \$0.41.

(EE) Sturgeon, green \$0.86 and white \$2.01.

(FF) Surfperch \$1.00.

(GG) Swordfish \$3.25 (2003 price).

(HH) Thornyhead (Sebastolobus), longspine \$0.65 and shortspine \$0.78.

(II) Tuna, albacore \$0.94, bluefin \$2.50 (2004 price) and yellowfin \$3.49.

(JJ) Walleye \$1.61.

(KK) Wolf-eel \$0.63.

(LL) Wrymouth \$0.18.

(b) CRUSTACEANS:

(A) Crab: box \$2.00, Dungeness bay \$2.74 and ocean \$1.57, rock \$1.43 and Tanner \$0.69 (2003 price).

(B) Crayfish \$1.84.

(C) Shrimp: brine \$1.00, coonstripe \$3.00, ghost (sand) \$2.33, mud \$1.28, pink \$0.37 (applied to the gross round weight of the confiscated pink shrimp reported on the fish receiving ticket) and spot \$8.10.

(D) Water flea (Daphnia) \$0.65 (2002 price).

(c) MOLLUSKS:

(A) Abalone, flat \$16.30.

(B) Clams: butter \$0.30, cockle \$0.48, gaper \$0.30, littleneck \$2.00, razor \$2.07 and softshell \$2.40 (2005 price).

(C) Mussels, ocean \$0.74.

(D) Octopus 1.03.

(E) Scallop, rock \$0.70 (2005 price).

(F) Scallop, weathervane dressed weight (shucked) \$5.73 (2002 price) and round weight \$0.55 (2002 price).

(G) Squid 0.23.

(d) OTHER INVERTEBRATES:

(A) Jellyfish \$10.00 (2004 price).

(B) Sea cucumber \$0.30 (2005 price).

(C) Sea urchin, red \$0.39 and purple \$0.30 (2004 price).

(D) Sea stars \$1.00.

(2) The Department may initiate civil proceedings to recover damages as authorized by ORS 506.720 where the value of any food fish unlawfully taken exceeds \$300, except for food fish taken by trawl in the groundfish fishery where the trip limit has not been exceeded by more than 15%.

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.109 & 506.720

Hist.: FWC 160, f. & ef. 11-25-77; FWC 18-1978, f. & ef. 4-7-78, Renumbered from 635-036-0605; FWC 33-1982, f. & ef. 6-2-82; FWC 9-1988, f. & cert. ef. 3-3-88; DFW 6-2003, f. 1-21-03, cert. ef. 2-1-03; DFW 3-2004, f. 1-14-04, cert. ef. 2-1-04; DFW 1-2005, f. & cert. ef. 1-7-05; DFW 1-2005, f. & cert. ef. 1-7-05; DFW 1-2006, f. & cert. ef. 1-9-06; DFW 1-2007, f. & cert. ef. 1-12-07

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Rule Caption: Adopt permanent renewal requirements for commercial sardine limited entry permits.

Adm. Order No.: DFW 2-2007

Filed with Sec. of State: 1-12-2007

Certified to be Effective: 1-12-07

Notice Publication Date: 12-1-06

Rules Amended: 635-006-1015, 635-006-1035, 635-006-1075

Rules Repealed: 635-006-1015(T)

Subject: Amended rules convert the current sardine limited entry permit renewal system temporary rules to permanent rules, for annual requirements for renewal of a limited entry sardine permit.

Rules Coordinator: Casaria Tuttle—(503) 947-6033

635-006-1015

Requirement for Permit

(1) The following provide general requirements for permits:

(a) Gillnet salmon — see ORS 508.775;

(b) Troll salmon — see ORS 508.801 and 508.828;

(c) Shrimp — see ORS 508.880 and 508.883;

(d) Scallop — see ORS 508.840 and 508.843;

(e) Roe-herring:

(A) It is *unlawful* for an individual to operate a vessel in the Yaquina Bay roe-herring fishery without first obtaining a vessel permit issued pursuant to OAR 635-006-1035 through 635-006-1095;

(B) It is *unlawful* for a wholesaler, canner or buyer to buy or receive roe-herring taken in the Yaquina Bay roe-herring fishery from a vessel for which the permit required by section (1)(e) of this rule has not been issued.

(f) Sea Urchin:

(A) It is *unlawful* for an individual to take or attempt to take sea urchins for commercial purposes without first obtaining a permit issued pursuant to OAR 635-006-1035 through 635-006-1095;

(B) It is *unlawful* for a wholesaler, canner, or buyer to buy or receive sea urchins taken in the sea urchin fishery from a person for which the permit required by section (1)(f) of this rule has not been issued.

(g) Ocean Dungeness crab:

(A) Except as provided under the reciprocity provisions of ORS 508.941(3) or section (F) below, it is *unlawful* for an individual to operate a vessel in the ocean Dungeness crab fishery without first obtaining a vessel permit issued pursuant to ORS 508.931 or 508.941. A Dungeness crab vessel permit is not required for vessels that are engaged solely in setting gear for a permitted vessel and which do not retrieve, retain or possess Dungeness crab.

(B) If the Commission establishes a vessel crab pot limitation or allocation system beyond the 2002-03 ocean crab season, August 14, 2001 is the control date for eligibility criteria related to past participation in the ocean fishery.

(C) In addition to certifying that the vessel is free of crab on November 30 each year, as required by OAR 635-005-0045(1), each vessel operator must declare and certify on the Oregon hold inspection certification form the maximum number of pots that will be used in that season's fishery before fishing.

(D) A single delivery license may not be substituted for an ocean Dungeness crab permit. Once a vessel has obtained an ocean Dungeness crab permit, Dungeness crab may be landed by the vessel using a combination of an ocean Dungeness crab permit and a single delivery permit in lieu of a commercial fishing and boat license. However, crab may not be landed more than twice in any one crab season using single delivery permits.

(E) Effective December 1, 2006, the number of crab pots allocated to a permit required under section (A) above will be determined as follows:

(i) The allocation will be based on documented landings of Ocean Dungeness crab into Oregon, Washington (excluding landings from the Puget Sound Fishery), or California, using valid Oregon fish receiving tickets, or equivalent valid documents from the states of Washington or California, from December 1, 1995 through August 14, 2001;

(ii) The crab pot allocation will be the highest number of pots the vessel qualifies for during the six qualifying seasons, December 1 of one year through September 15 of the next year (except through August 14, in 2001);

(iii) A crab pot allocation of 200 shall be assigned to a permit with landings less than 15,020 pounds in the 1995 to 1996 season, and 4,010 pounds in the 1996 to 1997 season, and 5,170 pounds in the 1997 to 1998 season, and 7,083 pounds in the 1998 to 1999 season, and 13,160 pounds in the 1999 to 2000 season, and 8,940 pounds in the 2000 to 2001 season;

(iv) A crab pot allocation of 300 shall be assigned to a permit with minimum landings of 15,020 pounds in the 1995 to 1996 season, or 4,010 pounds in the 1996 to 1997 season, or 5,170 pounds in the 1997 to 1998 season, or 7,083 pounds in the 1998 to 1999 season, or 13,160 pounds in the 1999 to 2000 season, or 8,940 pounds in the 2000 to 2001 season; and

(v) A crab pot allocation of 500 shall be assigned to a permit with minimum landings of 89,020 pounds in the 1995 to 1996 season, or 35,180 pounds in the 1996 to 1997 season, or 39,350 pounds in the 1997 to 1998

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season, or 49,450 pounds in the 1998 to 1999 season, or 78,400 pounds in the 1999 to 2000 season, or 37,030 pounds in the 2000 to 2001 season.

(F) If a vessel does not have an Oregon crab permit required under section (A) above, but does have a California Dungeness Crab permit valid to fish off Oregon, the vessel may fish for Dungeness crab outside of three nautical miles off Oregon provided:

(i) A request for an allocation is submitted as specified by Oregon Department of Fish and Wildlife License Services, Salem;

(ii) A crab pot allocation shall be assigned to their vessel as described in (E) above; and

(iii) All crab pots and buoys must be marked as specified by OAR 635-005-0055(6).

(h) Developmental Fisheries: See ORS 506.450 through 506.465 and OAR 635-006-0800 through 635-006-0950.

(i) July 1, 2001 is the control date to establish eligibility criteria for the purpose of future limited entry programs for the commercial groundfish fishery.

(j) Black rockfish / blue rockfish / nearshore fishery — see ORS 508.945.

(k) Brine Shrimp:

(A) It is *unlawful* to take or attempt to take brine shrimp for commercial purposes without first obtaining a brine shrimp fishery permit issued pursuant to OAR 635-006-1035 through 635-006-1095;

(B) It is *unlawful* for a wholesaler, canner, or buyer to buy or receive brine shrimp taken in the brine shrimp fishery from a person for which the permit required by this rule has not been issued.

(C) The Department may issue no more than three permits required by section (1)(k) of this rule.

(l) Bay clam dive fishery:

(A) It is *unlawful*:

(i) To take or attempt to take bay clams, using dive gear, for commercial purposes from subtidal areas in any Oregon estuary without first obtaining a coast-wide bay clam dive fishery permit issued pursuant to OAR 635-006-1025 through 635-006-1095;

(ii) To take or attempt to take bay clams, using dive gear, for commercial purposes from subtidal areas in Oregon estuaries south of Heceta Head without first obtaining a south-coast bay clam dive fishery permit issued pursuant to OAR 635-006-1025 through 635-006-1095;

(iii) For a wholesaler, canner, or buyer to buy or receive bay clams taken in the bay clam dive fishery from a vessel or person not issued the permit required by this rule.

(iv) To take or attempt to take bay clams where more than two divers operating from any one boat were in the water at the same time or where more than two persons without permits, excluding persons authorized by the Department for the performance of official duties, were on board any boat while harvesting, possessing, or transporting bay clams.

(B) The Department may not issue more than ten coast-wide permits required by section (1)(l)(A)(i) of this rule and five south-coast permits required by (1)(l)(A)(ii) of this rule.

(C) Permits may be issued to individuals or to vessels, designated at the beginning of the year. Designation may not change during the year.

(m) Sardine fishery:

(A) It is *unlawful* for an individual to operate a vessel in the Sardine fishery without first obtaining a vessel permit issued pursuant to OAR 635-006-1035 through 635-006-1095. The sardine fishery permit is not required for vessels to retain sardines as incidental catch in other fisheries.

(B) It is *unlawful* for a wholesaler, canner or buyer to buy or receive sardines taken in the Sardine fishery from a vessel for which the permit required by section (1)(m)(A) of this rule has not been issued.

(C) The Department may issue not more than 26 permits required by section (1)(m)(A) of this rule.

(D) The Sardine Advisory Group as defined under OAR 635-006-1065 may advise the Commission on increasing the number of permits, developing criteria for issuing the new permits, and other regulations concerning the sardine fishery.

(E) By January 1, 2008, vessels permitted under section (1)(m)(A) of this rule shall be operated or owned by the permit holder.

(2) The permits required by section (1) of this rule are in addition to and not in lieu of the commercial fishing and boat license required by ORS 508.235 and 508.260.

(3) No vessel may hold more than one vessel permit for a given fishery at any one time.

(4) If permits are issued on an individual basis, no individual may hold more than one permit for a given fishery at any one time.

(5) Unless otherwise provided, permits must be purchased by December 31 of the license year.

(6) No vessel permit may be transferred away from a vessel without the lien holder's written permission.

(7) Applications for permits shall be in such form and contain such information as the Department may prescribe. Proof of length of a vessel may be required at the time of application.

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.109, 506.129 & 508.921–508.941

Hist.: FWC 3-1996, f. 1-31-96, cert. ef. 2-1-96; FWC 64-1996, f. 11-13-96, cert. ef. 11-15-96; DFW 92-1998, f. & cert. ef. 11-25-98; DFW 103-2001, f. & cert. ef. 10-23-01; DFW 95-2002, f. & cert. ef. 8-27-02; DFW 112-2003, f. & cert. ef. 11-14-03; DFW 137-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 139-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 45-2006, f. 6-20-06, cert. ef. 12-1-06; DFW 74-2006, f. & cert. ef. 8-7-06; DFW 96-2006(Temp), f. & cert. ef. 9-8-06 thru 3-6-07; DFW 97-2006(Temp), f. 9-8-06, cert. ef. 9-9-06 thru 3-7-07; DFW 2-2007, f. & cert. ef. 1-12-07

635-006-1035

Eligibility Requirements for a Permit

Eligibility for a limited entry permit is as follows:

(1) Gillnet salmon — see ORS 508.784.

(2) Troll salmon — see ORS 508.810.

(3) Shrimp — see ORS 508.886 and 508.895.

(4) Scallop — see ORS 508.852.

(5) Roe-herring — The ODFW shall issue a permit as per ORS 508.765:

(a) By renewal of previous year's permit;

(b) Through the lottery if a lottery is held in accordance with OAR 635-006-1085.

(6) Sea Urchin — An individual licensed as a commercial fisherman under ORS 508.235 is eligible to obtain the permit required by OAR 635-006-1015:

(a) By renewal of previous year's permit; or

(b) Through the lottery if a lottery is held in accordance with OAR 635-006-1085; or

(c) Through a duly authorized medical transfer of an existing permit in accordance with OAR 635-006-1095;

(d) By combining three currently renewed permits into one new permit as provided in OAR 635-006-1095.

(7) Ocean Dungeness crab:

(a) See ORS 508.931;

(b) For the purposes of eligibility for the ocean Dungeness crab fishery permit, a boat which received a license waiver issued pursuant to ORS 508.808 shall be considered as having possessed a boat license for that year;

(c) ORS 508.931 and 508.941 require that the vessel be previously licensed in accordance with ORS 508.260 for the purposes of initial eligibility for an ocean Dungeness crab fishery permit. A single delivery license may not be substituted for a boat license for this purpose.

(8) Black rockfish/blue rockfish/nearshore fishery — see ORS 508.947.

(9) Brine Shrimp — A commercial fisherman licensed under ORS 508.235 is eligible to obtain the permit required by OAR 635-006-1015:

(a) By renewal of previous year's permit; or

(b) If issued a brine shrimp permit under the Developmental Fisheries Program prior to 2004.

(10) Bay clam dive fishery — An individual licensed as a commercial harvester under ORS 508.235 or a vessel is eligible to obtain the permit required by OAR 635-006-1015:

(a) For a south coast bay clam dive permit for the year 2006, if a bay clam south-coast dive permit was issued to the individual or vessel under the Developmental Fisheries program (OAR 635-006-0900) in 2005 and lawfully made five landings consisting of at least 100 pounds each landing or an annual total of 2,500 pounds of bay clams, using dive gear in Oregon in 2005; or

(b) For a coast wide bay clam dive permit for the year 2006, if a bay clam coast-wide dive permit was issued to the individual or vessel under the Developmental Fisheries program (OAR 635-006-0900) in 2005 and lawfully made five landings consisting of at least 100 pounds each landing or an annual total of 2,500 pounds of bay clams, using dive gear in Oregon in 2005.

(c) After 2006, by renewal of the previous years' permit and satisfaction of the requirements in OAR 635-006-1075(1)(j).

(11) Sardine fishery:

(a) An individual or entity is eligible to obtain the vessel permit required by OAR 635-006-1015:

(A) If issued a sardine permit under the Developmental Fisheries Program (OAR 635-006-0900) in 2005; and

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(B) Lawfully made landings of sardines into Oregon in 2003 and 2004; and

(C) Lawfully landed:

(i) At least 1,500 mt or 35 deliveries in any one year from 2000 through 2004; or

(ii) A total of 100 deliveries of sardines into Oregon in 2000 through 2004.

(b) If the number of permits issued under section (11)(a) of this rule is less than 20, enough permits to reach a total of 20 may be issued under section (11)(c) of this rule to vessels in order of highest total number of deliveries during 2000–2004.

(c) An individual or entity is eligible to obtain the vessel permit under (11)(b) of this rule if the vessel for which applications is made:

(A) Was not issued a permit under section (11)(a) of this rule; and

(B) Lawfully made landings of sardines into Oregon in 2003 and 2004; and

(C) Lawfully landed:

(i) At least 1,500 mt or 35 deliveries in any one year from 2000 through 2004; or

(ii) A total of 100 deliveries of sardines into Oregon in 2000 through 2004

(d) In addition to those Sardine Fishery Permits previously issued by the Department in calendar year 2006, the Oregon Department of Fish and Wildlife shall issue a Sardine Fishery Permit to any individual or entity, if that individual or entity held a legally qualified Oregon Developmental Fisheries Permit for Sardines on August 1, 2005, provided that neither the individual or entity has been previously issued an Oregon Sardine Fishery Permit in 2006.

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.109

Hist.: FWC 3-1996, f. 1-31-96, cert. ef. 2-1-96; FWC 64-1996, f. 11-13-96, cert. ef. 11-15-96; DFW 11-2003(Temp), f. & cert. ef. 2-10-03 thru 6-30-03; DFW 112-2003, f. & cert. ef. 11-14-03; DFW 137-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 139-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 74-2006, f. & cert. ef. 8-7-06; DFW 2-2007, f. & cert. ef. 1-12-07

635-006-1075

Renewal of Permit

(1) An individual who obtained a limited entry permit may renew the permit as follows:

(a) Gillnet salmon — see ORS 508.781;

(b) Troll salmon — see ORS 508.807;

(c) Shrimp — see ORS 508.892;

(d) Scallop — see ORS 508.849;

(e) Roe-herring permit — Permits may be renewed by submission to the Department of a \$75 fee and a complete application;

(f) Sea Urchin permit:

(A) Permits may be renewed by submission to the Department of a \$75 fee and a complete application date-stamped or postmarked by January 31 of the year for which renewal is sought; and

(B) The permittee shall have annually lawfully landed 5,000 pounds of sea urchins in Oregon. If a permittee obtained a permit later than January of the prior year (because the permit was obtained through the lottery, or as a result of Permit Board actions or surrender of a permit by a permit holder), the permittee shall not be required to make the 5,000 pound landing by the following January. Instead, at the next renewal thereafter, the permittee shall be required to demonstrate that the 5,000 pound landing requirement was fulfilled during the first full year (twelve-month period) in which the permit was held.

(g) Ocean Dungeness crab permit — see ORS 508.941. A permit which is not renewed by December 31 lapses, and may not be renewed for subsequent years.

(h) Black rockfish/blue rockfish/nearshore fishery — see ORS 508.947.

(i) Brine Shrimp permit:

(A) Permits may be renewed by submission to the Department of a \$75 fee and a complete application date-stamped or postmarked by January 31 of the year for which renewal is sought; and

(B) The permittee shall have lawfully landed 5,000 pounds of brine shrimp in Oregon in the prior year.

(j) Bay clam dive fishery:

(A) Permits may be renewed by submitting to the Department a \$75 fee and a complete application date-stamped or postmarked by January 31 of the year for which renewal is sought; and

(B) The permittee shall have lawfully made five landings consisting of at least 100 pounds each landing or an annual total of 2,500 pounds of bay clams, using dive gear in Oregon in the prior calendar year;

(C) Logbooks required under OAR 635-006-1110 must be turned into an ODFW office by the application deadline for renewal of a permit.

(D) If a permit is transferred under OAR 635-006-1095(10)(d), annual renewal requirements are waived in the year the transfer occurred.

(k) Sardine fishery: To renew a sardine permit:

(A) Only the permittee may renew a limited entry sardine permit. To renew a sardine permit for the following year, the permittee must, by December 31 of the current year:

(i) Submit a complete application to the Department;

(ii) Submit the logbooks required under OAR 635-006-1110; and

(iii) Must have lawfully landed into Oregon, during the current year, either (I) a minimum of 10 landings of sardines of a least 5 metric tons each, or (II) landings of sardines having an aggregate ex-vessel price of at least \$40,000.

(B) The Commission may waive the landing requirements of section (A)(iii) of this rule if it finds that the failure to meet these requirements is due to the permit holder's illness or injury, or to circumstances beyond the control of the permit holder. Final Orders shall be issued by the Commission and may be appealed as provided in ORS 183.480 through 183.550.

(C) The Commission may, at its discretion, waive the landing requirements of section (A)(iii) of this rule for all limited entry sardine permit holders due to unusual market conditions.

(2) An application for renewal in any limited entry fishery shall be considered complete if it is legible, has all information requested in the form, and is accompanied by the required fee in full. Any application which is not complete shall be returned, and unless it is thereafter resubmitted and deemed complete by January 31, the individual shall not be considered to have applied for renewal in a timely manner.

(3) It is the responsibility of the permittee to ensure that an application is complete and is filed in a timely manner. Failure of the Department to return an application for incompleteness or of an individual to receive a returned application shall not be grounds for treating the application as having been filed in a timely and complete manner.

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.109, 506.129 & 508.921 - 508.941

Hist.: FWC 3-1996, f. 1-31-96, cert. ef. 2-1-96; FWC 64-1996, f. 11-13-96, cert. ef. 11-15-96; DFW 92-1998, f. & cert. ef. 11-25-98; DFW 112-2003, f. & cert. ef. 11-14-03; DFW 137-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 139-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 23-2006, f. & cert. ef. 4-21-06; DFW 2-2007, f. & cert. ef. 1-12-07

Rule Caption: Amend rules for the sport and commercial harvest of groundfish and Pacific halibut in 2007.

Adm. Order No.: DFW 3-2007

Filed with Sec. of State: 1-12-2007

Certified to be Effective: 1-12-07

Notice Publication Date: 12-1-06

Rules Amended: 635-004-0005, 635-004-0018, 635-004-0033, 635-039-0080, 635-039-0085, 635-039-0090

Rules Repealed: 635-004-0018(T), 635-004-0033(T), 635-039-0080(T), 635-039-0090(T)

Subject: Amended rules incorporate, by reference, all federal groundfish and Pacific halibut regulations for sport and commercial fishers and amend annual state management measures for 2007.

Rules Coordinator: Casaria Tuttle—(503) 947-6033

635-004-0005

Scope of Rules

The Pacific halibut commercial fishery in Oregon is regulated by the federal government and the International Pacific Halibut Commission (IPHC). OAR chapter 635, division 004 incorporates into OARs, by reference, Pacific Halibut Fishery Regulations of the IPHC, and to the extent they are consistent with Title 50 of the Code of Federal Regulations, Part 300, Subpart E (61FR35550, July 5, 1996), as amended by Federal Regulations. Therefore, persons must consult the Federal Regulations in addition to division 004 to determine all rules applicable to halibut fishing requirements. It is unlawful to take halibut for commercial purposes except as set by Federal Regulations and the IPHC and in accordance with a valid permit issued by the IPHC.

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

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.129

Hist.: FC 241, f. 4-5-72, ef. 4-15-72, Renumbered from 625-010-0725, Renumbered from 635-036-0330; FWC 25-1989(Temp), f. & cert. ef. 4-5-89; FWC 51-1989, f. & cert. ef. 7-28-89; FWC 32-1990(Temp), f. & cert. ef. 4-4-90; FWC 67-1991, f. 6-25-91, cert. ef. 7-1-91; FWC 94-1995(Temp), f. 12-29-95, cert. ef. 1-1-96; FWC 9-1996, f. 3-5-96, cert. ef. 3-8-96; FWC 25-1997, f. 4-22-97, cert. ef. 5-1-97; DFW 91-1998, f. & cert. ef. 11-25-98; DFW 98-

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1999, f. 12-27-99, cert. ef. 1-1-00; DFW 81-2000, f. 12-22-00, cert. ef. 1-1-01; DFW 118-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 135-2002, f. 12-23-02, cert. ef. 1-1-03; DFW 128-2003, f. 12-15-03, cert. ef. 1-1-04; DFW 120-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 29-2005(Temp), f. 4-29-05, cert. ef. 5-1-05 thru 10-27-05 (Suspended by DFW 72-2005(Temp), f. & cert. ef. 7-7-05 thru 10-27-05); DFW 56-2005, f. 6-21-05, cert. ef. 7-1-05; DFW 3-2007, f. & cert. ef. 1-12-07

635-004-0009

Halibut Seasons

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.138, 496.162, 506.036, 506.109, 506.119, 506.129
Stats. Implemented: ORS 496.162, 506.129
Hist.: DFW 56-2005, f. 6-21-05, cert. ef. 7-1-05; DFW 3-2007, f. & cert. ef. 1-12-07

635-004-0018

Scope of Rules

Division 004 incorporates into OARs, by reference, the groundfish specifications and management measures for 2007 included in the *Biennial Specifications and Management Measures, Final Rule*, published in the Federal Register in December 2006, and in addition to the extent they are consistent with these rules, **Code of Federal Regulations, Title 50 Part 660, Subpart G (61FR34572, July 2, 1996, as amended)** to incorporate the standards in the *Biennial Specifications and Management Measures, Final Rule*. Therefore, persons must consult the Federal Regulations in addition to division 004 to determine all applicable groundfish fishing requirements. Where regulations refer to the fishery management area, that area is extended from shore to three nautical miles from shore coterminous with the Exclusive Economic Zone. A copy of the **Federal Regulations** may be obtained by contacting the National Oceanic and Atmospheric Administration's National Marine Fisheries Service at www.nwr.noaa.gov or 7600 Sand Point Way NE, Seattle, WA 98115-0070.

Stat. Auth.: ORS 496.138 & 506.119
Stats. Implemented: ORS 496.162 & 506.129
Hist.: FWC 141-1991, f. 12-31-91, cert. ef. 1-1-92; FWC 95-1994, f. 12-28-94, cert. ef. 1-1-95; FWC 71-1996, f. 12-26-96, cert. ef. 1-1-97; DFW 1-1998, f. & cert. ef. 1-9-98; DFW 91-1998, f. & cert. ef. 11-25-98; DFW 98-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 81-2000, f. 12-22-00, cert. ef. 1-1-01; DFW 118-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 135-2002, f. 12-23-02, cert. ef. 1-1-03; DFW 112-2003, f. & cert. ef. 11-14-03; DFW 128-2003, f. 12-15-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 133-2006(Temp), f. 12-21-06, cert. ef. 1-1-07 thru 6-29-07; DFW 3-2007, f. & cert. ef. 1-12-07

635-004-0033

Groundfish Restrictions

(1) The season for most species of ocean food fish is open year-round, until catch quotas are met (where applicable). Regulations for the following species or species groups of ocean food fish change throughout the season and the Oregon Administrative Rules and federal regulations should be consulted before fishing:

- (a) Minor Nearshore Rockfish
- (b) Minor Shelf Rockfish
- (c) Minor Slope Rockfish
- (d) Black Rockfish
- (e) Blue Rockfish
- (f) Cabezon
- (g) Canary Rockfish
- (h) Greenling
- (i) Tiger Rockfish
- (j) Vermilion Rockfish
- (k) Widow Rockfish
- (l) Yelloweye Rockfish
- (m) Yellowtail Rockfish
- (n) Darkblotched Rockfish
- (o) Pacific Ocean Perch
- (p) Longspine Thornyhead
- (q) Shortspine Thornyhead
- (r) Arrowtooth Flounder
- (s) Dover Sole
- (t) Petrale Sole
- (u) Rex Sole
- (v) Other Flatfish
- (w) Lingcod
- (x) Sablefish
- (y) Pacific Whiting

(2) For the purpose of this rule, "Other nearshore rockfish" means: black and yellow (*Sebastes chrysomelas*); brown (*S. auriculatus*); calico (*S. dalli*); China (*S. nebulosus*); copper (*S. caurinus*); gopher (*S. carnatus*); grass (*S. rastelliger*); kelp (*S. atrovirens*); olive (*S. serranoides*); quillback (*S. maliger*); and treefish (*S. serripes*).

(3) For the purpose of this rule a "commercial harvest cap" is defined as the total fishery-related mortality for a given species, or species group,

that may occur in a single calendar year in Oregon commercial fisheries. For 2007, the commercial harvest cap for black rockfish is 100.6 metric tons.

(4) For the purpose of this rule a "commercial landing cap" is defined as the total landed catch of a given species, or species group, that may be taken in a single calendar year in Oregon commercial fisheries. For 2007, the commercial landing caps are:

- (a) Black rockfish and blue rockfish combined of 104.6 metric tons.
- (b) Other nearshore rockfish, 12.0 metric tons.
- (c) Cabezon, 31.3 metric tons.
- (d) Greenling, 23.4 metric tons.

(5) For the purpose of this rule, the periods to which cumulative trip limits apply are: January through February (period 1); March through April (period 2); May through June (period 3); July through August (period 4); September through October (period 5); and November through December (period 6).

(6) For black and blue rockfish combined, no vessel may land more than:

- (a) 600 pounds in period 1;
 - (b) 800 pounds in period 2;
 - (c) 1600 pounds in each of periods 3, 4, and 5; and
 - (d) 800 pounds in period 6.
- (7) In each period, no vessel may land more than:
- (a) 600 pounds of other nearshore rockfish, combined;
 - (b) 2,000 pounds of cabezon; or
 - (c) 400 pounds of greenling species.

Stat. Auth.: ORS 506.109 & 506.119
Stats. Implemented: ORS 506.129
Hist.: FWC 73-1982(Temp), f. & ef. 10-27-82; FWC 1-1983 (Temp), f. & ef. 1-6-83; FWC 10-1983, f. & ef. 3-1-83; FWC 23-1983(Temp), f. & ef. 6-14-83; FWC 41-1983(Temp), f. & ef. 9-6-83; FWC 3-1984 f. & ef. 1-26-84; FWC 18-1984 (Temp), f. 5-4-84, ef. 5-6-84; FWC 36-1984(Temp), f. 7-31-84, ef. 8-1-84; FWC 1-1985(Temp), f. & ef. 1-4-85; FWC 5-1985, f. & ef. 2-19-85; FWC 18-1985(Temp), f. 4-26-85, ef. 4-27-85; FWC 52-1985(Temp), f. 8-30-85, ef. 9-1-85; FWC 65-1985 (Temp), f. & ef. 10-4-85; FWC 82-1985, f. 12-16-85, ef. 1-1-86; FWC 50-1986(Temp), f. & ef. 8-29-86; FWC 81-1986, f. 12-31-86, ef. 1-1-87; FWC 57-1987(Temp), f. & ef. 7-24-87; FWC 104-1987, f. 12-18-87, ef. 1-1-88; FWC 97-1988(Temp), f. & cert. ef. 1-6-88; FWC 103-1988, f. 12-29-88, cert. ef. 1-1-89; FWC 49-1989(Temp), f. & cert. ef. 7-26-89; FWC 69-1990 (Temp), f. 7-24-90, cert. ef. 7-25-90; FWC 122-1990, f. 11-26-90, cert. ef. 11-29-90; FWC 130-1990, f. 12-31-90, cert. ef. 1-1-91; FWC 48-1991(Temp), f. & cert. ef. 5-3-91; FWC 82-1991(Temp), f. 7-30-91, cert. ef. 7-31-91; FWC 83-1991, f. 8-1-91, cert. ef. 7-31-91; FWC 58-1992(Temp), f. & cert. ef. 7-29-92; FWC 141-1991, f. 12-31-91, cert. ef. 1-1-92; FWC 9-1992, f. 2-20-92, cert. ef. 2-21-92; FWC 58-1992(Temp), f. & cert. ef. 7-29-92; FWC 6-1993, f. 1-28-93, cert. ef. 2-1-93; FWC 10-1993, f. & cert. ef. 2-10-93; FWC 1-1994, f. & cert. ef. 1-14-94; FWC 32-1994, f. & cert. ef. 6-3-94; FWC 44-1994, f. 7-26-94, cert. ef. 8-1-94; FWC 95-1994, f. 12-28-94, cert. ef. 1-1-95; FWC 45-1995, f. & cert. ef. 6-1-95; FWC 94-1995(Temp), f. 12-29-95, cert. ef. 1-1-96; FWC 9-1996, f. 3-5-96, cert. ef. 3-8-96; DFW 118-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 119-2002(Temp), f. 10-24-02, cert. ef. 10-25-02 thru 12-31-02; DFW 135-2002, f. 12-23-02, cert. ef. 1-1-03; DFW 14-2003(Temp), f. 2-20-03, cert. ef. 2-21-03 thru 8-19-03; DFW 25-2003, f. & cert. ef. 3-26-03; DFW 60-2003(Temp), f. 7-15-03, cert. ef. 7-16-03 thru 12-31-03; DFW 79-2003(Temp), f. & cert. ef. 8-18-03 thru 12-31-03; DFW 102-2003(Temp), f. 9-30-03, cert. ef. 10-1-03 thru 12-31-03; DFW 128-2003, f. 12-15-03, cert. ef. 1-1-04; DFW 76-2004(Temp), f. 7-23-04, cert. ef. 7-28-04 thru 12-31-04; DFW 100-2004(Temp), f. & cert. ef. 9-28-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 120-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 31-2005(Temp), f. 4-29-05, cert. ef. 5-1-05 thru 10-27-05; DFW 82-2005(Temp), f. 7-29-05, cert. ef. 8-1-05 thru 12-31-05; DFW 86-2005(Temp), f. & cert. ef. 8-3-05 thru 12-31-05; DFW 119-2005(Temp), f. 10-10-05, cert. ef. 10-11-05 thru 12-31-05; DFW 135-2005(Temp), f. 11-30-05, cert. ef. 12-1-05 thru 12-31-05; DFW 138-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 50-2006(Temp), f. 6-28-06, cert. ef. 7-1-06 thru 12-27-06; DFW 83-2006(Temp), f. 8-10-06, cert. ef. 8-11-06 thru 2-6-07; DFW 108-2006(Temp), f. 9-29-06, cert. ef. 10-1-06 thru 12-31-06; DFW 133-2006(Temp), f. 12-21-06, cert. ef. 1-1-07 thru 6-29-07; DFW 3-2007, f. & cert. ef. 1-12-07

635-039-0080

Purpose and Scope

(1) The purpose of division 039 is to provide for management of sport fisheries for marine fish, shellfish, and marine invertebrates in the Pacific Ocean, coastal bays, and beaches over which the State has jurisdiction.

(2) Division 039 incorporates, by reference:

(a) The sport fishing regulations of the State, included in the document entitled **2007 Oregon Sport Fishing Regulations**. Therefore, persons must consult the **2007 Oregon Sport Fishing Regulations** in addition to divisions 011 and 039 to determine all applicable sport fishing requirements for marine fish, shellfish and marine invertebrates.

(b) The Pacific Council Decisions or News documents dated June and November 2006 (copy available from agency); and to the extent consistent with that document, Title 50 of the Code of Federal Regulations, Part 300, Subpart E (61FR35550, July 5, 1996) as amended by Federal Regulations, and Title 50 of the Code of Federal Regulations, Part 660 Vol. 71, No. 189, dated December 29, 2006; to determine regulations applicable to this fishery.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.138, 496.146 & 506.119
Stats. Implemented: ORS 496.162 & 506.129

ADMINISTRATIVE RULES

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; Renumbered from 635-39-105 - 635-39-135; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 25-1997, f. 4-22-97, cert. ef. 5-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 91-1998, f. & cert. ef. 11-25-98; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 98-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 81-2000, f. 12-22-00, cert. ef. 1-1-01; DFW 118-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 120-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 33-2005(Temp), f. 4-29-05, cert. ef. 5-1-05 thru 10-27-05; DFW 54-2005(Temp), f. 6-10-05, cert. ef. 6-12-05 thru 11-30-05; DFW 56-2005, f. 6-21-05, cert. ef. 7-1-05; DFW 71-2005(Temp), f. & cert. ef. 7-7-05 thru 11-30-05; DFW 89-2005(Temp), f. & cert. ef. 8-12-05 thru 12-12-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 138-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 134-2006(Temp), f. 12-21-06, cert. ef. 1-1-07 thru 6-29-07; DFW 3-2007, f. & cert. ef. 1-12-07

635-039-0085

Halibut Seasons

The Pacific halibut sport fishery in Oregon is regulated by the federal government and the International Pacific Halibut Commission (IPHC). OAR 635, division 039 incorporates into Oregon Administrative Rules, by reference, modifications or additions to provisions determined by the IPHC and to the extent they are consistent with Title 50 of the Code of Federal Regulations, Part 300, Subpart E (61FR35550, July 5, 1996) and as amended by Federal Regulations.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.138, 496.162, 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 496.162 & 506.129
Hist.: DFW 56-2005, f. 6-21-05, cert. ef. 7-1-05; DFW 89-2005(Temp), f. & cert. ef. 8-12-05 thru 12-12-05; DFW 107-2005(Temp), f. 9-14-05, cert. ef. 9-15-05 thru 10-31-05; DFW 121-2005(Temp), f. 10-12-05, cert. ef. 10-18-05 thru 12-31-05; Administrative correction 1-19-06; DFW 34-2006(Temp), f. 5-25-06, cert. ef. 5-27-06 thru 8-3-06; Administrative correction 8-22-06; DFW 3-2007, f. & cert. ef. 1-12-07

635-039-0090

Inclusions and Modifications

(1) The **2007 Oregon Sport Fishing Regulations** provide requirements for sport fisheries for marine fish, shellfish, and marine invertebrates in the Pacific Ocean, coastal bays, and beaches, commonly referred to as the Marine Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2007 Oregon Sport Fishing Regulations**.

(2) For the purposes of this rule, a "harvest target" is defined as the Oregon share of the regional recreational harvest guideline for yelloweye rockfish and canary rockfish that may be impacted (combined landings and other fishery related mortality) by the Oregon sport fishery in a single calendar year.

(a) The regional recreational harvest guidelines for these species in 2007 are specified in the Pacific Council Decisions or News documents dated June and November, 2006.

(b) Harvest targets for yelloweye rockfish and canary rockfish effective at the start of the Oregon sport fishery in 2007 are:

- (A) yelloweye rockfish, 3.3 metric tons.
- (B) canary rockfish, 6.6 metric tons.

(c) Harvest targets for yelloweye rockfish and canary rockfish may be revised inseason following consultation with Washington Department of Fish and Wildlife provided that:

(A) regional recreational harvest guidelines for these species are not projected to be exceeded as a result of any inseason revisions to a harvest target or targets; and

(B) inseason revisions to the harvest target or targets benefit the Oregon sport fishery.

(3) For the purposes of this rule, a "sport harvest cap" is defined as the amount that may be impacted (combined landings and other fishery related mortality) by the Oregon sport fishery in a single calendar year.

(a) For 2007, the sport harvest cap for black rockfish is 318 metric tons.

(4) For the purposes of this rule, "Other nearshore rockfish" means the following rockfish species: black and yellow (*Sebastes chrysomelas*); brown (*S. auriculatus*); calico (*S. dalli*); China (*S. nebulosus*); copper (*S. caurinus*); gopher (*S. carnatus*); grass (*S. rastelliger*); kelp (*S. atrovirens*); olive (*S. serranoides*); quillback (*S. maliger*); and treefish (*S. serripes*).

(5) For the purposes of this rule a "sport landing cap" is defined as the total landings for a given species, or species group, that may be taken in a single calendar year by the ocean boat fishery. For 2007 the sport landing caps are:

- (a) Black rockfish and blue rockfish combined, 359 metric tons.
- (b) Other nearshore rockfish, 11.3 metric tons.
- (c) Cabezon, 15.8 metric tons.
- (d) Greenling, 5.2 metric tons.

(6) In addition to the regulations for Marine Fish in the **2007 Oregon Sport Fishing Regulations**, the following apply for the sport fishery in the Marine Zone in 2007:

(a) Lingcod (including green colored lingcod): 2 fish daily bag limit.

(b) All rockfish ("sea bass" "snapper"), greenling ("sea trout"), cabezon, skates, and other marine fish species not listed in the **2007 Oregon Sport Fishing Regulations** in the Marine Zone, located under the category of Species Name, Marine Fish: 6 fish daily bag limit in aggregate (total sum or number). Retention of yelloweye rockfish and canary rockfish is prohibited.

(c) Flatfish (flounder, sole, sanddabs, turbot, and all halibut species *except* Pacific halibut): 25 fish daily bag limit in aggregate (total sum or number).

(d) Retention of all marine fish listed under the category of Species Name, Marine Fish, except sablefish, herring, anchovy, smelt, sardine, striped bass, hybrid bass, and offshore pelagic species (excluding leopard shark and soupfin shark), is prohibited when Pacific halibut is retained on the vessel during open days for the all-depth sport fishery for Pacific halibut north of Humbug Mountain. North of Cape Falcon, retention of Pacific cod also is allowed when Pacific halibut is retained on the vessel during open days for the all-depth sport fishery for Pacific halibut. Persons must also consult the Pacific Council Decisions; Title 50 of the Code of Federal Regulations, Part 300, Subpart E (61FR35550, July 5, 1996); and the annual Pacific Halibut Fishery Regulations as amended by Federal Regulations to determine all rules applicable to the taking of Pacific halibut.

(e) Harvest methods and other specifications for marine fish in subsections (6)(a), (b) and (c) including the following:

- (A) Minimum length for lingcod, 22 inches.
- (B) Minimum length for cabezon, 16 inches.
- (C) Minimum length for greenling, 10 inches.

(D) May be taken by angling, hand, bow and arrow, spear, gaff hook, snag hook and herring jigs.

(E) Mutilating the fish so the size or species cannot be determined prior to landing or transporting mutilated fish across state waters is prohibited.

(f) Sport fisheries for species in subsections (6)(a), (b) and (c) and including leopard shark and soupfin shark are open January 1 through December 31, twenty-four hours per day, except that ocean waters are closed for these species during April 1 through September 30, outside of the 40-fathom curve (defined by latitude and longitude) as shown on Title 50 Code of Federal Regulations Part 660 Section 384 Vol. 71, No. 189, dated September 29, 2006. A 20-fathom, 25-fathom, or 30-fathom curve, as shown on Title 50 Code of Federal Regulations Part 660 Section 391 Vol. 71, No. 189, dated September 29, 2006 may be implemented as the management line as in-season modifications necessitate.

(g) The Stonewall Bank Yelloweye Rockfish Conservation Area (YRCA) is defined by coordinates specified in Title 50 Code of Federal Regulations Part 660 Section 390. Within the YRCA, it is *unlawful* to fish for, take, or retain species listed in subsections (6)(a), (6)(b) and (6)(c) of this rule, leopard shark, soupfin shark, and Pacific halibut using recreational fishing gear. A vessel engaged in recreational fishing within the YRCA is prohibited from possessing any species listed in subsections (6)(a), (6)(b) and (6)(c) of this rule, leopard shark, soupfin shark, and Pacific halibut. Recreational fishing vessels in possession of species listed in subsections (6)(a), (6)(b) and (6)(c) and including leopard shark, soupfin shark, and Pacific halibut may transit the YRCA without fishing gear in the water.

(7) Razor clams may be taken by hand, shovel, or cylindrical gun or tube. The opening of the gun/tube must be either circular or elliptical with the circular gun/tube opening having a minimum outside diameter of 4 inches and the elliptical gun/tube opening having minimum outside diameter dimensions of 4 inches long and 3 inches wide.

[ED. NOTE: Tables referenced are available from the agency.]
[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119

Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129
Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 22-1994, f. 4-29-94, cert. ef. 5-2-94; FWC 29-1994(Temp), f. 5-20-94, cert. ef. 5-21-94; FWC 31-1994, f. 5-26-94, cert. ef. 6-20-94; FWC 43-1994(Temp), f. & cert. ef. 7-19-94; FWC 83-1994(Temp), f. 10-28-94, cert. ef. 11-1-94; FWC 95-1994, f. 12-28-94, cert. ef. 1-1-95; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 25-1995, f. 3-29-95, cert. ef. 4-1-95; FWC 26-1995, 3-29-95, cert. ef. 4-2-95; FWC 36-1995, f. 5-3-95, cert. ef. 5-5-95; FWC 43-1995(Temp), f. 5-26-95, cert. ef. 5-28-95; FWC 46-1995(Temp), f. & cert. ef. 6-2-95; FWC 58-1995(Temp), f. 7-3-95, cert. ef. 7-5-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 28-1996(Temp), f. 5-24-96, cert. ef. 5-26-96; FWC 30-1996(Temp), f. 5-31-96, cert. ef. 6-2-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 68-1999(Temp), f. & cert. ef. 9-17-99 thru 9-30-99; administrative correction 11-17-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 118-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 114-2003(Temp), f. 11-18-03, cert.

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ef. 11-21-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 128-2003, f. 12-15-03, cert. ef. 1-1-04; DFW 83-2004(Temp), f. 8-17-04, cert. ef. 8-18-04 thru 12-31-04; DFW 91-2004(Temp), f. 8-31-04, cert. ef. 9-2-04 thru 12-31-04; DFW 97-2004(Temp), f. 9-22-04, cert. ef. 9-30-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 34-2005(Temp), f. 4-29-05, cert. ef. 5-1-05 thru 10-27-05; DFW 75-2005(Temp), f. 7-13-05, cert. ef. 7-16-05 thru 12-31-05; DFW 87-2005(Temp), f. 8-8-05, cert. ef. 8-11-05 thru 12-31-05; DFW 121-2005(Temp), f. 10-12-05, cert. ef. 10-18-05 thru 12-31-05; DFW 129-2005(Temp), f. & cert. ef. 11-29-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 138-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 141-2005(Temp), f. 12-12-05, cert. ef. 12-30-05 thru 12-31-05; Administrative correction 1-19-06; DFW 61-2006, f. 7-13-06, cert. ef. 10-1-06; DFW 65-2006(Temp), f. 7-21-06, cert. ef. 7-24-06 thru 12-31-06; DFW 105-2006(Temp), f. 9-21-06, cert. ef. 9-22-06 thru 12-31-06; DFW 134-2006(Temp), f. 12-21-06, cert. ef. 1-1-07 thru 6-29-07; DFW 3-2007, f. & cert. ef. 1-12-07

Rule Caption: Amend Review of Denials rule for consistency with referenced rule 635-005-0055.

Adm. Order No.: DFW 4-2007(Temp)

Filed with Sec. of State: 1-12-2007

Certified to be Effective: 1-12-07 thru 6-15-07

Notice Publication Date:

Rules Amended: 635-006-1065

Subject: Amended rule is necessary to provide consistency with respect to review of decisions under referenced rule 635-005-0055 which defines the process by which crab permit holders may obtain replacements for crab buoy tags after the occurrence of an event that could not have been reasonable avoided.

Rules Coordinator: Casaria Tuttle—(503) 947-6033

635-006-1065

Review of Denials

(1) Except for bay clam dive fishery and sardine fishery permits, an individual whose application for issuance or renewal of a limited entry permit is denied by the Department may request review of the Department's decision by doing so in writing to the Commercial Fishery Permit Board. The procedure for requesting review and the applicable standard of review shall be as follows:

(a) Gillnet salmon — see ORS 508.796;

(b) Troll salmon — see ORS 508.825;

(c) Shrimp — see ORS 508.910;

(d) Scallop — see ORS 508.867;

(e) Roe-herring — see ORS 508.765. For the roe-herring fishery, the Board may waive requirements for permits if the Board finds that:

(A) The individual for personal or economic reasons chose to actively commercially fish the permit vessel in some other ocean fishery during the roe-herring season; or

(B) The Board finds that the individual failed to meet the requirements as the result of illness, accident or other circumstances beyond the individual's control.

(f) Sea Urchin — see ORS 508.760. For the sea urchin fishery, the Board may waive requirements for permits if the Board finds that failure to meet the requirements was due to illness, injury or circumstances beyond the control of the permittee;

(g) Ocean Dungeness crab — see ORS 508.941. For the Ocean Dungeness crab fishery, a permit holder may request review of the Department's initial crab pot allocation or the Department's denial of replacement of lost buoy tags by doing so in writing to the Commercial Fishery Permit Board. The Board may adjust the number of crab pots allocated to a permit or approve replacement of lost buoy tags as follows:

(A) The Board may adjust the number of crab pots allocated to a permit:

(i) Based on additional landings documentation supplied by permit holder according to criteria under OAR 635-006-1015(1)(g)(E); or

(ii) The crab pot allocation may be increased by one tier as described under OAR 635-006-1015(1)(g)(E) based on circumstances during the qualifying seasons described in OAR 635-006-1015(1)(g)(E) beyond the control of the permit holder which created undue hardship as defined by OAR 635-006-1095(7)(d).

(B) The Board may approve replacement of lost buoy tags under OAR 635-005-0055(6)(g).

(h) Black rockfish/blue rockfish/nearshore fishery — see ORS 508.960.

(2) The Board may delegate to the Department its authority to waive requirements for renewal of permits in all fisheries in such specific instances as the Board sets forth in a letter of delegation to the Department.

(3) For those fisheries requiring a \$75 application fee for Board review, the fee is nonrefundable. However, if the Board grants the applicant's request, the nonrefundable fee shall apply toward the permit fee.

(4) Orders issued by the Board are not subject to review by the Commission, but may be appealed as provided in ORS 183.480 to 183.550.

(5) Bay clam dive fishery permit:

(a) An individual whose application for issuance, renewal or transfer of a bay clam fishery permit is denied by the Department may, within 60 days of receipt of denial, make written request, to the Commission, for a hearing for review of the denial. The request shall identify why the permit should be granted;

(b) In accordance with any applicable provisions of ORS 183.310 to 183.550 for conduct of contested cases, a hearings officer shall review the proposed denial by the Department of an application for issuance, renewal or transfer of a permit;

(c) A party must petition for Commission review of the hearing officer's proposed order within 30 days of service of the proposed order if the party wants the proposed order changed. A party must identify what parts of the proposed order it objects to, and refer to parts of the administrative record and legal authority supporting its position;

(d) Final Orders shall be issued by the Commission and may be appealed as provided in ORS 183.480 to 183.550.

(6) Sardine fishery permit:

(a) An individual whose application for issuance, renewal or transfer of a sardine fishery permit is denied by the Department may, within 60 days of receipt of denial, make written request, to the Commission, for a hearing for review of the denial. The request shall identify why the permit should be granted;

(b) In accordance with any applicable provisions of ORS 183.310 to 183.550 for conduct of contested cases, a hearings officer shall review the proposed denial by the Department of an application for issuance, renewal or transfer of a permit. The Sardine Advisory Board is designated as a party to the contested case;

(c) A party, including the Department, must petition for Commission review of the hearing officer's proposed order within 30 days of service of the proposed order if the party wants to file an exception to the proposed order. A party must identify what parts of the proposed order it objects to, and refer to parts of the administrative record and legal authority supporting its position;

(d) The Sardine Advisory Group:

(A) Shall consist of members appointed by the Commission as follows:

(i) Three members shall be chosen to represent the sardine industry;

(ii) Two members shall be chosen to represent the public;

(B) Is subject to requirements of OAR 635-006-1200 sections (1) and (2).

Stat. Auth.: ORS 506.119, 508.921

Stats. Implemented: ORS 506.109, 508.941

Hist.: FWC 3-1996, f. 1-31-96, cert. ef. 2-1-96; FWC 64-1996, f. 11-13-96, cert. ef. 11-15-96; DFW 112-2003, f. & cert. ef. 11-14-03; DFW 137-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 139-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 45-2006, f. 6-20-06, cert. ef. 12-1-06; DFW 96-2006(Temp), f. & cert. ef. 9-8-06 thru 3-6-07; DFW 97-2006(Temp), f. 9-8-06, cert. ef. 9-9-06 thru 3-7-07; DFW 4-2007(Temp), f. & cert. ef. 1-12-07 thru 6-15-07

Department of Forestry Chapter 629

Rule Caption: Wood placement activities coincident with another forest operation are regulated by the forest practices act.

Adm. Order No.: DOF 1-2007

Filed with Sec. of State: 1-8-2007

Certified to be Effective: 1-8-07

Notice Publication Date: 11-1-06

Rules Adopted: 629-640-0105

Rules Amended: 629-600-0100, 629-640-0110

Subject: The rule amendments clarify that wood placement projects taking place in conjunction with forest operations are subject to regulations under the Forest Practices Act. The amendment to OAR 629-640-0110(1) and (3) makes this clarification, while the amendment to the Definitions rule, OAR 629-600-0100, provides a definition of "large wood key piece," which is needed for the amendment to OAR 629-640-0105. OAR 629-610-0110(2) amendment is needed to make explicit that basal area credit applies only if the additional requirements of OAR 629-640-0110 are met.

Rules Coordinator: Gayle Birch—(503) 945-7210

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629-600-0100

Definitions

As used in OAR chapter 629, divisions 605 through 669 and divisions 680 through 699, unless otherwise required by context:

(1) "Abandoned resource site" means a resource site that the State Forester determines is not active.

(2) "Active resource site" means a resource site that the State Forester determines has been used in the recent past by a listed species. "Recent past" shall be identified for each species in administrative rule. Resource sites that are lost or rendered not viable by natural causes are not considered active.

(3) "Active roads" are roads currently being used or maintained for the purpose of removing commercial forest products.

(4) "Aquatic area" means the wetted area of streams, lakes and wetlands up to the high water level. Oxbows and side channels are included if they are part of the flow channel or contain fresh water ponds.

(5) "Artificial reforestation" means restocking a site by planting trees or through the manual or mechanical distribution of seeds.

(6) "Basal area" means the area of the cross-section of a tree stem derived from DBH.

(7) "Basal area credit" means the credit given towards meeting the live tree requirements within riparian management areas for placing material such as logs, rocks or rootwads in a stream, or conducting other enhancement activities such as side channel creation or grazing enclosures.

(8) "Bog" means a wetland that is characterized by the formation of peat soils and that supports specialized plant communities. A bog is a hydrologically closed system without flowing water. It is usually saturated, relatively acidic, and dominated by ground mosses, especially sphagnum. A bog may be forested or non-forested and is distinguished from a swamp and a marsh by the dominance of mosses and the presence of extensive peat deposits.

(9) "Channel" is a distinct bed or banks scoured by water which serves to confine water and that periodically or continually contains flowing water.

(10) "Chemicals" means and includes all classes of pesticides, such as herbicides, insecticides, rodenticides, fungicides, plant defoliant, plant desiccants, and plant regulators, as defined in ORS 634.006(8); fertilizers, as defined in ORS 633.311; petroleum products used as carriers; and chemical application adjuvants, such as surfactants, drift control additives, anti-foam agents, wetting agents, and spreading agents.

(11) "Commercial" means of or pertaining to the exchange or buying and selling of commodities or services. This includes any activity undertaken with the intent of generating income or profit; any activity in which a landowner, operator or timber owner receives payment from a purchaser of forest products; any activity in which an operator or timber owner receives payment or barter from a landowner for services that require notification under OAR 629-605-0140; or any activity in which the landowner, operator, or timber owner barter or exchanges forest products for goods or services. This does not include firewood cutting or timber milling for personal use.

(12) "Completion of the operation" means harvest activities have been completed to the extent that the operation area will not be further disturbed by those activities.

(13) "Conflict" means resource site abandonment or reduced resource site productivity that the State Forester determines is a result of forest practices.

(14) "Debris torrent-prone streams" are designated by the State Forester to include channels and confining slopes that drain watersheds containing high landslide hazard locations that are of sufficient confinement and channel gradient to allow shallow, rapid landslide movement.

(15) "Department" means the Oregon Department of Forestry.

(16) "Diameter breast height" (DBH) means the diameter of a tree inclusive of the bark measured four and one-half feet above the ground on the uphill side of the tree.

(17) "Domestic water use" means the use of water for human consumption and other household human use.

(18) "Dying or recently dead tree" means a tree with less than ten percent live crown or a standing tree which is dead, but has a sound root system and has not lost its small limbs. Needles or leaves may still be attached to the tree.

(19) "Estuary" means a body of water semi-enclosed by land and connected with the open ocean within which saltwater is usually diluted by freshwater derived from the land. "Estuary" includes all estuarine waters, tidelands, tidal marshes, and submerged lands extending upstream to the

head of tidewater. However, the Columbia River Estuary extends to the western edge of Puget Island.

(20) "Exposure categories" are used to designate the likelihood of persons being present in structures or on public roads during periods when shallow, rapidly moving landslides may occur.

(21) "Filling" means the deposit by artificial means of any materials, organic or inorganic.

(22) "Fish use" means inhabited at any time of the year by anadromous or game fish species or fish that are listed as threatened or endangered species under the federal or state endangered species acts.

(23) "Fledging tree" means a tree or trees close to the nest which the State Forester determines are regularly used by young birds to develop flying skills.

(24) "Foraging area" means an area (usually a body of water) where bald eagles concentrate their hunting activities.

(25) "Foraging perch" means a tree or other structure that overlooks a portion of a foraging area and is habitually used by bald eagles as a vantage point while hunting.

(26) "Forestland" means land which is used for the growing and harvesting of forest tree species, regardless of how the land is zoned or taxed or how any state or local statutes, ordinances, rules or regulations are applied.

(27) "Free to grow" means the State Forester's determination that a tree or a stand of well distributed trees, of acceptable species and good form, has a high probability of remaining or becoming vigorous, healthy, and dominant over undesired competing vegetation. For the purpose of this definition, trees are considered well distributed if 80 percent or more of the portion of the operation area subject to the reforestation requirements of the rules contains at least the minimum per acre tree stocking required by the rules for the site and not more than ten percent contains less than one-half of the minimum per acre tree stocking required by the rules for the site.

(28) "Further review area" means an area of land that may be subject to rapidly moving landslides as mapped by the State Department of Geology and Mineral Industries or as otherwise determined by the State Forester.

(29) "Geographic region" means large areas where similar combinations of climate, geomorphology, and potential natural vegetation occur, established for the purposes of implementing the water protection rules.

(30) "High landslide hazard location" means a specific site that is subject to initiation of a shallow, rapidly moving landslide.

(31) "High water level" means the stage reached during the average annual high flow. The "high water level" often corresponds with the edge of streamside terraces, a change in vegetation, or a change in soil or litter characteristics.

(32) "Hydrologic function" means soil, stream, wetland and riparian area properties related to the storage, timing, distribution, and circulation of water.

(33) "Important springs" are springs in arid parts of eastern Oregon that have established wetland vegetation, flow year round in most years, are used by a concentration of diverse animal species, and by reason of sparse occurrence have a major influence on the distribution and abundance of upland species.

(34) "Inactive roads" are roads used for forest management purposes exclusive of removing commercial forest products.

(35) "Key components" means the attributes which are essential to maintain the use and productivity of a resource site over time. The key components vary by species and resource site. Examples include fledging trees or perching trees.

(36) "Lake" means a body of year-round standing open water.

(a) For the purposes of the forest practice rules, lakes include:

(A) The water itself, including any vegetation, aquatic life, or habitats therein; and

(B) Beds, banks or wetlands below the high water level which may contain water, whether or not water is actually present.

(b) "Lakes" do not include water developments as defined in section (82) of this rule.

(37) "Landslide mitigation" means actions taken to reduce potential landslide velocity or re-direct shallow, rapidly moving landslides near structures and roads so risk to persons is reduced.

(38) "Large lake" means a lake greater than eight acres in size.

(39) "Large wood key piece" means a portion of a bole of a tree, with or without the rootwad attached, that is wholly or partially within the stream, that meets the length and diameter standards appropriate to stream size and high water volumes established in A Guide to Placing Large Wood

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in Streams, Oregon Department of Forestry and Oregon Department of Fish and Wildlife, May 1995.

(40) "Live tree" means a tree that has 10 percent or greater live crown.

(41) "Local population" means the number of birds that live within a geographical area that is identified by the State Forester. For example: the area may be defined by physical boundaries, such as a drainage or subbasin.

(42) "Main channel" means a channel that has flowing water when average flows occur.

(43) "Natural barrier to fish use" is a natural feature such as a waterfall, increase in stream gradient, channel constriction, or other natural channel blockage that prevents upstream fish passage.

(44) "Natural reforestation" means restocking a site with self-grown trees resulting from self-seeding or vegetative means.

(45) "Nest tree" means the tree, snag, or other structure that contains a bird nest.

(46) "Nesting territory" means an area identified by the State Forester that contains, or historically contained, one or more nests of a mated pair of birds.

(47) "Operation" means any commercial activity relating to the establishment, management or harvest of forest tree species except as provided by the following:

(a) The establishment, management or harvest of Christmas trees, as defined in ORS 571.505, on land used solely for the production of Christmas trees.

(b) The establishment, management or harvest of hardwood timber, including but not limited to hybrid cottonwood that is:

(A) Grown on land that has been prepared by intensive cultivation methods and that is cleared of competing vegetation for at least three years after tree planting;

(B) Of a species marketable as fiber for inclusion in the furnish for manufacturing paper products;

(C) Harvested on a rotation cycle that is 12 or fewer years after planting; and

(D) Subject to intensive agricultural practices such as fertilization, cultivation, irrigation, insect control and disease control.

(c) The establishment, management or harvest of trees actively farmed or cultured for the production of agricultural tree crops, including nuts, fruits, seeds and nursery stock.

(d) The establishment, management or harvest of ornamental, street or park trees within an urbanized area, as that term is defined in ORS 221.010.

(e) The management or harvest of juniper species conducted in a unit of less than 120 contiguous acres within a single ownership.

(f) The establishment or management of trees intended to mitigate the effects of agricultural practices on the environment or fish and wildlife resources, such as trees that are established or managed for windbreaks, riparian filters or shade strips immediately adjacent to actively farmed lands.

(g) The development of an approved land use change after timber harvest activities have been completed and land use conversion activities have commenced.

(48) "Operator" means any person, including a landowner or timber owner, who conducts an operation.

(49) "Other wetland" means a wetland that is not a significant wetland or stream-associated wetland.

(50) "Perch tree" means a tree identified by the State Forester which is used by a bird for resting, marking its territory, or as an approach to its nest.

(51) "Plan for an Alternate Practice" means a document prepared by the landowner, operator or timber owner, submitted to the State Forester for written approval describing practices different than those prescribed in statute or administrative rule.

(52) "Relief culvert" means a structure to relieve surface runoff from roadside ditches to prevent excessive buildup in volume and velocity.

(53) "Removal" means the taking or movement of any amount of rock, gravel, sand, silt, or other inorganic substances.

(54) "Replacement tree" means a tree or snag within the nesting territory of a bird that is identified by the State Forester as being suitable to replace the nest tree or perch tree when these trees become unusable.

(55) "Resource site" is defined for the purposes of protection and for the purposes of requesting a hearing.

(a) For the purposes of protection:

(A) For threatened and endangered bird species, "resource site" is the nest tree, roost trees, or foraging perch and all identified key components.

(B) For sensitive bird nesting, roosting and watering sites, "resource site" is the nest tree, roost tree or mineral watering place, and all identified key components.

(C) For significant wetlands "resource site" is the wetland and the riparian management area as identified by the State Forester.

(b) For the purposes of requesting a hearing under ORS 527.670(4) and 527.700(3), "resource site" is defined in OAR 629-680-0020.

(56) "Riparian area" means the ground along a water of the state where the vegetation and microclimate are influenced by year-round or seasonal water, associated high water tables, and soils which exhibit some wetness characteristics.

(57) "Riparian management area" means an area along each side of specified waters of the state within which vegetation retention and special management practices are required for the protection of water quality, hydrologic functions, and fish and wildlife habitat.

(58) "Roosting site" means a site where birds communally rest at night and which is unique for that purpose.

(59) "Roost tree" is a tree within a roosting site that is used for night time roosting.

(60) "Saplings and poles" means live trees of acceptable species, of good form and vigor, with a DBH of one to 10 inches.

(61) "Seedlings" means live trees of acceptable species of good form and vigor less than one inch in DBH.

(62) "Shallow, rapidly moving landslide" means any detached mass of soil, rock, or debris that begins as a relatively small landslide on steep slopes and grows to a sufficient size to cause damage as it moves down a slope or a stream channel at a velocity difficult for people to outrun or escape.

(63) "Side channel" means a channel other than a main channel of a stream that only has flowing water when high water level occurs.

(64) "Significant wetlands" means those wetland types listed in OAR 629-680-0310, that require site specific protection.

(65) "Snag" means a tree which is dead but still standing, and that has lost its leaves or needles and its small limbs.

(66) "Sound snag" means a snag that retains some intact bark or limb stubs.

(67) "Staging tree" is a tree within the vicinity of a roosting site that is used for perching by bald eagles before entering the roost.

(68) "Stream" means a channel, such as a river or creek, that carries flowing surface water during some portion of the year.

(a) For the purposes of the forest practice rules, streams include:

(A) The water itself, including any vegetation, aquatic life, or habitats therein;

(B) Beds and banks below the high water level which may contain water, whether or not water is actually present;

(C) The area between the high water level of connected side channels;

(D) Beaver ponds, oxbows, and side channels if they are connected by surface flow to the stream during a portion of the year; and

(E) Stream-associated wetlands.

(b) "Streams" do not include:

(A) Ephemeral overland flow (such flow does not have a channel); or

(B) Road drainage systems or water developments as defined in section (82) of this rule.

(69) "Stream-associated wetland" means a wetland that is not classified as significant and that is next to a stream.

(70) "Structural exception" means the State Forester determines that no actions are required to protect the resource site. The entire resource site may be eliminated.

(71) "Structural protection" means the State Forester determines that actions are required to protect the resource site. Examples include retaining the nest tree or perch tree.

(72) "Temporal exception" means the State Forester determines that no actions are required to prevent disturbance to birds during the critical period of use.

(73) "Temporal protection" means the State Forester determines that actions are required to prevent disturbance to birds during the critical period of use.

(74) "Tree leaning over the channel" means a tree within a riparian management area if a portion of its bole crosses the vertical projection of the high water level of a stream.

(75) "Tye Core Area" means a location with geologic conditions including thick sandstone beds with few fractures. These sandstones weather rapidly and concentrate water in shallow soils creating a higher shallow, rapidly moving landslide hazard. The Tye Core area is located within coastal watersheds from the Siuslaw watershed south to and including the

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Coquille watershed, and that portion of the Umpqua watershed north of Highway 42 and west of Interstate 5. Within these boundaries, locations where bedrock is highly fractured or not of sedimentary origin as determined in the field by a geotechnical specialist are not subject to the Tye Core area slope steepness thresholds.

(76) "Type D stream" means a stream that has domestic water use, but no fish use.

(77) "Type F stream" means a stream with fish use, or both fish use and domestic water use.

(78) "Type N stream" means a stream with neither fish use nor domestic water use.

(79) "Unit" means an operation area submitted on a notification of operation that is identified on a map and that has a single continuous boundary. Unit is used to determine compliance with ORS 527.676 (down log, snag and green live tree retention), ORS 527.740 and 527.750 (harvest type 3 size limitation), and other forest practice rules.

(80) "Vacated roads" are roads that have been made impassable and are no longer to be used for forest management purposes or commercial forest harvesting activities.

(81) "Water bar" means a diversion ditch and/or hump in a trail or road for the purpose of carrying surface water runoff into the vegetation and duff so that it does not gain the volume and velocity which causes soil movement or erosion.

(82) "Water development" means water bodies developed for human purposes that are not part of a stream such as waste treatment lagoons, reservoirs for industrial use, drainage ditches, irrigation ditches, farm ponds, stock ponds, settling ponds, gravel ponds, cooling ponds, log ponds, pump chances, or heli-ponds that are maintained for the intended use by human activity.

(83) "Waters of the state" include lakes, bays, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, wetlands, inlets, canals, the Pacific Ocean within the territorial limits of the State of Oregon, and all other bodies of surface or underground waters, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters which do not combine or effect a junction with natural surface or underground waters), which are wholly or partially within or bordering the state or within its jurisdiction.

(84) "Wetland" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands include marshes, swamps, bogs, and similar areas. Wetlands do not include water developments as defined in section (82) of this rule.

(85) "Written plan" means a document prepared by an operator, timber owner or landowner that describes how the operation is planned to be conducted.

Stat. Auth.: ORS 527.710(1)

Stats. Implemented: ORS 527.630(5), 527.674 & 527.714

Hist.: FB 31, f. 6-14-72, ef. 7-1-72; FB 39, f. 7-3-74, ef. 7-25-74; FB 1-1978, f. & ef. 1-6-78; FB 5-1978, f. & ef. 6-7-78; FB 3-1983, f. & ef. 9-13-83; FB 1-1985, f. & ef. 3-12-85; FB 2-1985(Temp), f. & ef. 4-24-85; FB 2-1987, f. 5-4-87, ef. 8-1-87; FB 4-1988, f. 7-27-88, cert. ef. 9-1-88; FB 4-1990, f. & cert. ef. 7-25-90; FB 1-1991, f. & cert. ef. 5-23-91; FB 7-1991, f. & cert. ef. 10-30-91; FB 3-1994, f. 6-15-94, cert. ef. 9-1-94; FB 5-1994, f. 12-23-94, cert. ef. 1-1-95; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97, Renumbered from 629-024-0101; DOF 6-2002, f. & cert. ef. 7-1-02; DOF 13-2002, f. 12-9-02 cert. ef. 1-1-03; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06; DOF 8-2005, f. 12-13-05, cert. ef. 1-1-06; DOF 7-2006(Temp), f. 6-27-06 thru 12-23-06; DOF 1-2007, f. & cert. ef. 1-8-07

629-640-0105

Placing Large Wood Key Pieces in Type F Streams to Improve Fish Habitat

(1) Placement of large wood key pieces in a Type F stream to improve fish habitat that is conducted in conjunction with a forest operation is subject to the regulations in the Oregon Forest Practices Act and the forest practice rules.

(2) The goal of placing large wood key pieces is to deliver wood that is relatively stable, but can reconfigure to a limited degree and work with the natural stream flow to restore and maintain habitat for aquatic species. When placing large wood key pieces in conjunction with an operation, an operator shall design and implement the project to:

(a) Rely on the size of wood for stability and exclude the use of any type of artificial anchoring;

(b) Emulate large wood delivery configurations that occur from natural riparian processes over time; and

(c) Restore and maintain natural aquatic habitat over time rather than rely on constructed habitat structures.

(d) Meet the standards established in A Guide to Placing Large Wood in Streams, Oregon Department of Forestry and Oregon Department of Fish and Wildlife, May 1995.

Stat. Auth.: ORS 527.710(1)

Stats. Implemented: ORS 527.765, 527.674, 527.714 & 527.715

Hist.: DOF 1-2007, f. & cert. ef. 1-8-07

629-640-0110

Live Tree Retention Credit for Improvement of Type F Streams

(1) Many Type F streams currently need improvement of fish habitat because they lack adequate amounts of large woody debris in channels, or they lack other important habitat elements.

(2) This rule allows operators incentives to conduct other stream enhancement projects to create immediate improvements in fish habitat. Operators placing large wood key pieces in streams, as described in OAR 629-640-0105, may qualify for the live tree retention credit under this rule only if such placement meets the additional requirements of this rule.

(3) When addressed in a written plan, operators may place conifer logs or downed trees in Type F streams and receive basal area credit toward meeting the live tree retention requirements in a stream's riparian management area.

(4) For each conifer log or tree the operator places in a large or medium Type F stream, the basal area credit is twice the basal area of the placed log or tree.

(5) For each conifer log or tree the operator places in a small Type F stream, the basal area credit is equal to the basal area of the placed log or tree.

(6) Basal area credit will be determined by measuring the cross-sectional area of the large end of a log or by measuring the point on a downed tree that would be equivalent to breast height.

(7) To receive basal area credit for downed trees or conifer logs placed in a stream, the operator shall comply with the guidance and restrictions for placing logs or trees prescribed by the State Forester.

(8) Operators may propose other stream enhancement projects for basal area credit such as creation of backwater alcoves, riparian grazing enclosures (such as fencing), and placement of other instream structure such as boulders and rootwads. When a project is addressed in a written plan and reviewed by the department in consultation with the Department of Fish and Wildlife, basal area credit shall be given toward meeting the live tree requirements within riparian management areas. The basal area credit shall be negotiated between the department, operator and Department of Fish and Wildlife.

(9) Basal area credit may be given to an operation for enhancement projects conducted at locations other than at the operation site so long as the project is in the same immediate vicinity as the operation site (for instance, within one or two miles of the operation).

(10) Basal area credit may be given to an operation for improvement projects conducted at a later date (this may be necessary to avoid operating under high water conditions or to protect spawning areas), but the project must be completed within six months of the completion of the operation.

(11) In granting basal area credit, the standing tree basal area retained within riparian management areas of Type F streams shall not be reduced to less than the active management targets shown in **Table 2** or **3**, as applicable.

(12) For small Type F streams in the Eastern Cascade and Blue Mountain geographic regions, the live conifer tree basal area may be reduced to 30 square feet for the active management target. The remaining portion of the basal area requirement must come from snags, dying or recently dead or dying trees, or hardwood trees if available in the riparian management area.

(13) Operators shall notify the State Forester of the completion of live tree retention credit stream improvement projects that were planned for locations other than on the operation site under section (9) of this rule or that were planned to be completed at another date under section (10) of this rule.

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

Stat. Auth.: ORS 527.710(1)

Stats. Implemented: ORS 527.674, 527.715 & 527.765

Hist.: FB 3-1994, f. 6-15-94, cert. ef. 9-1-94, Renumbered from 629-057-2240; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06; DOF 8-2005, f. 12-13-05, cert. ef. 1-1-06; DOF 1-2007, f. & cert. ef. 1-8-07

Rule Caption: Improves the voluntary Forest Resource Trust program for private nonindustrial forestland owners with under-producing forestlands.

Adm. Order No.: DOF 2-2007

Filed with Sec. of State: 1-10-2007

ADMINISTRATIVE RULES

Certified to be Effective: 1-11-07

Notice Publication Date: 10-1-06

Rules Amended: 629-022-0040, 629-022-0110, 629-022-0120, 629-022-0130, 629-022-0150, 629-022-0160, 629-022-0200, 629-022-0220, 629-022-0230, 629-022-0250, 629-022-0300, 629-022-0320, 629-022-0380, 629-022-0390, 629-022-0410

Rules Repealed: 629-022-0310, 629-022-0330, 629-022-0340, 629-022-0350, 629-022-0360, 629-022-0370

Subject: The proposed rules simplify the process for a private non-industrial forestland owner to receive 100% funding from the Forest Resource Trust for forest establishment on underproducing forestland. The repayment terms create more options for the landowner and are less complicated than the existing rules, which should improve program participation and administration. Eligible acres have been extended to allow large ranches with low site forestland to participate. The timber lien will be used when certain criteria establish the landowner as a risk to the state for repaying funds. The terms of financial assistance acknowledge that society benefits from forest stewardship investments with clean water, soil conservation, fish and wildlife habitat, jobs, taxes, timber, carbon sequestration, scenic quality and biodiversity.

Rules Coordinator: Gayle Birch—(503) 945-7210

629-022-0040

Definitions

As used in the Forest Resource Trust rules, unless the context requires otherwise:

(1) "Adequately stocked" means the number and size of the trees growing within a forest stand meet the standards determined by the State Forester in OAR 629-022-0390.

(2) "Contract" means the Forest Resource Trust Contract that is signed by the State Forester and the landowner.

(3) "Conversion" means an operation conducted on underproducing forestland with the objective of removing undesirable competing vegetation, including the incidental harvest of forest products and establishing an adequately stocked, free to grow forest stand.

(4) "Environmental restoration" means a practice that protects, restores or improves natural resources. For example, an environmental restoration practice may enhance wildlife habitat for a sensitive species such as the osprey or a threatened species such as the bald eagle; improve water quality, reduce water temperature, or provide large woody debris to a stream in a watershed enhancement area; improve the health of an insect damaged or diseased forest; or protect soils from erosion or degradation.

(5) "Final harvest" means forest products are removed from the stand to create a Harvest Type 1, 2 or 3 condition, described as:

(a) "Harvest type 1" means an operation that requires reforestation but does not require wildlife leave trees. A harvest type 1 is an operation that leaves a combined stocking level of free to grow seedlings, saplings, poles and larger trees that is less than the stocking level established by rule of the board that represents adequate utilization of the productivity of the site.

(b) "Harvest type 2" means an operation that requires wildlife leave trees but does not require reforestation. A harvest type 2 does not require reforestation because it has an adequate combined stocking of free to grow seedlings, saplings, poles and larger trees, but leaves:

(A) On Cubic Foot Site Class I, II or III, fewer than 50 11-inch DBH trees or less than an equivalent basal area in larger trees, per acre;

(B) On Cubic Foot Site Class IV or V, fewer than 30 11-inch DBH trees or less than an equivalent basal area in larger trees, per acre; or

(C) On Cubic Foot Site Class VI, fewer than 15 11-inch DBH trees or less than an equivalent basal area in larger trees, per acre.

(c) "Harvest type 3" means an operation that requires reforestation and requires wildlife leave trees. This represents a level of stocking below which the size of operations is limited under ORS 527.740 and 527.750.

(6) "Forestland" means land zoned in a county comprehensive plan for forest or farm use that is capable of producing commercial hardwood or softwood timber, regardless of the vegetation currently on the land.

(7) "Forest products" include, but are not limited to, logs, poles and pilings, lumber, chips, and pulp.

(8) "Forest stand" means the aggregation of all trees within the project boundary described in the contract.

(9) "Free to grow" means the State Forester has determined that a forest stand has well distributed trees, of acceptable species and of good form

and has a high probability of remaining or becoming vigorous, healthy and dominant over undesired competing vegetation.

(10) "Harvest" means the forest products in a forest stand are cut, severed, removed or sold.

(11) "Landowner" means the person or persons who are eligible to apply for or receive trust funds, or are subject to a Forest Resource Trust Contract.

(12) "Low site forestland" means forestland which is capable of annual wood production between 20 and 119 cubic feet per acre per year at culmination of mean annual increment (Cubic Foot Site Class IV, V and VI).

(13) "Nonindustrial private forestland owner" means:

(a) Any forest landowner who has not owned a forest product manufacturing facility within the past 6 months that employed more than 6 people; and

(b) Is not owned or partially owned, or controlled, by any person who has owned a forest products manufacturing facility within the past 6 months, that employed more than 6 people.

(14) "Operation" means any commercial activity relating to the growing or harvesting of forest tree species.

(15) "Person" means an individual, partnership, corporation, limited liability company, trustee, business or other entity.

(16) "Practice" means the operational activity identified in the project plan, such as site preparation or tree planting.

(17) "Project" means the practices required to establish an adequately stocked, free to grow forest stand, described in the project plan in OAR 629-022-0130.

(18) "Resource management professional" means a person who the State Forester recognizes as having the ability to develop landowner plans for managing the biological, economic, and environmental relationships of forest resources, and to identify appropriate activities to manage, protect, or enhance forest resources, and who has:

(a) A degree in forestry, biology or related sciences, plus at least a year of forestry consulting or employment experience; or

(b) An associate degree in forestry, biology or related sciences, plus at least 5 years of forestry consulting or employment experience.

(19) "Salvage" means harvest of trees that are dead, dying or damaged and deteriorating.

(20) "State Forester" means the State Forester or the duly authorized representative of the State Forester.

(21) "Timber" means all logs which can be measured in board feet and other forest products.

(22) "Trust" means the Forest Resource Trust as authorized in ORS 526.700 through 526.775.

(23) "Underproducing forestland" means any forestland that is capable of producing at least 20 cubic feet of wood fiber per acre per year at culmination of mean annual increment, but does not currently support the minimum number of free to grow trees required in the reforestation rules under the Forest Practices Act.

Stat. Auth.: ORS 526.700 - 526.730, 526.745 & 293

Stats. Implemented: ORS 526.700 - 526.775

Hist.: FB 4-1994, f. & cert. ef. 8-3-94; DOF 2-2007, f. 1-10-07 cert. ef. 1-11-07

629-022-0110

Eligible Landowners and Land

(1) Only nonindustrial private forestland owners with less than 5,000 acres of forestland or up to 15,000 acres of low site forestland in Oregon are eligible to receive funds.

(2) Eligible forestland must be underproducing forestland that is:

(a) At least 10 contiguous acres in size;

(b) Zoned for forest or farm use;

(c) Located outside urban growth boundaries or residential zones, as identified in the county comprehensive plan;

(d) Free from all reforestation requirements under the Forest Practices Act;

(e) Free of any "no tree cutting" covenants or encumbrances;

(f) Under no current petition before a county requesting a land use change to avoid reforestation under ORS 527.760; and (g) Under no active operation to convert underproducing forestland.

Stat. Auth.: ORS 526.700 - 526.730, 526.745 & 293

Stats. Implemented: ORS 526.700 - 526.775

Hist.: FB 4-1994, f. & cert. ef. 8-3-94; DOF 2-2007, f. 1-10-07 cert. ef. 1-11-07

629-022-0120

Applying for Trust Funds

(1) Any person may apply for trust funds, certifying on an application provided by the State Forester that:

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(a) Both the lands and the person meet the requirements of OARs 629-022-0100 and 629-022-0110; and

(b) The person requests a suspension of the reforestation requirements under OAR 629-610-0070 when a proposed project includes the harvest of forest products.

(2) If the person is a corporation, partnership or limited liability company, the application shall provide the names and addresses of the stockholders, partners, members or any other person having an ownership interest in the entity.

Stat. Auth.: ORS 526.700 - 526.730, 526.745 & 293

Stats. Implemented: ORS 526.700 - 526.775

Hist.: FB 4-1994, f. & cert. ef. 8-3-94; DOF 2-2007, f. 1-10-07 cert. ef. 1-11-07

629-022-0130

Project Plan

(1) A landowner meeting the requirements of OAR 629-022-0100, 629-022-0110 and 629-022-0120 shall submit a project plan, subject to the State Forester granting a reforestation suspension described in OAR 629-610-0070 if forest products are harvested during the conversion project.

(2) A landowner may receive technical assistance to develop the project plan from the State Forester, other cooperating state or federal agencies, or a resource management professional.

(3) The project plan shall include a:

(a) Current aerial photograph showing project boundaries;

(b) Project map or maps at 4" = 1 mile or larger scale showing a legend, scale, north arrow, property boundary, the project boundary, location of practices, acres, vegetative cover types, soil types within the project boundary, existing or proposed roads, and sensitive resource sites or streams that are protected by the Forest Practices Act; and

(c) Description of environmental restoration practices planned within the project boundary and the source of funding for the practices.

(4) The project plan shall include a description of the following required practices in the project:

(a) Site preparation to remove grass, brush or trees by mechanical, manual, prescribed fire, or chemical methods to prepare a seedling planting site;

(b) Acceptable tree seedlings, specifying appropriate seed zone, elevation, quality control standards, nursery source, availability dates, reservation, transportation, and handling and storage;

(c) Planting or interplanting, including the number of seedlings per acre by site class and species, the soil and air temperature limitations during planting, and seedling planting depth and root replacement;

(d) Fertilizer application that may be required to enhance seedling growth on low productivity lands;

(e) Seedling protection to reduce animal damage to seedlings; and

(f) Application of moisture conservation measures by either mechanical, manual or chemical methods.

(5) The project plan shall also include for each practice described in section (4) of this rule:

(a) Specifications for the practice;

(b) A time schedule for completion;

(c) Estimated costs; and

(d) A description of any Forest Practices Act rules that need to be followed.

(6) When the landowner retains a resource management professional to implement a project, the project plan shall include the resource management professional fees described in OAR 629-022-0230.

(7) The project plan shall include a description of the recommended management practices that ensure the forest stand remains adequately stocked and reaches the free to grow condition.

Stat. Auth.: ORS 526.700 - 526.730, 526.745 & 293

Stats. Implemented: ORS 526.700 - 526.775

Hist.: FB 4-1994, f. & cert. ef. 8-3-94; DOF 2-2007, f. 1-10-07 cert. ef. 1-11-07

629-022-0150

The Trust Contract

(1) A landowner receiving project approval for trust funding under OAR 629-022-0140 shall execute a Forest Resource Trust Contract with the State Forester.

(2) The contract shall include:

(a) The approved project plan;

(b) Financial agreements for repayment of trust funds under OAR 629-022-0300 through 629-022-0410; and

(c) A security instrument, if required by the State Forester, described in OAR 629-022-0160.

(3) No work shall begin on the practices described in the project plan until the contract is signed by all parties.

Stat. Auth.: ORS 526.700 - 526.730, 526.745 & 293

Stats. Implemented: ORS 526.700 - 526.775

Hist.: FB 4-1994, f. & cert. ef. 8-3-94; DOF 2-2007, f. 1-10-07 cert. ef. 1-11-07

629-022-0160

Trust Security Instrument

(1) The landowner may be required by the State Forester to provide good and sufficient collateral to secure repayment of all funds paid to the landowner from the trust.

(2) Collateral shall be in the form of a first mortgage or trust deed on the property within the project boundaries and all improvements, fixtures, crops, trees and timber on the property and shall not exceed 75% of the sum of the fair market value of the land, trees and timber, plus the actual trust funds advanced under the contract.

(3) If legislation is passed that provides a new security instrument specifically for the trust, the landowner shall be provided the opportunity to substitute the collateral provided under section (2) of this rule with the new security instrument.

(4) Costs and fees related to the collateral and the security instrument, such as title policy premiums and escrow fees, shall be paid from trust funds but shall not be used to determine final payback amounts described in OAR 629-022-0300 through 629-022-0320. These costs and fees shall be subject to repayment following a breach of contract.

Stat. Auth.: ORS 526.700 - 526.730, 526.745 & 293

Stats. Implemented: ORS 526.700 - 526.775

Hist.: FB 4-1994, f. & cert. ef. 8-3-94; DOF 2-2007, f. 1-10-07 cert. ef. 1-11-07

629-022-0200

Implementing the Project Plan; Payments

(1) The landowner shall implement the practices in the project plan and notify the State Forester when a practice, or a part of a practice, described in the project plan is complete.

(2) The landowner shall submit written invoices for all services and supplies used to complete the practices described in the project plan.

(3) The State Forester shall disburse trust funds to the land owner, payable to both the landowner and the provider of the services or supplies, when the State Forester certifies that a practice is complete to the specifications and within the costs approved in the approved project plan in OAR 629-022-0140.

(4) Actual costs paid from the trust fund shall be used to determine final payback amounts described in OAR 629-022-0300 through 629-022-0320.

Stat. Auth.: ORS 526.700 - 526.730, 526.745 & 293

Stats. Implemented: ORS 526.700 - 526.775

Hist.: FB 4-1994, f. & cert. ef. 8-3-94; DOF 2-2007, f. 1-10-07 cert. ef. 1-11-07

629-022-0220

Project Rates and Costs

(1) Project costs described in the project plan in OAR 629-022-0130 shall be within written rates determined by the State Forester, based on the prevailing rates and wages in Oregon.

(2) Project costs paid from the trust fund may not exceed the project costs approved in OAR 629-022-0140(2), unless the landowner requests additional trust funds, and provides evidence justifying additional trust funds, prior to the completion of the practice.

(3) The State Forester may approve additional trust funds when:

(a) The requirements of section (2) of this rule are met; and

(b) The landowner agrees to amend the contract and the payback amounts, described in OAR 629-022-0300 through 629-022-0320, to reflect the higher trust fund expenditures.

(4) The trust fund shall not pay for:

(a) The cost of environmental restoration practices described in the project plan;

(b) Purchase of capital or expendable items, such as vehicles, road surfacing, culverts, sprayers, shovels, planting hoes, saws or safety equipment; or

(c) Landowner labor, materials or equipment.

Stat. Auth.: ORS 526.700 - 526.730, 526.745 & 293

Stats. Implemented: ORS 526.700 - 526.775

Hist.: FB 4-1994, f. & cert. ef. 8-3-94; DOF 2-2007, f. 1-10-07 cert. ef. 1-11-07

629-022-0230

Resource Management Professional Fees

(1) Resource management professional fees may be paid from trust funds for field and office work required to write a project plan described in OAR 629-022-0130 and to supervise the implementation and completion of all practices in the project plan described in OAR 629-022-0130(4) and (5).

(2) The fees in section (1) of this rule shall be subject to:

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(a) The landowner executing the contract under OAR 629-022-0150 and 629-022-0160; and

(b) The landowner submitting invoices for the professional fees charged.

(3) Trust funds disbursed under this rule shall be payable to both the landowner and the resource management professional.

(4) Fees shall be within rate determined by the State Forester, based on the prevailing resource management professional fees in Oregon.

(5) All resource management professional fees paid from the trust fund shall be included in the actual costs to determine final payback amounts described in OAR 629-022-0300 through 629-022-0320.

Stat. Auth.: ORS 526.700 - 526.730, 526.745 & 293

Stats. Implemented: ORS 526.700 - 526.775

Hist.: FB 4-1994, f. & cert. ef. 8-3-94; DOF 2-2007, f. 1-10-07 cert. ef. 1-11-07

629-022-0250

Life of the Contract

The contract between the landowner and the trust shall be terminated when:

(1) The landowner makes full payment described in OAR 629-022-0300; or

(2) A catastrophe destroys the entire forest stand, leaving no salvage value; or

(3) Two hundred years, or as otherwise specified in the contract, elapse since the execution of the original contract.

Stat. Auth.: ORS 526.700 - 526.730, 526.745 & 293

Stats. Implemented: ORS 526.700 - 526.775

Hist.: FB 4-1994, f. & cert. ef. 8-3-94; DOF 2-2007, f. 1-10-07 cert. ef. 1-11-07

629-022-0300

Repaying Trust Funds

(1) The landowner may terminate the contract at anytime during the life of the contract by repaying all trust funds, including interest.

(2) The State Forester shall calculate the amount due by using the actual costs paid to the landowner to establish the forest stand described in the contract, with annual interest at the rate determined in OAR 629-022-0320. Interest is simple, prorated to the nearest full month, and begins on the date that payment or payments are made to the landowner.

(3) When there is a partial harvest of forest products at any time during the life of the contract, the landowner must make payments of 50 percent of all net receipts, until all the trust funds, including interest are paid.

(4) When there is a final harvest of forest products from the stand described in the contract, the landowner must make full repayment of all the trust funds, including interest.

(5) Repayment of trust funds is first applied to the actual cost paid to the landowner and then to the accumulative interest, until repaying all the trust funds, including interest.

(6) The landowner shall make payments to the State Forester, to be deposited in the trust fund, within 60 days of receiving notice of payment from the State Forester.

Stat. Auth.: ORS 526.700 - 526.730, 526.745 & 293

Stats. Implemented: ORS 526.700 - 526.775

Hist.: FB 4-1994, f. & cert. ef. 8-3-94; DOF 2-2007, f. 1-10-07 cert. ef. 1-11-07

629-022-0320

Interest Rate

(1) The interest rate is 4.0 percent, simple interest.

(2) The interest rate shall be fixed when the contract is executed and shall not change during the life of the contract.

Stat. Auth.: ORS 526.700 - 526.730, 526.745 & 293

Stats. Implemented: ORS 526.700 - 526.775

Hist.: FB 4-1994, f. & cert. ef. 8-3-94; DOF 4-2006(Temp), f. & cert. ef. 5-2-06 thru 10-28-06; Administrative correction, 11-16-06; DOF 2-2007, f. 1-10-07 cert. ef. 1-11-07

629-022-0380

Catastrophe; Salvage Adjustments

(1) A catastrophe means an event or circumstance beyond the landowner's control, resulting in all or part of a forest stand being incapable of producing harvest revenues to make repayment of trust funds as described in OAR 629-022-0300.

(2) A catastrophe may be caused by:

(a) Insects, diseases, fire or other casualties and accidents; or

(b) Storms, floods, droughts and other unusual environmental conditions.

(3) When a catastrophe damages individual trees or groups of trees within the forest stand:

(a) The landowner shall pay the appropriate fixed payback percentage rate on salvaged forest products, as described in OAR 629-022-0300(3) and (4); and

(b) The State Forester shall adjust the forest stand boundaries to reflect a forest stand capable of producing harvest revenues. The forest stand boundaries shall not be adjusted to exclude land with unharvested merchantable forest products.

Stat. Auth.: ORS 526.700 - 526.730, 526.745 & 293

Stats. Implemented: ORS 526.700 - 526.775

Hist.: FB 4-1994, f. & cert. ef. 8-3-94; DOF 2-2007, f. 1-10-07 cert. ef. 1-11-07

629-022-0390

Adequately Stocked Forest Stand

The landowner shall manage forest stands established with trust funds above the reforestation stocking standards in the Forest Practices Act and in OAR 629-610-0020 or as otherwise specified in the contract, until the conditions in OAR 629-022-0250, Life of the Contract, are met.

Stat. Auth.: ORS 526.700 - 526.730, 526.745 & 293

Stats. Implemented: ORS 526.700 - 526.775

Hist.: FB 4-1994, f. & cert. ef. 8-3-94; DOF 2-2007, f. 1-10-07 cert. ef. 1-11-07

629-022-0410

Remedies for Breach of Contract

(1) The landowner shall pay liquidated damages for a breach of contract by repaying all trust funds, with interest as calculated in OAR 629-022-0300(2).

(2) At any time forest products are harvested in breach of contract, the landowner shall pay liquidated damages in the form of a breach penalty.

(3) In addition to any other right as provided by law, the State Forester may assign a liquidated and delinquent account, as defined by the Oregon Accounting Manual, to the Department of Revenue or to a private collection agency.

(4) The breach penalty in section (2) of this rule shall include a reasonable administrative fee to recover the cost of collection services and other related costs, as described in ORS 293.231 through 293.250.

Stat. Auth.: ORS 526.700 - 526.730, 526.745 & 293

Stats. Implemented: ORS 526.700 - 526.775

Hist.: FB 4-1994, f. & cert. ef. 8-3-94; DOF 2-2007, f. 1-10-07 cert. ef. 1-11-07

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

Rule Caption: Pharmaceutical Rule Revisions for January 1, 2007 — PMPDP PDL.

Adm. Order No.: OMAP 48-2006

Filed with Sec. of State: 12-28-2006

Certified to be Effective: 1-1-07

Notice Publication Date: 11-1-06

Rules Amended: 410-121-0030

Subject: The Pharmaceutical Services Program administrative rules govern Division of Medical Assistance Programs' payment for pharmaceutical products and services provided to certain clients. DMAP revised 410-121-0030, The Practitioner Managed Prescription Drug Plan (PMPDP) Plan Drug List (PDL) by adding and deleting certain drugs to the PDL.

Rules Coordinator: Darlene Nelson—(503) 945-6927

410-121-0030

Practitioner-Managed Prescription Drug Plan (PMPDP)

(1) The Practitioner-Managed Prescription Drug Plan (PMPDP) is a plan that ensures that fee for service clients of the Oregon Health Plan will have access to the most effective prescription drugs appropriate for their clinical conditions at the best possible price:

(a) Licensed health care practitioners (informed by the latest peer reviewed research), make decisions concerning the clinical effectiveness of the prescription drugs;

(b) The licensed health care practitioners also consider the health condition of a client or characteristics of a client, including the client's gender, race or ethnicity.

(2) PMPDP Plan Drug List (PDL):

(a) The PDL is the primary tool that the Department of Human Services (DHS) has developed to inform licensed health care practitioners about the results of the latest peer-reviewed research and cost effectiveness of prescription drugs;

(b) The PDL consists of prescription drugs in selected classes that DHS, in consultation with the Health Resources Commission (HRC), has determined represent effective drug(s) available at the best possible price;

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(c) For each selected drug class, the PDL will identify a drug(s) as the benchmark drug that DHS determines to be the most effective drug(s) available for the best possible price;

(d) The PDL will include other drugs in the class that are Medicaid reimbursable and which the Food and Drug Administration (FDA) has determined to be safe and effective if the relative cost is less than the benchmark drug(s). If pharmaceutical manufacturers enter into supplemental discount agreements with DHS that reduce the cost of their drug below that of the benchmark drug for the class, DHS will include their drug in the PDL;

(e) A copy of the current PDL is available on the web at www.dhs.state.or.us/policy/healthplan/guides/pharmacy/.

(3) PMPDP PDL Selection Process:

(a) DHS will utilize the recommendations made by the HRC, which result from an evidence-based evaluation process, as the basis for identifying the most effective drug(s) within a selected drug class;

(b) DHS will determine the drug(s) identified in (3)(a) that is (are) available for the best possible price and will consider any input from the HRC about other FDA-approved drug(s) in the same class that are available for a lesser relative price. DHS will determine relative price using the methodology described in subsection (4);

(c) DHS will review drug classes and selected drug(s) for the drug classes periodically:

(A) Review will occur more frequently at the discretion of DHS if new safety information or the release of new drugs in a class or other information makes a review advisable;

(B) DHS will not add new drugs to the PDL until they have been reviewed by the HRC;

(C) DHS will make all changes or revisions to the PDL, using the rulemaking process and will publish the changes on DHS's Pharmaceutical Services provider rules Web page.

(4) Relative cost and best possible price determination:

(a) DHS will determine the relative cost of all drugs in each selected class that are Medicaid reimbursable and that the FDA has determined to be safe and effective;

(b) DHS may also consider dosing issues, patterns of use and compliance issues. DHS will weigh these factors with any advice provided by the HRC in reaching a final decision;

(c) DHS will determine the benchmark drug based on (4)(b) and on the Estimated Acquisition Cost (EAC) on the first of the month (OAR 410-121-0155) in which DHS reviews that specific drug class;

(d) Once the cost of the benchmark drug is determined, DHS will recalculate the cost of the other FDA-approved drugs in the class using the EAC in effect for retail pharmacies on the first of the month in which DHS reviews that specific drug class less average available rebate. DHS will include drugs with prices under the benchmark drug cost on the PDL.

(5) Regardless of the PDL, pharmacy providers shall dispense prescriptions in the generic form, unless the practitioner requests otherwise, subject to the regulations outlined in OAR 410-121-0155. Table 121-0030-1, PMPDP PDL.

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.06

Hist.: OMAP 25-2002, f. 6-14-02 cert. ef. 7-1-02; OMAP 31-2002, f. & cert. ef. 8-1-02; OMAP 36-2002, f. 8-30-02, cert. ef. 9-1-02; OMAP 29-2003, f. 3-31-03 cert. ef. 4-1-03; OMAP 35-2003, f. & cert. ef. 5-1-03; OMAP 47-2003, f. & cert. ef. 7-1-03; OMAP 57-2003, f. 9-5-03, cert. ef. 10-1-03; OMAP 70-2003(Temp), f. 9-15-03, cert. ef. 10-1-03 thru 3-15-04; OMAP 82-2003, f. 10-31-03, cert. ef. 11-1-03; OMAP 9-2004, f. 2-27-04, cert. ef. 3-1-04; OMAP 29-2004, f. 4-23-04 cert. ef. 5-1-04; OMAP 34-2004, f. 5-26-04 cert. ef. 6-1-04; OMAP 45-2004, f. 7-22-04 cert. ef. 8-1-04; OMAP 81-2004, f. 10-29-04 cert. ef. 11-1-04; OMAP 89-2004, f. 11-24-04 cert. ef. 12-1-04; OMAP 19-2005, f. 3-21-05, cert. ef. 4-1-05; OMAP 32-2005, f. 6-21-05, cert. ef. 7-1-05; OMAP 58-2005, f. 10-27-05, cert. ef. 11-1-05; OMAP 16-2006, f. 6-12-06, cert. ef. 7-1-06; OMAP 32-2006, f. 8-31-06, cert. ef. 9-1-06; OMAP 48-2006, f. 12-28-06, cert. ef. 1-1-07

Rule Caption: 2006 — Medicaid Drug Rebate Program list updates from Centers for Medicare.

Adm. Order No.: OMAP 49-2006

Filed with Sec. of State: 12-28-2006

Certified to be Effective: 1-1-07

Notice Publication Date: 11-1-06

Rules Amended: 410-121-0157

Subject: The Pharmaceutical Services program rules govern Division of Medical Assistance Programs' (DMAP) payments for services provided to certain clients. OAR 410-121-0157 references the CMS Federal Medicaid Rebate List that provides information regarding pharmaceutical companies participating in the Medicaid Drug Rebate Program that meets criteria set forth in section 1927(b) of the

Social Security Act. DMAP must use this list for payment reimbursement to providers, in compliance with federal regulations. DMAP receives all updates to this list from CMS in the form of numbered releases, and subsequently amends rule 410-121-0157 to reference the releases and updated lists.

DMAP amended this rule to reference updates received July 3, 2006 (for the quarter April through June) and August 23, 2006 (for the quarter July through September). All updates are posted on the following website: <http://www.dhs.state.or.us/policy/healthplan/guides/pharmacy/main.html>

The information can also be obtained by contacting DMAP.

Rules Coordinator: Darlene Nelson—(503) 945-6927

410-121-0157

Participation in the Medicaid Drug Rebate Program

(1) The Oregon Medicaid Pharmaceutical Services Program is a participant in the Centers for Medicare and Medicaid Services (CMS) Medicaid Drug Rebate Program, created by the Omnibus Budget Reconciliation Act (OBRA) of 1990. The Medicaid Drug Rebate Program requires a drug manufacturer to enter into and have in effect a national rebate agreement with the Secretary of the Department of Health and Human Services for States to receive federal funding for outpatient drugs dispensed to Medicaid patients. The drug rebate program is administered by CMS's Center for Medicaid and State Operations (CMSO). Pharmaceutical companies participating in this program have signed agreements with CMS to provide rebates to the Division of Medical Assistance Programs (DMAP) on all their drug products. DMAP will reimburse providers only for outpatient drug products manufactured or labeled by companies participating in this program.

(2) Documents in rule by reference: Names and Labeler Code numbers for participants in the Medicaid Drug Rebate Program are the responsibility of and maintained by CMS. DMAP receives this information from CMS in the form of numbered and dated Releases. Subsequently, DMAP produces and updates Master Pharmaceutical Manufacturer's Rebate Lists (Lists), alphabetical and numeric, by manufacturer. These lists are used by DMAP providers to bill for services. DMAP includes in rule by reference, the following CMS Releases and subsequent DMAP Master Pharmaceutical Manufacturer's Rebate Lists: Release #136, dated February 17, 2005 — Lists updated March 30, 2005; Release #137, dated May 13, 2005 and Lists updated June 23, 2005; Release #138, dated August 5, 2005, and Lists updated August 19, 2005, and Release #139, dated December 1, 2005 — Lists updated December 8, 2005; Release #140, dated March 15, 2006, and Lists updated March 17, 2006, Release # 142, dated July 3, 2006, and Lists updated July 12, 2006; Release # 143, dated August 23, 2006, and Lists updated August 29, 2006. All CMS Releases are available on the Department of Human Services' website: www.dhs.state.or.us/policy/healthplan/guides/pharmacy/main.html, and on the CMS website: www.cms.hhs.gov/medicaid/drugs/drughmpg.asp, and the subsequent DMAP Master Pharmaceutical Manufacturer's Rebate Lists, are available on the Department of Human Services' website: www.dhs.state.or.us/policy/healthplan/guides/pharmacy/main.html.

(3) Retroactive effective dates: The CMS Medicaid Drug Rebate Program experiences frequent changes in participation and often this information is submitted to DMAP after the effective date(s) of some changes. Therefore, certain participant additions and deletions may be effective retroactively. See specific instructions in the CMS Releases for appropriate effective date(s) of changes.

(4) DMAP contracts with First Health Services to manage the Medicaid Rebate Dispute Resolution program. Pharmacy providers must verify the accuracy of their Medicaid pharmacy claims with First Health Services within 30 days of request in instances where drug manufacturers dispute their claim information. Verification can be photocopies of drug invoices showing that the billed products were in stock during the time of the date of service.

(5) The actual National Drug Code (NDC) dispensed and the actual metric decimal quantity dispensed, must be billed.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 16-1991(Temp), f. 4-12-91, cert. ef. 4-15-91; HR 22-1991, f. & cert. ef. 5-16-91; HR 23-1991(Temp), f. 6-14-91, cert. ef. 6-17-91; HR 31-1991, f. & cert. ef. 7-16-91; HR 36-1991(Temp), f. 9-16-91, cert. ef. 10-1-91; HR 45-1992, f. & cert. ef. 10-16-91; HR 50-1991(Temp), f. & cert. ef. 10-29-91; HR 1-1992, f. & cert. ef. 1-2-92; HR 13-1992, f. & cert. ef. 6-1-92; HR 21-1992, f. 7-31-92, cert. ef. 8-1-92; HR 31-1992, f. & cert. ef. 10-1-92; HR 34-1992, f. & cert. ef. 12-1-92; HR 4-1993, f. 3-10-93, cert. ef. 3-11-93; HR 7-1993(Temp), f. & cert. ef. 4-1-93; HR 14-1993, f. & cert. ef. 7-2-93; HR 24-1993, f. & cert. ef. 10-1-93; HR 17-1994, f. & cert. ef. 4-1-94; HR 25-1994, f. & cert. ef. 7-1-94; HR 2-1995, f. & cert. ef. 2-1-95; HR 6-1995, f. 3-31-95, cert. ef. 4-1-95; HR 14-1995, f. 6-29-95, cert. ef. 7-1-95;

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HR 23-1995, f. 12-29-95, cert. ef. 1-1-96; HR 22-1997, f. & cert. ef. 10-1-97; HR 27-1997, f. & cert. ef. 12-1-97; OMAP 2-1998, f. 1-30-98, cert. ef. 2-1-98; OMAP 29-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 43-2000(Temp), f. 12-29-00, cert. ef. 1-1-01 thru 5-1-01; OMAP 3-2001, f. & cert. ef. 3-16-01; OMAP 24-2001(Temp), f. 5-9-01, cert. ef. 5-10-01 thru 11-1-01; OMAP 25-2001(Temp), f. 6-28-01, cert. ef. 7-1-01 thru 12-1-01; OMAP 27-2001(Temp), f. 7-30-01, cert. ef. 8-1-01 thru 1-26-02; OMAP 48-2001(Temp), f. 9-28-01, cert. ef. 10-1-01 thru 3-1-02; OMAP 56-2001(Temp), f. & cert. ef. 11-1-01 thru 4-15-02; OMAP 57-2001(Temp), f. 11-28-01, cert. ef. 12-1-01 thru 4-15-02; OMAP 66-2001(Temp), f. 12-28-01, cert. ef. 1-1-02 thru 5-15-02; OMAP 4-2002(Temp), f. & cert. ef. 3-5-02 thru 8-1-02; OMAP 16-2002(Temp), f. & cert. ef. 4-12-02 thru 9-1-02; OMAP 20-2002(Temp), f. & cert. ef. 5-15-02 thru 10-1-02; OMAP 34-2002(Temp), f. & cert. ef. 8-14-02 thru 1-15-03; OMAP 67-2002(Temp), f. & cert. ef. 11-1-02 thru 3-15-03; OMAP 6-2003(Temp), f. & cert. ef. 2-14-03 thru 7-1-03; OMAP 38-2003, f. & cert. ef. 5-9-03; OMAP 39-2003(Temp), f. & cert. ef. 5-15-03; OMAP 48-2003, f. & cert. ef. 7-7-03; OMAP 74-2003, f. & cert. ef. 10-1-03; OMAP 5-2004(Temp), f. & cert. ef. 2-4-04 thru 6-15-04; OMAP 24-2004, f. & cert. ef. 3-30-04; OMAP 31-2004(Temp), f. & cert. ef. 5-14-04 thru 10-15-04; OMAP 42-2004, f. 6-24-04 cert. ef. 7-1-04; OMAP 53-2004(Temp), f. & cert. ef. 9-10-04 thru 2-15-05; OMAP 82-2004, f. 10-29-04 cert. ef. 11-1-04; OMAP 1-2005(Temp), f. & cert. ef. 1-14-05 thru 6-1-05; OMAP 6-2005, f. 3-1-05, cert. ef. 3-31-05; OMAP 7-2005(Temp), f. 3-1-05, cert. ef. 4-1-05 thru 8-1-05; OMAP 30-2005, f. & cert. ef. 6-6-05; OMAP 55-2005, f. 10-25-05, cert. ef. 11-1-05; OMAP 5-2006, f. 3-22-06, cert. ef. 4-1-06; OMAP 7-2006(Temp), f. 3-29-06, cert. ef. 4-1-06 thru 9-15-06; OMAP 12-2006, f. 5-26-06, cert. ef. 6-1-06; OMAP 49-2006, f. 12-28-06, cert. ef. 1-1-07

Rule Caption: 2006-07 — Federal Upper Limits for Prescription drugs updates from Centers for Medicare and Medicaid Services (CMS).

Adm. Order No.: OMAP 50-2006

Filed with Sec. of State: 12-28-2006

Certified to be Effective: 1-1-07

Notice Publication Date: 11-1-06

Rules Amended: 410-121-0300

Subject: The Pharmaceutical Services program rules govern Division of Medical Assistance Programs' (DMAP) payments for services provided to certain clients. OAR 410-121-0300 references the CMS Federal Upper Limits (FUL) List that provides information regarding multiple source drugs that meet the criteria set forth in 42 CFR 447.332 and section 1927(e) of the Social Security Act, as amended by OBRA 1993. DMAP must use this list for payment reimbursement to providers, in compliance with federal regulations. DMAP receives all updates to this list from CMS in the form of numbered releases, and subsequently amends rule 410-121-0300 to reference the releases and updated lists. DMAP amended this rule to reference updates received June 23, 2006 to be effective July 23, 2006; and September 26, 2006 to be effective October 27, 2006.

DMAP posts the updated and current information on the following website: <http://www.dhs.state.or.us/policy/healthplan/guides/pharmacy/main.html>

The information can also be obtained by contacting DMAP.

Rules Coordinator: Darlene Nelson—(503) 945-6927

410-121-0300

CMS Federal Upper Limits for Drug Payments

(1) The Centers for Medicare and Medicaid Services (CMS) Federal Upper Limits for Drug Payments listing of multiple source drugs meets the criteria set forth in 42 CFR 447.332 and 1927(e) of the Act as amended by OBRA 1993.

(2) Payments for multiple source drugs must not exceed, in the aggregate, payment levels determined by applying to each drug entity a reasonable dispensing fee (established by the State and specified in the State Plan), plus an amount based on the limit per unit. CMS has determined the amount based on the limit per unit to be equal to 150 percent applied to the lowest price listed (in package sizes of 100 units, unless otherwise noted) in any of the published compendia of cost information of drugs.

(3) The FUL drug listing is published in the State Medicaid Manual, Part 6, Payment for Services, Addendum A. The most current Transmittals and subsequent changes are posted to the CMS website (contact OMAP for most current website address). The FUL price listing will be updated approximately every six months.

(4) Retroactive effective dates: The CMS FUL Drug Listing experiences occasional changes and often this information is submitted to OMAP after the effective date(s) of some changes. Therefore, certain participant additions and deletions may be effective retroactively. See specific instructions in the CMS Releases for appropriate effective date(s) of changes.

(6) The most current CMS Federal Upper Limits for Drug Payments Listing includes changes to Transmittal #37, included in the January 20, 2005 Title XIX State Agency Letter, effective for February 14, 2005; the March 10, 2006 Title XIX State Agency Letter, effective for services ren-

dered on or after April 10, 2006; the June 23, 2006 Title XIX State Agency Letter, effective for services rendered on or after July 23, 2006 and are available for downloading on OMAP's Website (contact OMAP for most current website address). To request a hard copy, call OMAP.

Stat. Auth.: ORS 409.010, 409.110, 409.050

Stats. Implemented: ORS 414.065

Hist.: AFS 56-1989, f. 9-28-89, cert. ef. 10-1-89; AFS 63-1989(Temp), f. & cert. ef. 10-17-89; AFS 79-1989, f. & cert. ef. 12-21-89; HR 3-1990(Temp), f. & cert. ef. 2-23-90; HR 13-1990, f. & cert. ef. 4-20-90, Renumbered from 461-016-0330; HR 20-1990, f. & cert. ef. 7-9-90; HR 29-1990, f. 8-31-90, cert. ef. 9-1-90; HR 45-1990, f. & cert. ef. 12-28-90; HR 10-1991, f. & cert. ef. 2-19-91; HR 37-1991, f. & cert. ef. 9-16-91; HR 13-1992, f. & cert. ef. 6-1-92; HR 28-1992, f. & cert. ef. 9-1-92; HR 35-1992(Temp), f. & cert. ef. 12-1-92; HR 1-1993(Temp), f. & cert. ef. 1-25-93; HR 3-1993, f. & cert. ef. 2-22-93; HR 5-1993(Temp), f. 3-10-93, cert. ef. 3-22-93; HR 8-1993(Temp), f. & cert. ef. 4-1-93; HR 11-1993, f. 4-22-93, cert. ef. 4-26-93; HR 15-1993(Temp), f. & cert. ef. 7-2-93; HR 20-1993, f. & cert. ef. 9-1-93; HR 25-1993(Temp), f. & cert. ef. 10-1-93; HR 14-1994, f. & cert. ef. 3-1-94; HR 25-1994, f. & cert. ef. 7-1-94; HR 2-1995, f. & cert. ef. 2-1-95; HR 6-1995, f. 3-31-95, cert. ef. 4-1-95; HR 14-1995, f. 6-29-95, cert. ef. 7-1-95; HR 23-1995, f. 12-29-95, cert. ef. 1-1-96; HR 22-1997, f. & cert. ef. 10-1-97; HR 27-1997, f. & cert. ef. 12-1-97; OMAP 2-1998, f. 1-30-98, cert. ef. 2-1-98; OMAP 43-1998(Temp), f. & cert. ef. 11-20-98 thru 5-1-99; OMAP 5-1999, f. & cert. ef. 2-26-99; OMAP 42-2000(Temp), f. & cert. ef. 12-15-00 thru 5-1-01; OMAP 1-2001(Temp), f. & cert. ef. 2-1-01 thru 6-1-01; OMAP 2-2001(Temp), f. 2-14-01, cert. ef. 2-15-01 thru 7-1-01; OMAP 18-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 23-2001(Temp), f. & cert. ef. 4-16-01 thru 8-1-01; OMAP 26-2001(Temp), f. & cert. ef. 6-6-01 thru 1-2-02; OMAP 51-2001(Temp), f. 9-28-01, cert. ef. 10-1-01 thru 3-15-01; OMAP 58-2001, f. 11-30-01, cert. ef. 12-1-01; OMAP 67-2001(Temp), f. 12-28-01, cert. ef. 1-1-02 thru 5-15-02; OMAP 3-2002(Temp), f. & cert. ef. 2-15-02 thru 6-15-02; OMAP 5-2002(Temp), f. & cert. ef. 3-5-02 thru 6-15-02; OMAP 19-2002(Temp), f. & cert. ef. 4-22-02 thru 9-15-02; OMAP 29-2002(Temp), f. 7-15-02, cert. ef. 8-1-02 thru 1-1-03; OMAP 71-2002(Temp), f. & cert. ef. 12-1-02 thru 5-15-03; OMAP 10-2003, f. 2-28-03, cert. ef. 3-1-03; OMAP 11-2003(Temp), f. 2-28-03, cert. ef. 3-1-03 thru 8-15-03; OMAP 41-2003, f. & cert. ef. 5-29-03; OMAP 51-2003, f. & cert. ef. 8-5-03; OMAP 54-2003(Temp), f. & cert. ef. 8-15-03 thru 1-15-03; OMAP 75-2003, f. & cert. ef. 10-1-03; OMAP 83-2003(Temp), f. 11-25-03, cert. ef. 12-1-03 thru 4-15-04; OMAP 2-2004, f. 1-23-04, cert. ef. 2-1-04; OMAP 32-2004(Temp), f. & cert. ef. 5-14-04 thru 10-15-04; OMAP 43-2004, f. 6-24-04 cert. ef. 7-1-04; OMAP 93-2004(Temp), f. & cert. ef. 12-10-04 thru 5-15-05; OMAP 2-2005, f. 1-31-05, cert. ef. 2-1-05; OMAP 23-2005(Temp), f. & cert. ef. 4-1-05 thru 9-1-05; OMAP 29-2005, f. & cert. ef. 6-6-05; OMAP 56-2005, f. 10-25-05, cert. ef. 11-1-05; OMAP 59-2005(Temp), f. 11-8-05, cert. ef. 11-12-05 thru 5-1-06; OMAP 68-2005, f. 12-21-05, cert. ef. 1-1-06; OMAP 8-2006(Temp), f. 3-29-06, cert. ef. 4-1-06 thru 9-15-06; OMAP 13-2006, f. 5-26-06, cert. ef. 6-1-06; OMAP 50-2006, f. 12-28-06, cert. ef. 1-1-07

Rule Caption: 2007 — Oregon Maximum Allowable Costs (OMAC) updates from Centers for Medicare and Medicaid Services (CMS).

Adm. Order No.: OMAP 51-2006

Filed with Sec. of State: 12-28-2006

Certified to be Effective: 1-1-07

Notice Publication Date: 11-1-06

Rules Amended: 410-121-0320

Subject: The Pharmaceutical Rules govern Division of Medical Assistance Programs payment for pharmaceutical products provided to clients. Rule 410-121-0320, Oregon Maximum Allowable Cost (OMAC) lists generated monthly and each list indicates the amount, per product, that DMAP will reimburse to providers for products provided to OMAP clients during that particular month. DMAP will revise rule 410-121-0320 to include, by reference, all monthly First Health Service's OMAC listings received by DMAP for the time period of January 1, 2007 through and including December 1, 2007. As the updates are received and permanently filed with the Secretary of State as amendments to OAR 410-121-0320, DMAP will post the updated and current information on the following website: <http://www.dhs.state.or.us/policy/healthplan/guides/pharmacy/main.html> The information can also be obtained by contacting DMAP.

Note: There is no point in the rulemaking process that the lists that are referenced can be debated nor changed by DMAP staff, nor with the public comment process. The rule is revised and filed only to change the date of the list as it is updated, and DMAP is obligated to insert the appropriate date of reference for the dated list, into the permanent rule text. Therefore, this Notice will serve to indicate both, that this rule will be revised to appropriately reference the aforementioned list, and further will be revised to allow DMAP to change or add dates as needed, therefore establishing (in rule), the necessary reference to updated lists (by date), and thus allowing providers to bill accordingly.

Rules Coordinator: Darlene Nelson—(503) 945-6927

ADMINISTRATIVE RULES

410-121-0320

Oregon Maximum Allowable Cost (OMAC)

(1) The Oregon maximum allowable cost, or the maximum amount that the Division of Medical Assistance Programs (DMAP) will reimburse for prescribed drugs, is determined by DMAP's claims processing company, First Health Services. First Health Services determines the maximum allowable cost on selected multiple-source drug designation when a bioequivalent drug product is available from at least two wholesalers serving the State of Oregon.

(2) First Health Services generates and maintains all official OMAC lists and provides a copy of each list to DMAP. OMAC lists are generated monthly and each list indicates the amount, per product, that DMAP will reimburse to providers for products provided to DMAP clients during that particular month. For example: The OMAC list, January 1, 2003, includes the amounts DMAP will reimburse for products provided during the month of January 2003; the list, February 1, 2003, covers the month of February 2003, etc.

(3) DMAP includes in rule by reference the OMAC lists for January 1, 2005, February 1, 2005, March 1, 2005, April 1, 2005, May 1, 2005, June 1, 2005, July 1, 2005, August 1, 2005, September 1, 2005, October 1, 2005, November 1, 2005 and December 1, 2005.

(4) DMAP includes in rule by reference the OMAC lists for January 1, 2006, February 1, 2006, March 1, 2006, April 1, 2006, May 1, 2006, June 1, 2006, July 1, 2006, August 1, 2006, September 1, 2006, October 1, 2006, November 1, 2006, and December 1, 2006.

(5) DMAP includes in rule by reference the OMAC lists for January 1, 2007, February 1, 2007, March 1, 2007, April 1, 2007, May 1, 2007, June 1, 2007, July 1, 2007, August 1, 2007, September 1, 2007, October 1, 2007, November 1, 2007 and December 1, 2007.

(6) Current OMAC lists are available for review and/or downloading on DMAP's website: www.dhs.state.or.us/policy/healthplan/guides/pharmacy/. Future lists, referenced in this rule, will be available and posted to DMAP's website upon receipt from First Health Services.

(7) The OMAC list does not apply if a prescriber certifies that a single-source (brand) drug is medically necessary.

Stat. Auth.: ORS 184.750, 184.770, 411 & 414
Stats. Implemented: ORS 414.065

Hist.: AFS 56-1989, f. 9-29-89, cert. ef. 10-1-89; HR 3-1990(Temp), f. & cert. ef. 2-23-90; HR 13-1990, f. & cert. ef. 4-20-90, Renumbered from 461-016-0340; HR 20-1990, f. & cert. ef. 7-9-90; HR 29-1990, f. 8-31-90, cert. ef. 9-1-90; OMAP 61-2001(Temp), f. 12-13-01, cert. ef. 12-15-01 thru 3-15-02; OMAP 1-2002, cert. ef. 2-15-02; OMAP 6-2002(Temp), f. & cert. ef. 3-5-02 thru 8-1-02; OMAP 17-2002(Temp), f. & cert. ef. 4-12-02 thru 9-1-02; OMAP 28-2002(Temp), f. 6-28-02, cert. ef. 7-1-02 thru 12-1-02; OMAP 35-2002(Temp), f. & cert. ef. 8-14-02 thru 1-1-03; OMAP 38-2002(Temp), f. & cert. ef. 8-30-02 thru 1-15-03; OMAP 40-2002(Temp), f. & cert. ef. 10-1-02 thru 2-15-03; OMAP 68-2002(Temp), f. & cert. ef. 11-15-02 thru 4-1-03; OMAP 7-2003, f. & cert. ef. 2-14-03 thru 7-1-03; OMAP 52-2003, f. & cert. ef. 8-5-03; OMAP 3-2004, f. 1-23-04, cert. ef. 2-1-04; OMAP 96-2004, f. 12-30-04, cert. ef. 1-1-05; OMAP 69-2005, f. 12-21-05, cert. ef. 1-1-06; OMAP 51-2006, f. 12-28-06, cert. ef. 1-1-07

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Rule Caption: January 2007 rule change to re-coded and remove G-/J-tube from Not Otherwise Classified Prior Authorization.

Adm. Order No.: OMAP 52-2006

Filed with Sec. of State: 12-28-2006

Certified to be Effective: 1-1-07

Notice Publication Date: 11-1-06

Rules Amended: 410-148-0260

Subject: The Home Enteral/Parenteral and Intravenous Services (EPIV) administrative rules govern the Division of Medical Assistance Programs' payment for services rendered to clients. DMAP will amend 410-148-0260 to recode and remove the standard or low profile gastrostomy/jejunostomy tube for non-Prior Authorized coding as B4086 from "Not Otherwise Classified (NOC)".

Rules Coordinator: Darlene Nelson—(503) 945-6927

410-148-0260

Home Enteral Nutrition

(1) Codes that have "PA" indicated require prior authorization. Codes with "BR" indicated are covered by report.

(2) Enteral Nutrition Formula. Use B4150 through B4156 when billing for tube fed nutritional formulae. If the product dispensed is not shown in HCPCS description, select a category equivalent when billing the Division of Medical Assistance Programs (DMAP).

(3) Oral Nutritional Supplements:

(a) Prior authorization is required on all oral supplements;

(b) Oral nutritional supplements can be billed through the on-line Point of Sale pharmacy system, or by paper using the 5.1 Universal Claim Form. Use the product's NDC when billing;

(c) If the product dispensed is not shown in one of the listed categories, select a category that is equivalent when billing DMAP;

(d) Oral nutritional supplements may be approved when the following criteria has been met:

(A) Clients age 6 and above:

(i) Must have a nutritional deficiency identified by one of the following:

(I) Recent low serum protein levels; or

(II) Recent Registered Dietician assessment shows sufficient caloric/protein intake is not obtainable through regular, liquefied or pureed foods.

(III) The clinical exception to the requirements of (I) and (II) must meet the following:

III-a. Prolonged history (i.e. years) of malnutrition, and diagnosis or symptoms of cachexia, and

III-b. Client residence in home, nursing facility, or chronic home care facility, and

III-c. Where (I) and (II) would be futile and invasive

(ii) And have a recent unplanned weight loss of at least 10%, plus one of the following:

(I) Increased metabolic need resulting from severe trauma; or

(II) Malabsorption difficulties (e.g., short-gut syndrome, fistula, cystic fibrosis, renal dialysis; or

(III) Ongoing cancer treatment, advanced AIDS or pulmonary insufficiency.

(iii) Weight loss criteria may be waived if body weight is being maintained by supplements due to patient's medical condition (e.g., renal failure, AIDS)

(B) Clients under age 6:

(i) Diagnosis of 'failure to thrive';

(ii) Must meet same criteria as above, with the exception of % of weight loss.

(4) Enteral Nutrition Equipment:

(a) All repair and maintenance is subject to rule 410-148-0080;

(b) Procedure Codes:

(A) S5036, Repair of infusion device (each 15 minutes = 1 unit) — PA;

(B) B9998, Enteral Nutrition Infusion Pump Replacement parts will be reimbursed at provider's acquisition cost (including shipping and handling) — PA/BR;

(C) B9000, Enteral Nutrition Infusion Pump, without alarm— rental (1 month = 1 unit) — PA;

(D) B9002, Enteral Nutrition Infusion Pump, with alarm— rental (1 month = 1 unit) — PA;

(E) E0776, IV Pole — Purchase;

(F) E0776, modifier RR, IV Pole — Rental (1 day = 1 unit);

(G) S9342, Enteral Nutrition via pump (1 day = 1 unit) — PA.

(5) Home Infusion Therapy:

(a) S9325, Home infusion, pain management (do not use with code S9326, S9327 or S9328) — PA

(b) S9326, Home infusion, continuous pain management — PA;

(c) S9327, Home infusion, intermittent pain management — PA;

(d) S9328, Home infusion, implanted pump pain management — PA.

(6) Not Otherwise Classified (NOC):

(a) B9998, NOC For Enteral Supplies — PA/BR

(b) S9379, Home infusion therapy, NOC — PA/BR.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 26-1990, f. 8-31-90, cert. ef. 9-1-90; HR 26-1993, f. & cert. ef. 10-1-93; HR 3-1995, f. & cert. ef. 2-1-95; OMAP 7-1998, f. 2-27-98, cert. ef. 3-1-98; OMAP 29-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 46-2001, f. 9-24-01, cert. ef. 10-1-01, Renumbered from 410-121-0840; OMAP 22-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 63-2003, f. 9-5-03, cert. ef. 10-1-03; OMAP 15-2004, f. 3-11-04, cert. ef. 4-1-04; OMAP 52-2006, f. 12-28-06, cert. ef. 1-1-07

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Rule Caption: Managed care plan reimbursement for Graduate Medical Education.

Adm. Order No.: OMAP 53-2006(Temp)

Filed with Sec. of State: 12-28-2006

Certified to be Effective: 1-1-07 thru 6-29-07

Notice Publication Date:

Rules Amended: 410-141-0420

Subject: The Oregon Health Plan (OHP-Division 141) Administrative rules govern payment of managed care for the Division of Medical Assistance Programs' services provided to clients. DMAP

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temporarily amended OAR 410-141-0420 to reflect necessary changes to the reimbursements for Graduate Medical Education (GME). This rule must be temporarily amended for the OAR to reflect new state policy by January 1, 2007.

Rules Coordinator: Darlene Nelson—(503) 945-6927

410-141-0420

Oregon Health Plan Prepaid Health Plan Billing and Payment Under the Oregon Health Plan

(1) All billings for Oregon Health Plan Clients to Prepaid Health Plans (PHPs) and to Division of Medical Assistance Programs (DMAP) shall be submitted within four (4) months and twelve (12) months, respectively, of the date of service, subject to other applicable DMAP billing rules. Submissions shall be made to PHPs within the four (4) month time frame except in the following cases:

(a) Pregnancy;

(b) Eligibility issues such as retroactive deletions or retroactive Enrollments;

(c) Medicare is the primary payor;

(d) Other cases that could have delayed the initial billing to the PHP (which does not include failure of Provider to certify the DMAP Member's eligibility); or

(e) Third Party Resource (TPR). Pursuant to 42 CFR 36.61, subpart G: Indian Health Services and the amended Public Law 93-638 under the Memorandum of Agreement that Indian Health Service and 638 Tribal Facilities are the payor of last resort and is not considered an alternative resource or TPR.

(2) Providers must be enrolled with DMAP to be eligible for Fee-for-Service (FFS) payment by DMAP. Mental health Providers, except Federally Qualified Health Centers, must be approved by the Local Mental Health Authority (LMHA) and the Addictions and Mental Health Division (AMH) before enrollment with DMAP. Providers may be retroactively enrolled, in accordance with OAR 410-120-1260, Provider Enrollment.

(3) Providers, including mental health Providers, do not have to be enrolled with DMAP to be eligible for payment for services by PHPs except that Providers who have been excluded as Medicare/Medicaid Providers by DMAP, CMS or by lawful court orders are ineligible to receive payment for services by PHPs.

(4) Providers shall verify, before rendering services, that the DMAP Member is eligible for the Medical Assistance Program on the date of service and that the service to be rendered is covered under the Oregon Health Plan Benefit Package of Covered Services. Providers shall also identify the party responsible for covering the intended service and seek pre-authorizations from the appropriate payor before rendering services. Providers shall inform DMAP Members of any charges for Non-Covered Services prior to the services being delivered.

(5) Capitated Services:

(a) PHPs receive a Capitation Payment to provide services to DMAP Members. These services are referred to as Capitated Services;

(b) PHPs are responsible for payment of all Capitated Services. Such services should be billed directly to the PHP, unless the PHP or DMAP specifies otherwise. PHPs may require Providers to obtain preauthorization to deliver certain Capitated Services.

(6) Payment by the PHP to Providers for Capitated Services is a matter between the PHP and the Provider, except as follows:

(a) Pre-authorizations:

(A) PHPs shall have written procedures for processing pre-authorization requests received from any Provider. The procedures shall specify time frames for:

(i) Date stamping pre-authorization requests when received;

(ii) Determining within a specific number of days from receipt whether a pre-authorization request is valid or non-valid;

(iii) The specific number of days allowed for follow up on pended preauthorization requests to obtain additional information;

(iv) The specific number of days following receipt of the additional information that a redetermination must be made; (v) Providing services after office hours and on weekends that require preauthorization;

(vi) Sending notice of the decision with Appeal rights to the DMAP Member when the determination is made to deny the requested service as specified in 410-141-0263.

(B) PHPs shall make a determination on at least 95% of Valid Pre-Authorization requests, within two working days of receipt of a preauthorization or reauthorization request related to urgent services; alcohol and drug services; and/or care required while in a skilled nursing facility. Pre-authorizations for prescription drugs must be completed and the pharmacy

notified within 24 hours. If a pre-authorization for a prescription cannot be completed within the 24 hours, the PHP must provide for the dispensing of at least a 72-hour supply if the medical need for the drug is immediate. PHP shall notify Providers of such determination within 2 working days of receipt of the request;

(C) For expedited prior authorization requests in which the Provider indicates, or the PHP determines, that following the standard timeframe could seriously jeopardize the DMAP Member's life or health or ability to attain, maintain, or regain maximum function:

(i) The PHP must make an expedited authorization decision and provide notice as expeditiously as the DMAP Member's health condition requires and no later than three working days after receipt of the request for service;

(ii) The PHP may extend the three working days time period by up to 14 calendar days if the DMAP Member requests an extension, or if the PHP justifies to DMAP a need for additional information and how the extension is in the DMAP Member's interest.

(D) For all other pre-authorization requests, PHPs shall notify Providers of an approval, a denial or a need for further information within 14 calendar days of receipt of the request. PHPs must make reasonable efforts to obtain the necessary information during that 14-day period. However, the PHP may use an additional 14 days to obtain follow-up information, if the PHP justifies the need for additional information and how the delay is in the interest of the DMAP Member. The PHP shall make a determination as the DMAP Member's health condition requires, but no later than the expiration of the extension. PHPs shall notify DMAP Members of a denial within five working days from the final determination using a DMAP or AMH approved client notice format.

(b) Claims Payment:

(A) PHPs shall have written procedures for processing claims submitted for payment from any source. The procedures shall specify time frames for:

(i) Date stamping claims when received;

(ii) Determining within a specific number of days from receipt whether a claim is valid or non-valid;

(iii) The specific number of days allowed for follow up of pended claims to obtain additional information;

(iv) The specific number of days following receipt of additional information that a determination must be made; and

(v) Sending notice of the decision with Appeal rights to the DMAP Member when the determination is made to deny the claim.

(B) PHPs shall pay or deny at least 90% of Valid Claims within 45 calendar days of receipt and at least 99% of Valid Claims within 60 calendar days of receipt. PHPs shall make an initial determination on 99% of all claims submitted within 60 calendar days of receipt;

(C) PHPs shall provide written notification of PHP determinations when such determinations result in a denial of payment for services, for which the DMAP Member may be financially responsible. Such notice shall be provided to the DMAP Member and the treating Provider within 14 calendar days of the final determination. The notice to the DMAP Member shall be a DMAP or AMH approved notice format and shall include information on the PHPs internal appeals process, and the Notice of Hearing Rights (OMAP 3030) shall be attached. The notice to the Provider shall include the reason for the denial; (D) PHPs shall not require Providers to delay billing to the PHP;

(E) PHPs shall not require Medicare be billed as the primary insurer for services or items not covered by Medicare, nor require non-Medicare approved Providers to bill Medicare;

(F) PHPs shall not deny payment of Valid Claims when the potential TPR is based only on a diagnosis, and no potential TPR has been documented in the DMAP Member's Clinical Record;

(G) PHPs shall not delay nor deny payments because a Co-payment was not collected at the time of service.

(c) FCHPs, PCOs, and MHOs are responsible for payment of Medicare coinsurances and deductibles up to the Medicare or PHP's allowable for Covered Services the DMAP Member receives within the PHP, for authorized referral care, and for Urgent Care Services or Emergency Services the DMAP Member receives from Non-Participating Providers. FCHPs, PCOs, and MHOs are not responsible for Medicare coinsurances and deductibles for non-urgent or non-emergent care DMAP Members receive from Non-Participating Providers;

(d) FCHPs and PCOs shall pay transportation, meals and lodging costs for the DMAP Member and any required attendant for out-of-state services (as defined in General Rules) that the FCHP and PCO has arranged

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and authorized when those services are available within the state, unless otherwise approved by DMAP;

(e) PHPs shall be responsible for payment of Covered Services provided by a Non-Participating Provider that were not pre-authorized if the following conditions exist:

(A) It can be verified that the Participating Provider ordered or directed the Covered Services to be delivered by a Non-Participating Provider; and

(B) The Covered Service was delivered in good faith without the pre-authorization; and

(C) It was a Covered Service that would have been pre-authorized with a Participating Provider if the PHP's referral protocols had been followed;

(D) The PHP shall be responsible for payment to Non-Participating Providers (Providers enrolled with DMAP that do not have a contract with the PHP) for Covered Services that are subject to reimbursement from the PHP, the amount specified in OAR 410-120-1295. This rule does not apply to Providers that are Type A or Type B hospitals, as they are paid in accordance with ORS 414.727.

(7) Other services:

(a) DMAP Members enrolled with PHPs may receive certain services on a DMAP FFS basis. Such services are referred to as Non-Capitated Services;

(b) Certain services must be authorized by the PHP or the Community Mental Health Program (CMHP) for some mental health services, even though such services are then paid by DMAP on a DMAP FFS basis. Before providing services, Providers should contact the PHPs identified on the DMAP Member's Medical Care Identification or, for some mental health services, the CMHP. Alternatively, the Provider may call the DMAP Provider Services Unit to obtain information about coverage for a particular service and/or pre-authorization requirements;

(c) Services authorized by the PHP or CMHP are subject to the rules and limitations of the appropriate DMAP administrative rules and supplemental information, including rates and billing instructions;

(d) Providers shall bill DMAP directly for Non-Capitated Services in accordance with billing instructions contained in the DMAP administrative rules and supplemental information;

(e) DMAP shall pay at the Medicaid FFS rate in effect on the date the service is provided subject to the rules and limitations described in the relevant rules, contracts, billing instructions and DMAP administrative rules and supplemental information;

(f) DMAP will not pay a Provider for provision of services for which a PHP has received a Capitation Payment unless otherwise provided for in OAR 410-141-0120;

(g) When an item or service is included in the rate paid to a medical institution, a residential facility or foster home, provision of that item or service is not the responsibility of DMAP, AMH, nor a PHP except as provided for in DMAP administrative rules and supplemental information (e.g., Capitated Services that are not included in the nursing facility all-inclusive rate);

(h) FCHPs and PCOs that contract with FQHCs and RHCs shall negotiate a rate of reimbursement that is not less than the level and amount of payment which the FCHP or PCO would make for the same service(s) furnished by a Provider, who is not an FQHC nor RHC, consistent with the requirements of BBA 4712(b)(2).

(8) Coverage of services through the Oregon Health Plan Benefit Package of Covered Services is limited by OAR 410-141-0500, Excluded Services and Limitations for OHP Clients.

(9) OHP Clients who are enrolled with a PCM receive services on a FFS basis:

(a) PCMs are paid a per client/per month payment to provide Primary Care Management Services, in accordance with OAR 410-141-0410, Primary Care Manager Medical Management;

(b) PCMs provide Primary Care access, and management services for Preventive Services, primary care services, referrals for specialty services, limited inpatient hospital services and outpatient hospital services. DMAP payment for these PCM managed services is contingent upon PCCM authorization;

(c) All PCM managed services are Covered Services that shall be billed directly to DMAP in accordance with billing instructions contained in the DMAP administrative rules and supplemental information;

(d) DMAP shall pay at the DMAP FFS rate in effect on the date the service is provided subject to the rules and limitations described in the appropriate DMAP administrative rules and supplemental information.

(10) All OHP Clients who are enrolled with a PCO receive inpatient hospital services on a DMAP FFS basis:

(a) May receive services directly from any appropriately enrolled DMAP Provider;

(b) All services shall be billed directly to DMAP in accordance with FFS billing instructions contained in the DMAP administrative rules and supplemental information;

(c) DMAP shall pay at the DMAP FFS rate in effect on the date the service is provided subject to the rules and limitations described in the appropriate DMAP administrative rules and supplemental information.

(11) OHP Clients who are not enrolled with a PHP receive services on a DMAP FFS basis:

(a) Services may be received directly from any appropriate enrolled DMAP Provider;

(b) All services shall be billed directly to DMAP in accordance with billing instructions contained in the DMAP administrative rules and supplemental information;

(c) DMAP shall pay at the DMAP FFS rate in effect on the date the service is provided subject to the rules and limitations described in the appropriate DMAP administrative rules and supplemental information.

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 31-1993, f. 10-14-93, cert. ef. 2-1-94; HR 7-1994, f. & cert. ef. 2-1-94; HR 17-1995, f. 9-28-95, cert. ef. 10-1-95; HR 19-1996, f. & cert. ef. 10-1-96; HR 25-1997, f. & cert. ef. 10-1-97; OMAP 21-1998, f. & cert. ef. 7-1-98; OMAP 39-1999, f. & cert. ef. 10-1-99; OMAP 26-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 15-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 52-2001, f. & cert. ef. 10-1-01; OMAP 57-2002, f. & cert. ef. 10-1-02; OMAP 4-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 61-2003, 9-5-03, cert. ef. 10-1-03; OMAP 23-2004(Temp), f. & cert. ef. 3-23-04 thru 8-15-04; OMAP 33-2004, f. 5-26-04, cert. ef. 6-1-04; OMAP 37-2004(Temp), f. 5-27-04 cert. ef. 6-1-04 thru 11-15-04; OMAP 47-2004, f. 7-22-04 cert. ef. 8-1-04; OMAP 27-2005, f. 4-20-05, cert. ef. 5-1-05; OMAP 46-2005, f. 9-9-05, cert. ef. 10-1-05; OMAP 23-2006, f. 6-12-06, cert. ef. 7-1-06; OMAP 53-2006(Temp), f. 12-28-06, cert. ef. 1-1-07 thru 6-29-07

Rule Caption: Removal of unnecessary "Purpose and Foreword" rules.

Adm. Order No.: OMAP 54-2006

Filed with Sec. of State: 12-28-2006

Certified to be Effective: 1-1-07

Notice Publication Date: 12-1-06

Rules Repealed: 410-122-0000, 410-127-0000, 410-129-0010, 410-131-0020, 410-132-0000, 410-136-0020, 410-142-0000, 410-143-0000

Subject: The administrative rules govern Division of Medical Assistance Programs' (DMAP) payments for services provided to clients. DMAP repealed unnecessary administrative rules listed above.

Rules Coordinator: Darlene Nelson—(503) 945-6927

Department of Human Services, Public Health Division Chapter 333

Rule Caption: WIC Vendor Administration.

Adm. Order No.: PH 30-2006

Filed with Sec. of State: 12-27-2006

Certified to be Effective: 12-27-06

Notice Publication Date: 11-1-06

Rules Adopted: 333-054-0025

Rules Amended: 333-054-0000, 333-054-0010, 333-054-0020, 333-054-0030, 333-054-0040, 333-054-0050, 333-054-0060, 333-054-0070

Rules Repealed: 333-054-0020(T), 333-054-0030(T)

Subject: The Oregon Department of Human Services (DHA) is permanently adopting and amending rules as they pertain to WIC program vendors who derive or are likely to derive more than 50% of their food sales from WIC program sales and to update the criteria used by the DHS when making price adjustments on redeemed food instruments.

Additionally, clarifications and adjustments to definitions, the vendor agreement, violations and sanctions have been made to reflect current program vendor management practices.

Rules Coordinator: Christina Hartman—(971) 673-1291

ADMINISTRATIVE RULES

333-054-0000

Description of WIC Program

(1) The WIC Program is a federally funded program established in 1972 by an amendment to the Child Nutrition Act of 1966. The purpose of the WIC Program is to serve as an adjunct to health care by providing: nutrition education and counseling; nutritious supplemental foods; and health screening and referral services to pregnant and breast-feeding women, infants, and children in certain high-risk categories.

(2) Federal regulations governing the WIC Program, 7 CFR § Part 246, require adoption and implementation of standards and procedures to guide the state's administration of the WIC Program. These regulations also define the rights and responsibilities of vendors.

(3) The WIC Program in the State of Oregon is administered by the Department of Human Services (DHS).

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

Stat. Auth.: ORS 409.600

Stats. Implemented: ORS 409.600

Hist.: HD 7-1993, f. & cert. ef. 6-11-93; OHD 17-2001, f. 8-02-01, cert. ef. 8-15-01; OHD 22-2002, f. & cert. ef. 12-24-02; PH 19-2003(Temp), f. & cert. ef. 11-14-03 thru 5-12-04; PH 22-2003, f. 12-31-03, cert. ef. 1-5-04; PH 30-2006, f. & cert. ef. 12-27-06

333-054-0010

Definitions

(1) "Abbreviated administrative review" means a hearing that is held at the request of a vendor that has been issued an application denial, civil money penalty, fine, or sanction by DHS. Abbreviated Reviews are facilitated by DHS staff other than the staff person that imposed the sanction. A facilitated discussion is held in order to resolve the imposition of a sanction.

(2) "Adequate participant access" means there are authorized vendors sufficient for participant need. The determination of whether a vendor is necessary for adequate participant access is based on the availability of other authorized vendors within a five-mile radius, geographic barriers to using other authorized vendors, local agency recommendations based upon identified participants' needs, and the availability of public transportation and roads.

(3) "Annual Food Sales" means sales of all Food Stamp eligible foods intended for home preparation and consumption including meat, fish, and poultry; bread and cereal products; dairy products; fruits and vegetables. Food items such as condiments and spices, coffee, tea, cocoa, and carbonated and non-carbonated drinks may be included in food sales when offered for sale along with foods in the categories identified above. Food sales do not include sales of any items that cannot be purchased with food stamp benefits, such as hot foods or food that will be eaten in the store.

(4) "Applicant" means any person, or person with an interest in the business, making a written request for authorization to participate in the WIC Program, including vendors that reapply for authorization.

(5) "Authorization" means the process by which DHS assesses, selects, and enters into agreements with stores that apply or subsequently reapply to be vendors.

(6) "Authorized food" means any supplemental foods listed on the WIC Authorized Food List or the food instrument.

(7) "Authorized shopper" means the participant or any person designated by a participant who has been documented as such at the local agency to act on the participant's behalf and, in the case of an infant or child, the caretaker or the caretaker's designee. This includes any DHS representative posing as a participant or participant designee as authorized by DHS.

(8) "CFR" means Code of Federal Regulations.

(9) "Change of Ownership" means a change in the ownership or control of ten percent or more of any class of stock in a corporation; a change in, addition of or removal of a partner of any partnership; a change in ownership or control of ten percent or more of the total investment commitment in partnership; or a change in the owner of a sole proprietorship.

(10) "CMP" means civil money penalty.

(11) "Compliance buy" means a single covert, on-site visit in which a DHS representative poses as an authorized shopper and attempts to transact, or transacts, one or more food instruments.

(12) "DHS" means Oregon Department of Human Services.

(13) "Disqualification" means the act of ending the WIC Program participation of a vendor, whether as a punitive sanction or for administrative reasons.

(14) "FNS" means the Food and Nutrition Service of the U. S. Department of Agriculture.

(15) "FSP" means the Food Stamp Program, of the Food and Nutrition Service of the U.S. Department of Agriculture.

(16) "Food instrument" means a WIC Program voucher, check, coupon or other WIC approved document, which is used to obtain authorized foods.

(17) "Full administrative review" means a formal hearing that is held before an assigned administrative law judge from the state Office of Administrative Hearings. Attorneys may be present to represent both parties. Formal procedures are followed as to the presentation of evidence, examination of documentation and cross-examination of witnesses in accordance with 7 CFR § 246.18 and ORS Chapter 183.

(18) "Incentive item" means a food or non-food item offered free of charge to WIC shoppers to motivate them to shop at a particular store. Examples of incentive items include, but are not limited to, cash prizes, lottery tickets, transportation, sales/specials such as a buy-one-get one free or free additional ounces offer, and other free food or merchandise.

(19) "Inventory audit" means an examination of food invoices or other proofs of vendor purchases to determine whether a vendor has purchased sufficient quantities of authorized foods to support the vendor's claim for reimbursement for such foods from DHS during a specific period of time.

(20) "Investigation" means a period of review, beginning with the start of an inventory audit or the first compliance buy and closing when the audit has been completed or a sufficient number of compliance buys have been completed to provide evidence of compliance or non-compliance, not to exceed 24 months, to determine a vendor's compliance with program rules and procedures.

(21) "Local agency" means:

(a) A public or private non-profit health or human services agency that provides health services, either directly or through contract, in accordance with 7 CFR § 246.5;

(b) An Indian Health Service unit;

(c) An Indian tribe, band or group recognized by the Department of the Interior which operates a health clinic or is provided health services by an Indian Health Service unit; or

(d) An intertribal council or group that is an authorized representative of Indian tribes, bands or groups recognized by the Department of the Interior, which operates a health clinic or is provided health services by an Indian Health Service unit.

(22) "MT50" means an authorized vendor or applicant that derives, or is expected to derive, more than 50% of its total annual food sales from WIC food sales. The total food sales do not include alcohol, tobacco, lottery or any other non-food item

(23) "Participant" means any pregnant woman, breastfeeding woman, post-partum woman, infant or child who receives authorized foods or food instruments under the WIC Program, and the breastfed infant of any participating breastfeeding woman.

(24) "Pattern" means three or more of the same rule violation that occurs within a single investigation.

(25) "Peer group" means a group of vendors considered to be in the same category by DHS based on factors such as store type, store size and geography.

(26) "Person" means a human being, a public or private corporation, an unincorporated association, a partnership, a Limited Liability Corporation, a sole proprietor, a government or a governmental instrumentality.

(27) "Person with an interest in the business" means an officer, director, partner, or manager of the business or a shareholder with 10% interest or more in the business.

(28) "Price adjustment" means an adjustment made by DHS, in accordance with the vendor agreement, to the purchase price on a food instrument, which matches the vendor's actual shelf price, for the total of the individual items. This adjusted amount shall not exceed the maximum amount allowable by DHS for the vendor's peer group for that food instrument.

(29) "Prominently displayed" means immediately noticeable by persons entering the vendor location.

(30) "Routine monitoring" means an overt, on-site visit in which DHS authorized representatives or federal officials identify themselves to vendor personnel.

(31) "Trafficking" means buying or selling food instruments for cash.

(32) "U.S.C." means United States Code.

(33) "Unauthorized food item" means foods and/or brands not allowed on the WIC Authorized Food List. It also means foods not specified on a food instrument as eligible for purchase for that participant, with WIC benefits.

ADMINISTRATIVE RULES

(34) "Vendor" means the current owner(s) or any person with an interest in the business, of any retail store location that is currently authorized by DHS to participate in the WIC Program. Vendor may also refer to the authorized store location.

(35) "Vendor agreement" means a standard written legal contract between the vendor and DHS that sets forth responsibilities of the parties.

(36) "Vendor overcharge" means intentionally or unintentionally charging DHS more for authorized foods than the actual shelf price or the price the vendor charges other shoppers.

(37) "Vendor Price List" means a list of current authorized foods and minimum stock requirements, with current shelf prices completed by the vendor.

(38) "Violation" means an activity that is prohibited by OAR 333-054-0000 through 333-054-0070 and is classified in OAR 333-054-0050.

(39) "WIC Authorized Food List" means the supplemental foods approved by the State of Oregon.

(40) "WIC Program" means the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) authorized by Section 17 of the Federal Child Nutrition Act of 1966, as amended, 42 U.S.C. §1786.

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

Stat. Auth.: ORS 409.600

Stats. Implemented: ORS 409.600

Hist.: HD 7-1993, f. & cert. ef. 6-11-93; HD 31-1994, f. & cert. ef. 12-22-94; OHD 17-2001, f. 8-02-01, cert. ef. 8-15-01; OHD 22-2002, f. & cert. ef. 12-24-02; PH 19-2003(Temp), f. & cert. ef. 11-14-03 thru 5-12-04; PH 22-2003, f. 12-31-03, cert. ef. 1-5-04; PH 7-2005(Temp), f. & cert. ef. 5-2-05 thru 10-28-05; PH 16-2005, f. & cert. ef. 10-28-05; PH 30-2006, f. & cert. ef. 12-27-06

333-054-0020

How a Vendor Becomes WIC Authorized

(1) Only authorized vendors may accept food instruments in exchange for authorized foods.

(2) Application:

(a) An applicant shall submit a completed application to DHS, which includes:

- (A) An application form;
- (B) A Vendor Price List;
- (C) A current Food Stamp Authorization number; and
- (D) Any other documents or information required by DHS.

(b) DHS may limit the periods during which applications for vendor authorization will be accepted and processed. DHS will process applications, outside of the limited application period, if it determines the applicant's store is necessary to ensure adequate participant access in a specific geographic location.

(3) Selection Criteria: In order for DHS to consider authorizing an applicant, the applicant shall:

(a) Demonstrate and maintain competitive pricing as determined by DHS based on the applicant's shelf prices and as compared to data from the peer group appropriate to the applicant's characteristics. Such data may include redemption prices and/or shelf prices. If an applicant's store is necessary to ensure adequate participant access, it may be exempt from this requirement;

(b) Possess a current bank account number;

(c) Not have, within the previous six years, a criminal conviction or civil judgment involving fraud or any other offense related to the applicant's business integrity or honesty;

(d) Possess a current FSP authorization number. Pharmacies and military commissaries shall be exempt from this selection requirement due to the nature of the services they provide for the WIC Program;

(e) Not have a history of serious violations with either the WIC Program or Food Stamp Program;

(f) Not be currently disqualified from participation in another state's WIC Program. DHS shall not authorize an applicant that has been assessed a CMP in lieu of disqualification by another state WIC Program until the period of the disqualification that would otherwise have been imposed has expired;

(g) Not be currently disqualified from participation in the Food Stamp Program. DHS shall not authorize an applicant that has been assessed a FSP civil money penalty in lieu of disqualification until the period of the disqualification that would otherwise have been imposed has expired;

(h) Have a fixed location for each store;

(i) Stock representative items from all food categories specified on the Vendor Price List. Minimum quantities specified on the Vendor Price List shall be stocked or on order before authorization of an applicant;

(A) DHS may grant a written exception if the applicant is able to provide documentation that appropriate stock was on order at the time of the initial on-site review and will be in the store within 7 days;

(B) DHS may grant a written exception to this requirement for cases where there is no participant need in the applicant's area for a specific authorized food item, such as infant formula. DHS shall determine participant need based on the local agency's input regarding a vendor request for exception, vendor redemption data relative to the vendor's request, and the number of infants using formula in the vendor's store's zip code. If a local agency notifies the vendor of a specific need for that authorized food item, the vendor will ensure that the authorized food item is available within 7 days of the request;

(C) Pharmacies are exempt from this requirement; however, they shall obtain infant formula, including formula that requires a prescription, within 72 hours of a DHS or participant request.

(j) An applicant must purchase infant formula, which is to be sold to WIC shoppers, only from manufacturers, wholesalers, distributors, and retailers authorized by the Oregon WIC Program.

(4) Authorization Requirements:

(a) DHS or the local agency shall conduct a documented on-site visit prior to, or at the time of, authorization of an applicant, including evaluating the inventory and condition of authorized foods and providing the applicant with the WIC Program information prior to or at the time of authorization;

(b) DHS shall conduct a live interactive training prior to or at the time of authorization. DHS shall designate the date, time, and location of the training, except that DHS shall provide the vendor with at least one alternate date on which to attend such training; and

(c) Once authorized, the vendor shall remain in compliance with the current selection criteria set forth in OAR 333-054-0020(3) for the duration of the vendor agreement. DHS shall disqualify the vendor at any time the vendor does not meet the current selection criteria.

(5) Application Denials: DHS shall give the applicant written notification of denial, in conformance with ORS Chapter 183, as otherwise provided in these rules, DHS may deny an applicant authorization for reasons including, but not limited to, the following:

(a) The applicant's failure to meet the selection criteria;

(b) The applicant's failure to meet all of the WIC rules initially or for the duration of the vendor agreement;

(c) The applicant's store or business has been sold by its previous owner in an attempt to circumvent a WIC Program sanction. In making this determination, DHS may consider such factors as whether the applicant's store or business was sold to a relative by blood or marriage of the previous owner(s) or sold to any person for less than its fair market value;

(d) The applicant's history of complaints, violations and/or sanctions;

(e) The applicant's refusal to accept training from the WIC Program;

or

(f) The applicant's misrepresentation of information on the application.

Stat. Auth.: ORS 409.600

Stat. Implemented: ORS 409.600

Stat. Auth.: ORS 409.600

Stats. Implemented: ORS 409.600

Hist.: HD 7-1993, f. & cert. ef. 6-11-93; OHD 17-2001, f. 8-02-01, cert. ef. 8-15-01; OHD 22-2002, f. & cert. ef. 12-24-02; PH 19-2003(Temp), f. & cert. ef. 11-14-03 thru 5-12-04; PH 22-2003, f. 12-31-03, cert. ef. 1-5-04; PH 7-2005(Temp), f. & cert. ef. 5-2-05 thru 10-28-05; PH 16-2005, f. & cert. ef. 10-28-05; PH 16-2006(Temp), f. 6-30-06, cert. ef. 7-1-06 thru 12-27-06; PH 30-2006, f. & cert. ef. 12-27-06

333-054-0025

MT50s

(1) An applicant that is likely to derive more than 50% of the store's annual food sales from WIC transactions will not be authorized except for cases of participant access hardship as determined solely by DHS. An existing MT50 vendor that was authorized prior to December 8, 2004 is exempt from this selection criterion.

(2) An existing MT50 will be allowed to close a current location and open at a new location as long as there is no break in service to WIC participants.

(3) MT50s may only provide incentive items that were obtained by the vendor at no cost (free) to the vendor. Any incentive items provided must be approved by the State. Minimal customary courtesies of the retail food trade, such as bagging supplemental food for the participant or helping the shopper load groceries into the cart, are exceptions to this rule.

Stat. Auth.: ORS 409.600

Stat. Implemented: ORS 409.600

Hist.: PH 30-2006, f. & cert. ef. 12-27-06

ADMINISTRATIVE RULES

333-054-0030

Vendor Agreements

(1) Each applicant who has been approved for authorization shall sign a vendor agreement. The term of a vendor agreement shall not exceed three years. The vendor agreement shall be signed by a representative of DHS and a representative of the vendor who has the legal authority to sign the vendor agreement and obligate the applicant to the terms of the vendor agreement. Failure to adhere to the vendor agreement is a violation and may result in a sanction.

(2) A vendor shall apply for authorization prior to the expiration of each vendor agreement and shall meet the selection criteria in effect at the time of each application. DHS or the local agency shall provide a vendor with not less than 15 days advance written notice of the expiration of its vendor agreement.

(3) In the event of any change in store facilities that adversely impacts participants' ability to transact food instruments (including, but not limited to store remodel, building damage, and equipment failure), DHS shall disqualify the vendor.

(4) DHS shall immediately terminate the vendor agreement if it determines that the vendor has provided false information in connection with its application for authorization.

(5) Either DHS or the vendor may terminate the vendor agreement for cause after providing at least 15 days advance written notice to the other party. If DHS initiates the termination, it must offer the opportunity for appeal.

(6) DHS shall terminate a vendor agreement when DHS determines that there is a relationship, real or apparent, which jeopardizes the fair and objective administration of the program between a vendor and DHS or any of its local agencies.

(7) When a vendor has more than one store location, the vendor agreement shall include a list of each store's name and location. Individual store locations may be added or deleted, by amendment to the vendor agreement or disqualification of an individual store location, without affecting the remaining store locations. Each store location included in the vendor agreement shall meet all applicable laws and rules.

(8) Neither DHS nor the vendor is obligated to renew the vendor agreement.

(9) The vendor agreement does not constitute a license or property interest.

(10) DHS may terminate the vendor agreement if a vendor has not been selected for regular use by at least five (5) authorized shoppers during the six-month period prior to the agency's review.

(11) The vendor agreement must include a requirement that the vendor comply with OAR 333-054-0000 to 333-054-0070 as applicable to vendors.

(12) The vendor shall notify DHS in writing of any change in ownership, store name, store location or permanent store closure at least 30 days prior to the effective date of the change:

(a) In the event of a cessation of operations, or any change in ownership or store location, the vendor agreement shall be terminated;

(b) In the event of a name change for any store the vendor shall, within 60 days of the change, ensure that the store's outside sign bears the same name as that listed on the vendor agreement; and

(c) If the vendor with multiple store locations listed in a vendor agreement closes any store listed in the vendor agreement, the vendor shall notify DHS in writing of the closed store's name, address, and telephone number. This written notification shall be considered an amendment of the vendor agreement unless disapproved in writing by DHS within 15 days of DHS' receipt of the vendor's notification.

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

Stat. Auth.: ORS 409.600

Stats. Implemented: ORS 409.600

Hist.: HD 7-1993, f. & cert. ef. 6-11-93; OHD 17-2001, f. 8-2-01, cert. ef. 8-15-01; OHD 22-2002, f. & cert. ef. 12-24-02; PH 19-2003(Temp), f. & cert. ef. 11-14-03 thru 5-12-04; PH 22-2003, f. 12-31-03, cert. ef. 1-5-04; PH 7-2005(Temp), f. & cert. ef. 5-2-05 thru 10-28-05; PH 16-2005, f. & cert. ef. 10-28-05; PH 16-2006(Temp), f. 6-30-06, cert. ef. 7-1-06 thru 12-27-06; PH 30-2006, f. & cert. ef. 12-27-06

333-054-0040

Vendor Monitoring

DHS shall monitor vendors for compliance with applicable laws and rules, including on-site investigation of selected vendors.

(1) DHS or its authorized representative must conduct compliance buys or inventory audits to collect evidence of improper vendor practices.

(2) DHS or its authorized representative shall conduct routine monitorings of selected vendors.

Stat. Auth.: ORS 409.600

Stats. Implemented: ORS 409.600

Hist.: HD 7-1993, f. & cert. ef. 6-11-93; OHD 17-2001, f. 8-2-01, cert. ef. 8-15-01; OHD 22-2002, f. & cert. ef. 12-24-02; PH 19-2003(Temp), f. & cert. ef. 11-14-03 thru 5-12-04; PH 22-2003, f. 12-31-03, cert. ef. 1-5-04; PH 16-2005, f. & cert. ef. 10-28-05; PH 30-2006, f. & cert. ef. 12-27-06

333-054-0050

Violations and Sanctions

Violations shall be classified as Type 1a, 1b, 2, or 3 violations based on the severity of the violation.

(1) Prior warning:

(a) DHS may, but is not required to notify the vendor that Type 1a, 1b, or Type 2 violations have occurred before imposing a sanction;

(b) DHS must notify the vendor of the initial occurrence of a Type 3 violation that requires a pattern of occurrences in order to impose a sanction, prior to documenting another violation, unless notification would compromise an investigation.

(2) Type 1a Violations:

(a) Accepting a food instrument before the "First Day To Use" or after the "Last Day To Use;"

(b) Failing to enter the actual purchase price in the designated box before the authorized shopper signs the food instrument;

(c) Failing to obtain the authorized shopper's signature at the time of the transaction, in the designated box, on the front of the food instrument accepted for payment.

(3) Type 1a Sanction: Food instruments redeemed by vendors for Type 1a violations will not be reimbursed.

(4) Type 1b Violations:

(a) One incident of failing to maintain an adequate stock of authorized foods or formula to fill food instruments consistent with vendor agreement requirements. DHS shall grant an exception if the vendor is able to provide documentation that the appropriate stock was on order at the time of the violation and received by the vendor within 7 days of the violation;

(b) Failing to notify DHS of any change in ownership, store name, or store location at least 30 days prior to the effective date of the change;

(c) Failing to notify DHS by 5:00 p.m. the business day following any change in store facilities which adversely impact participants' ability to transact food instruments;

(d) Failing to prominently display shelf prices for authorized foods;

(e) Failing to complete and return the Vendor Price List by the deadline set by DHS;

(f) Failing to provide the authorized shopper with a receipt for foods purchased with a food instrument;

(g) Failing to ensure that within 60 days of a name change the outside sign bears the same name as that listed on the vendor agreement;

(h) Influencing an authorized shopper's selection of authorized foods;

(i) Accepting any food instrument when a valid WIC Program identification card is not presented prior to the transaction;

(j) Requesting or requiring any identification or information from the authorized shopper other than the WIC Program identification card;

(k) Failing to compare the shopper's signature with the signature on the WIC Program identification card;

(l) Treating authorized shoppers differently than other customers, such as a separate line for authorized shoppers or discourteous treatment;

(m) Selling expired authorized foods or infant formula to authorized shoppers;

(n) Failing to ensure that the designated trainer is able to demonstrate the correct procedure for processing a food instrument;

(o) Failing to reimburse DHS, within 30 days of written request, for amounts paid by DHS to the vendor on improperly redeemed food instruments;

(p) Including sales tax as part of the actual cost of the authorized foods listed on the food instrument;

(q) Failing to respond to a request issued by DHS;

(r) Failing to accept training when required by DHS;

(s) Using the "WIC" acronym or logos in an unauthorized manner;

(t) Failing to maintain or provide, to DHS upon request, invoices or receipts to show source(s) of formula purchase;

(u) Failing to maintain or provide to DHS upon request, documentation of food sales during the agreement period;

(v) Failing to witness the authorized shopper's signature at the time of the transaction, in the designated box, on the front of the food instrument accepted for payment;

(w) Obtaining an authorized shopper's signature on a food instrument after a WIC transaction has been completed; and

(x) MT50s only: Failing to maintain or provide, to DHS upon request, documentation for each incentive item.

ADMINISTRATIVE RULES

(5) Type 1b Sanctions:

(a) For the first Type 1b violation, DHS may issue the vendor a "Notice of Non-Compliance;"

(b) If the first Type 1b violation occurred during a compliance buy, DHS may issue the vendor a "Notice of Non-Compliance" regardless of how many Type 1b violations are found during a single compliance buy;

(c) For the second Type 1b violation committed within twelve months of the first Type 1b violation, regardless of how many Type 1b violations occur as a result of verbal or written request by DHS, during a single visit, routine monitoring or compliance buy, DHS may issue the vendor a "Notice of Non-Compliance" requiring the vendor to submit a written corrective action plan to DHS within 14 days of the date of DHS' notice. If the vendor does not submit an acceptable written corrective action plan within the time period specified, DHS may disqualify the vendor from the WIC Program for six months. DHS may disqualify the vendor for six months if the approved corrective action is not implemented within 30 days of the "Notice of Non-Compliance;"

(d) For the third Type 1b violation committed within twelve months of the first Type 1b violation, regardless of how many Type 1 violations occur as a result of verbal or written request by DHS, during a single visit, routine monitoring or compliance buy, DHS may disqualify the vendor from the WIC Program for six months.

(6) Type 2 Violations:

(a) Retaining WIC identification or any information that identifies a shopper as a WIC participant or disclosing information regarding a client of the WIC Program to any person other than DHS, its representatives or a federal official;

(b) Failing to:

(A) Comply with terms in a final order issued by DHS; or

(B) Comply with an investigation by federal or state officials.

(c) Requiring authorized shoppers to pay for authorized foods during a WIC transaction other than with a food instrument.

(7) Type 2 Sanctions:

(a) For the first Type 2 Violation, regardless of how many Type 2 violations occur as a result of verbal or written request by DHS, during a single visit, routine monitoring or compliance buy, DHS may issue the vendor a "Notice of Non-Compliance" requiring the vendor to submit a written corrective action plan within 14 days of DHS' notice. If the vendor does not submit an acceptable written corrective action plan within the time period specified, DHS may disqualify the vendor from the WIC Program for six months;

(b) For the second Type 2 violation committed within 24 months of the first Type 2 violation, regardless of how many Type 2 violations occur as a result of verbal or written request by DHS, during a single visit, routine monitoring or compliance buy, DHS may disqualify the vendor from the WIC Program for one year;

(c) For a Type 2 violation followed by a Type 1b violation within 24 months of the first violation, DHS may disqualify a vendor from the WIC Program for six months;

(d) DHS may disqualify a vendor from the WIC Program for one year for a combination of three Type 1b and 2 violations, such as a Type 2 violation, followed by a Type 1b, followed by a Type 2, within 24 months of the first violation.

(8) Type 3 Violations and Sanctions:

(a) If a vendor fails to implement a corrective action imposed by DHS within 30 days of the "Notice of Non-Compliance," DHS may disqualify the vendor for six months;

(b) For the following violations, DHS shall disqualify a vendor for one year:

(A) A pattern of providing unauthorized food items in exchange for food instruments, including charging for authorized food provided in excess of those listed on the food instrument;

(B) Failing to provide, within two business days of DHS' request, purchasing/receiving records to substantiate the volume and prices charged to DHS;

(C) Refusing DHS or a federal official access to food instruments negotiated on the day of review;

(D) A pattern of failing to stock appropriate quantities of authorized foods and infant formula;

(E) Seeking restitution from WIC Program participants or authorized shoppers for a food instrument that has not been or will not be paid by DHS or for which reimbursement has been requested by DHS;

(F) Providing change when redeeming a food instrument;

(G) Violating the nondiscrimination clause listed in the vendor agreement;

(H) A pattern of allowing a refund or any other item of value in exchange for authorized foods or providing exchanges for authorized food items obtained with food instruments, except for exchanges of an identical authorized food item when the original authorized food item is defective, spoiled, or has exceeded its "sell by," "best if used by," or other date limiting the sale or use of the food item. An identical authorized food item means the exact brand and size as the original authorized food item obtained and returned by the authorized shopper;

(I) Providing false information or omitting pertinent information on the vendor application; and

(J) MT50s only: A pattern of providing WIC shoppers with incentive items or other merchandise and/or services not approved by DHS.

(c) For the following violations, DHS shall disqualify the vendor for three years:

(A) One incident of the sale of alcohol, an alcoholic beverage, or a tobacco product in exchange for a food instrument;

(B) A pattern of claiming reimbursement for the sale of an amount of a specific authorized food item, which exceeds the store's documented inventory of that authorized food item for a specific period of time;

(C) A pattern of vendor overcharges;

(D) A pattern of receiving, transacting and/or redeeming food instruments outside of authorized channels or locations. This includes, but is not limited to use of an unauthorized vendor and/or unauthorized person, and/or redemption of food instruments outside of an authorized store location;

(E) A pattern of charging for foods not received by the authorized shopper; and

(F) A pattern of providing credit or non-food items in exchange for food instruments, other than those items listed in OAR 333-054-0050(8)(d)(A), (8)(d)(B) and (8)(e).

(d) Six year disqualification:

(A) One incident of buying or selling a food instrument for cash (trafficking); or

(B) One incident of selling a firearm, ammunition, explosive, or controlled substance, as defined in 21 U.S.C. § 802, in exchange for a food instrument.

(e) Permanent Disqualification: Conviction of trafficking in food instruments or selling firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. § 802 in exchange for a food instrument.

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

Stat. Auth.: ORS 409.600

Stats. Implemented: ORS 409.600

Hist.: HD 7-1993, f. & cert. ef. 6-11-93; OHD 17-2001, f. 8-2-01, cert. ef. 8-15-01; OHD 22-2002, f. & cert. ef. 12-24-02; PH 19-2003(Temp), f. & cert. ef. 11-14-03 thru 5-12-04; PH 22-2003, f. 12-31-03, cert. ef. 1-5-04; PH 7-2005(Temp), f. & cert. ef. 5-2-05 thru 10-28-05; PH 16-2005, f. & cert. ef. 10-28-05; PH 30-2006, f. & cert. ef. 12-27-06

333-054-0060

Vendor Disqualifications

(1) A vendor may not apply for authorization during a period of disqualification from the WIC Program.

(2) DHS shall not accept a vendor's voluntary withdrawal from the WIC Program as an alternative to disqualification. In addition, DHS may not use non-renewal as an alternative to disqualification.

(3) DHS shall disqualify a vendor that does not pay, partially pays or fails to timely pay, a CMP assessed in lieu of disqualification, for the length of the disqualification corresponding to the violation for which the CMP was assessed. If this vendor was assessed more than one CMP in lieu of disqualification as the result of a single investigation, DHS shall disqualify the vendor for the period corresponding to the most serious violation.

(4) The total period of disqualification imposed for DHS violations, resulting from a single investigation, listed in OAR 333-054-0050(4), 333-054-0050(6) and 333-054-0050(8)(a)(B) through (K) may not exceed one year.

(5) After a vendor is disqualified, in order to participate in the WIC Program, it must apply for authorization.

(6) Prior to disqualifying a vendor, DHS shall determine if disqualification of the vendor would result in inadequate participant access. If DHS determines that disqualification of the vendor would result in inadequate participant access, DHS shall not disqualify the vendor and shall impose a CMP in lieu of disqualification. DHS shall include documentation of its participant access determination and any supporting documentation in each vendor's file. DHS shall not impose a CMP in lieu of disqualification for third or subsequent sanctions, even if the disqualification results in inadequate participant access. DHS shall not impose a CMP in lieu of disqualification for trafficking or an illegal sales conviction, even if the disqualification results in inadequate participant access.

ADMINISTRATIVE RULES

(7) DHS shall disqualify a vendor who has been disqualified from the FSP. The disqualification shall be for the same length of time as the FSP disqualification, although it may begin at a later date than the FSP disqualification. Such disqualification by the WIC Program shall not be subject to administrative or judicial review under the WIC Program:

(a) DHS may disqualify a vendor who has been assessed a CMP in lieu of disqualification in the FSP, as provided in 7 CFR § 278.6. The length of such disqualification shall correspond to the period for which the vendor would otherwise have been disqualified in the Food Stamp Program. DHS shall determine if the disqualification of a vendor would result in inadequate participant access prior to disqualifying a vendor for FSP disqualification pursuant to paragraph (9) of this rule or for any of the violations listed in this rule. If DHS determines that disqualification of the vendor would result in inadequate participant access, DHS shall not disqualify or impose a CMP in lieu of disqualification. DHS shall include participant access documentation in vendor files;

(b) DHS shall provide the appropriate FNS office with a copy of the notice of adverse action and information on vendors it has disqualified. This information shall include the vendor's name, address, identification number, the type of violation(s), length of the disqualification, or the length of the disqualification corresponding to the violation for which a FSP CMP was assessed.

(8) Disqualification from the WIC Program may result in disqualification as a retailer in the FSP. Such disqualification may not be subject to administrative or judicial review under the FSP.

(9) DHS may disqualify a vendor that has been disqualified or assessed a CMP in lieu of disqualification by another WIC state agency for a mandatory sanction:

(a) The length of the disqualification shall be for the same length of time as the disqualification by the other WIC state agency or, in the case of a CMP in lieu of disqualification assessed by the other WIC state agency, for the same length of time for which the vendor would otherwise have been disqualified. The disqualification may begin at a later date than the sanction imposed by the other WIC state agency;

(b) If DHS determines that disqualification of a vendor would result in inadequate participant access, DHS shall not impose a CMP in lieu of disqualification.

(10) Pursuant to 7 CFR 246.12(1)(1), DHS shall use the following formula to calculate a CMP imposed in lieu of disqualification:

(a) Determine the vendor's average monthly redemptions for at least the 6-month period ending with the month immediately preceding the month during which the notice of administrative action is dated;

(b) Multiply the average monthly redemptions figure by 10 percent (.10); and

(c) Multiply the product from paragraph (10)(b) of this rule by the number of months for which the store would have been disqualified. This is the amount of the CMP, provided that the CMP shall not exceed \$11,000 for each violation. For a violation that warrants permanent disqualification, the amount of the CMP shall be \$11,000. DHS shall impose a CMP for each violation when during the course of a single investigation DHS determines a vendor has committed multiple violations. The total amount of CMPs imposed for violations cited as part of a single investigation shall not exceed \$44,000.

(11) DHS shall use the formula in section (10)(a) through (c) of this rule to calculate a CMP in lieu of disqualification for any violation under 333-054-0050(4), (6), or (8)(b)(B) to (K). DHS has the discretion to reduce the amount of this CMP in quarterly increments, after reviewing the following criteria:

(a) Whether the vendor had other WIC violations or complaints within the 12 months immediately preceding the month the notice of administrative action is dated;

(b) The degree of severity of the violations and/or complaints in (11)(a);

(c) If the vendor being sanctioned is part of a multi-store chain, whether there is a pattern within the corporation of violations and the seriousness of those violations; and

(d) The degree of cooperation shown by the vendor, demonstrated by the vendor's willingness to schedule staff training and to make changes in store operations based on DHS recommendations.

(12) DHS shall disqualify a vendor for a period corresponding to the most serious sanction when during the course of a single investigation DHS determines a vendor has committed multiple violations. DHS shall include all violations in the notice of administrative action. If a sanction for a specific violation is not upheld after a hearing or appeal, DHS may impose a sanction for any remaining violations.

(13) If the basis for disqualification of a vendor is for violation of OAR 333-054-0050(8)(e), the effective date of the disqualification is the date the vendor received notice, either actual or constructive, of the disqualification.

(14) DHS shall, where appropriate, refer vendors who abuse the WIC Program to appropriate federal, state or local authorities for prosecution under applicable statutes.

(15) A vendor who commits fraud or abuse of the Program is subject to prosecution under applicable federal, state or local laws. A vendor who has embezzled, willfully misapplied, stolen or fraudulently obtained program funds, assets, or property shall be subject to a fine of not more than \$25,000 or imprisonment for not more than five years or both, if the value of the funds is \$100 or more. If the value is less than \$100, the penalties are a fine of not more than \$1,000 or imprisonment for not more than one year or both.

(16) A vendor may be subject to actions in addition to the sanctions in this rule, such as claims by DHS of reimbursement for improperly redeemed food instruments and penalties outlined in 7 CFR § 246.12(1)(2)(i).

(17) DHS shall use the following criteria to determine inadequate participant access:

(a) The availability of other authorized vendors within a five-mile radius;

(b) Geographic barriers to using other authorized vendors;

(c) Local agency recommendations based upon identified participants' needs; and

(d) Unavailability of public transportation and roads.

(18) Any time DHS uses criteria in (17) of this rule, DHS shall include participant access documentation in vendor file.

(19) DHS shall not reimburse for food instruments submitted by a vendor for payment during a period of disqualification.

(20) A vendor is not entitled to receive any compensation for revenues lost as a result of a disqualification.

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

Stat. Auth.: ORS 409.600

Stats. Implemented: ORS 409.600

Hist.: HD 7-1993, f. & cert. ef. 6-11-93; OHD 17-2001, f. 8-2-01, cert. ef. 8-15-01; OHD 22-2002, f. & cert. ef. 12-24-02; PH 19-2003(Temp), f. & cert. ef. 11-14-03 thru 5-12-04; PH 22-2003, f. 12-31-03, cert. ef. 1-5-04; PH 7-2005(Temp), f. & cert. ef. 5-2-05 thru 10-28-05; PH 16-2005, f. & cert. ef. 10-28-05; PH 30-2006, f. & cert. ef. 12-27-06

333-054-0070

Administrative Review

(1) DHS shall provide a vendor with a full administrative review in accordance with the provisions of ORS Chapter 183 for the following:

(a) Denial of authorization based on the vendor selection criteria for competitive price or minimum variety and quantity of authorized WIC foods;

(b) Denial of authorization based on a determination that the vendor is attempting to circumvent a sanction;

(c) Termination of an agreement for cause;

(d) Disqualification; and

(e) Imposition of a fine or a CMP in lieu of disqualification.

(2) DHS may provide a vendor with an abbreviated or full administrative review in accordance with the provisions of ORS chapter 183 for the following:

(a) Denial of authorization based on the vendor selection criteria for business integrity or for a current FSP disqualification or CMP penalty for hardship;

(b) Denial of authorization based on a DHS selection criteria for previous history of WIC sanctions or FSP withdrawal of authorization or disqualification;

(c) Denial of authorization based on DHS' limiting criteria;

(d) Termination of an agreement because of a change in ownership or location or cessation of operations;

(e) Disqualification based on a trafficking conviction;

(f) Disqualification based on the imposition of an FSP CMP for hardship;

(g) Disqualification or CMP based on a USDA mandatory sanction from another state WIC agency; and

(h) Application of criteria used to determine whether a store is an MT50.

(3) The vendor shall not be entitled to an administrative review for the following actions:

(a) The validity or appropriateness of DHS' limiting or selection criteria;

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(b) The validity or appropriateness of DHS' participant access criteria and DHS' participant access determinations;

(c) DHS' determination regarding whether a vendor had an effective policy and program in effect to prevent trafficking regardless of the vendor's awareness, approval, and/or involvement in the violation activity;

(d) Denial of authorization if DHS vendor authorization is subject to the procurement procedures applicable to DHS;

(e) The expiration of the vendor's agreement;

(f) Disputes regarding food instrument payments and vendor claims;

(g) Disqualification of a vendor as a result of disqualification from FSP; and

(h) The validity or appropriateness of DHS' criteria used to determine whether or not a vendor is an MT50 store.

(4) If the vendor agreement expires during the appeal period, DHS will accept application for renewal and delay determination until all appeals have been exhausted.

Stat. Auth.: ORS 409.600

Stats. Implemented: ORS 409.600

Hist.: HD 7-1993, f. & cert. ef. 6-11-93; OHD 17-2001, f. 8-2-01, cert. ef. 8-15-01; OHD 22-2002, f. & cert. ef. 12-24-02; PH 19-2003(Temp), f. & cert. ef. 11-14-03 thru 5-12-04; PH 22-2003, f. 12-31-03, cert. ef. 1-5-04; PH 16-2005, f. & cert. ef. 10-28-05; PH 30-2006, f. & cert. ef. 12-27-06

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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 15-2006

Filed with Sec. of State: 12-29-2006

Certified to be Effective: 1-1-07

Notice Publication Date: 11-1-06

Rules Adopted: 461-001-0015, 461-001-0020, 461-145-0185, 461-145-0343

Rules Amended: 461-001-0000, 461-105-0010, 461-110-0370, 461-110-0410, 461-110-0530, 461-110-0630, 461-110-0750, 461-115-0010, 461-115-0050, 461-115-0530, 461-115-0540, 461-115-0651, 461-115-0705, 461-120-0125, 461-125-0370, 461-130-0310, 461-130-0315, 461-130-0325, 461-130-0327, 461-130-0335, 461-135-0010, 461-135-0070, 461-135-0075, 461-135-0210, 461-135-0400, 461-135-0475, 461-135-0506, 461-135-0510, 461-135-0520, 461-135-0708, 461-135-0725, 461-135-0750, 461-135-0780, 461-135-0950, 461-135-0960, 461-140-0210, 461-140-0220, 461-140-0242, 461-140-0270, 461-140-0296, 461-140-0300, 461-145-0001, 461-145-0020, 461-145-0022, 461-145-0025, 461-145-0055, 461-145-0108, 461-145-0130, 461-145-0140, 461-145-0175, 461-145-0220, 461-145-0250, 461-145-0280, 461-145-0310, 461-145-0330, 461-145-0340, 461-145-0440, 461-145-0470, 461-145-0505, 461-145-0540, 461-145-0570, 461-145-0580, 461-150-0055, 461-150-0070, 461-150-0080, 461-155-0225, 461-155-0250, 461-155-0270, 461-155-0300, 461-155-0660, 461-160-0010, 461-160-0015, 461-160-0055, 461-160-0090, 461-160-0400, 461-160-0415, 461-160-0430, 461-160-0500, 461-160-0580, 461-160-0610, 461-160-0620, 461-160-0780, 461-165-0180, 461-170-0020, 461-170-0101, 461-170-0102, 461-170-0103, 461-170-0130, 461-175-0010, 461-175-0250, 461-180-0085, 461-180-0090, 461-185-0050, 461-190-0197, 461-190-0310, 461-195-0301, 461-195-0305, 461-195-0310, 461-195-0325, 461-195-0511, 461-195-0541, 461-195-0611

Rules Repealed: 461-110-0110, 461-110-0510, 461-110-0610, 461-110-0720, 461-120-0005, 461-120-0610, 461-150-0010, 461-160-0020, 461-175-0030, 461-190-0161

Rules Ren. & Amend: 461-110-0115 to 461-001-0035, 461-115-0510 to 461-175-0222, 461-160-0560 to 461-001-0030, 461-190-0110 to 461-001-0025

Subject: OAR 461-001-0000 is being amended to add definitions of terms currently used or defined in other rules throughout chapter 461 for food stamps, public assistance, and medical assistance. For some of the definitions currently in this Chapter that are being moved to this rule, the definition itself is also being amended. This rule is also

being amended to add some definitions of terms not currently defined in the rules.

OAR 461-001-0015 is being adopted to provide a single rule focused on definitions that apply only in the Food Stamp program and to locate this rule in the same division (461-001) as other rules focusing on definitions. Most of the terms being defined are currently part of OAR 461-110-0110 which is being repealed. Some cross-references are being added and some of the definitions themselves are being changed.

OAR 461-001-0020 is being adopted to provide a single rule focused on definitions that apply only in the Food Stamp OFSET program and to locate this rule in the same division (461-001) as other rules focusing on definitions. Most of the terms being defined are currently part of OAR 461-190-0310. Some of the definitions are being changed or removed.

OAR 461-105-0010, 461-110-0370, 461-110-0410, 461-120-0125, 461-130-0327, 461-135-0210, 461-135-0400, 461-135-0475, 461-135-0506, 461-135-0510, 461-135-0520, 461-135-0725, 461-145-0025, 461-160-0015, 461-160-0055, 461-160-0415, 461-160-0430, 461-160-0500, 461-160-0780, 461-170-0101, 461-170-0102, 461-195-0511, and 461-195-0541 are being amended to update and add cross-references to definitions (some of which are being added or moved to other rule numbers), and to update the terms used in these rules.

OAR 461-110-0110 is being repealed and its definitions are being relocated into OAR 461-001-0000 and 461-001-0015.

OAR 461-110-0115 is being amended and renumbered to 461-001-0035 to locate the definitions specific to the OSIP-EPD and OSIPM-EPD programs in the same division (461-001) as other rules focusing on definitions. This rule is being amended to clarify the applicability of the rule.

OAR 461-110-0510 is being repealed and OAR 461-110-0530 is being amended so that a single rule will be used to describe the concept of a financial group. OAR 461-110-0530 is also being amended to add cross-references, update and clarify the rule, and indicate how the rule applies to the EXT (Extended Medical Assistance), MAA (Medical Assistance Assumed), MAF (Medical Assistance to Families), SAC (Medical Coverage for Children in Substitute or Adoptive Care), and TANF programs.

OAR 461-110-0610 is being repealed and OAR 461-110-0630 is being amended so that a single rule will be used to describe the concept of a need group, which is the individuals whose needs are used in determining eligibility and benefit level for food stamps, medical assistance, and public assistance programs. OAR 461-110-0630 is also being amended to change who is considered part of the need group in the QMB (Qualified Medical Beneficiaries) program and to add cross references to other rules.

OAR 461-110-0720 is being repealed and OAR 461-110-0750 is being amended so that a single rule will be used to describe the concept of a benefit group. OAR 461-110-0750 is also being amended to update language and add cross-references.

OAR 461-115-0010 is being amended to clarify current policy regarding the application process for food stamps, public assistance, and medical assistance. The amendment indicates that while a client may apply for more than one program utilizing one application, the application process for different programs may vary. This rule is also being amended to update terms and use more precise language.

OAR 461-115-0050 is being amended to correct a rule cross-reference, clarify the rule and state when a new application is not required in the Extended Medical (EXT), Medical Assistance Assumed (MAA), Medical Assistance to Families (MAF), and Oregon Health Plan (OHP) programs.

OAR 461-115-0510 is being amended and renumbered to OAR 461-175-0222 to outline the information that will be included in the notice that the Food Stamp certification period is ending. The certi-

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fication period means the period for which a client is certified eligible for the Food Stamp program.

OAR 461-115-0530, 461-115-0540, 461-145-0001, 461-145-0055, 461-145-0340, 461-145-0440, 461-145-0540, 461-145-0570, 461-150-0070, 461-150-0080, and 461-190-0197 are being amended to relocate definitions to OAR 461-001-0000, update language, and cross-reference definitions in OAR 461-001-0000 and other rules.

OAR 461-115-0651 is being amended to make permanent a temporary rule change adopted on September 1, 2006 that removed a requirement to verify citizenship for initial applicants to the Food Stamp program because routine verification is not required by the federal regulations.

OAR 461-115-0705 about required verification is being amended to add the citizenship verification requirements of the Deficit Reduction Act of 2005 into the verification requirements for Breast and Cervical Cancer Medical (BBCM), Extended Medical (EXT), Medical Assistance Assumed (MAA), Medical Assistance to Families (MAF), Oregon Health Plan (OHP), and Substitute Adoptive Care (SAC) programs. OAR 461-135-0010 about assumed eligibility for medical programs is being amended to add the new citizenship verification requirements of OAR 461-115-0705 into the assumed eligibility requirements for the Medical Assistance Assumed (MAA) and the Substitute Adoptive Care (SAC) programs. These amendments make permanent temporary rules adopted on September 1, 2006. Additionally, OAR 461-115-0705 is being amended to remove a reference regarding the requirement to provide verification to support a request for waiver of a premium arrearage in the OHP program, as it is redundant (the information is already required to be verified in section (3) of the rule).

OAR 461-120-0005, which is a table of contents for rules about nonfinancial eligibility requirements in Division 461-120, is being repealed.

OAR 461-120-0610, 461-150-0010, 461-160-0020, and 461-175-0030 are being repealed and their definitions are being relocated into OAR 461-001-0000.

OAR 461-125-0370 is being amended to more accurately restate the requirements in 42 CFR 435.541 about the effect of a disability determination by the Social Security Administration (SSA) on the eligibility of clients in the OSIP (Oregon Supplemental Income Program) and OSIPM (Oregon Supplemental Income Program – Medical) programs.

OAR 461-130-0310 about the participation classifications for Employment and Training programs is being amended to clarify when a person may be exempt from participating in the Oregon Food Stamp Employment Transition Program (OFSET) program due to taking care of a person with a disability that lives in a different household and eliminate use of the “incapacitated” per ORS 182.109. This rule is also being amended add and updated cross-references to other rules and to use more precise language.

OAR 461-130-0315 about requirements in the REF and TANF programs, 461-130-0325 about participation requirements, 461-130-0335 about removing disqualifications, and 461-160-0400 about the use of income to determine eligibility and benefits in the Food Stamp program are being amended to update and add cross-references, update terms, and clarify the rules.

OAR 461-135-0070 about specific eligibility requirements in the MAA (Medical Assistance Assumed) and MAF (Medical Assistance to Families) programs is being amended to remove exceeding the TANF time limit as a basis for eligibility. This rule is also being amended to clarify the rule, update and add cross-references to definitions that are being added or moved to other rule numbers, and update the terms used in this rule.

OAR 461-135-0075 is being amended to comply with federal requirements by replacing the current language, which is based on the Oregon Option waiver of 1996, with current language found in federal law at 42 U.S.C. 608(a)(7) and in regulation at 45 CFR 264.1. Under the federal law, families with an adult receiving TANF are not

eligible, in most instances, for TANF benefits for more than 60 months in a lifetime. The amended rule also states exceptions to the 60-month limit and the priority system if the state exceeds its extension allotment under federal law.

OAR 461-135-0708 is being amended to correct a cross-reference to a rule that was renumbered.

OAR 461-135-0750 is being amended to update section cross-references to match section renumbering in other rules and to update terms used in the rule.

OAR 461-135-0780 (eligibility for Pickle Amendment clients in the OSIPM program), 461-155-0250 (income and payment standard for OSIP and OSIPM), 461-155-0270 (payment standard for OSIP and OSIPM clients in nonstandard living arrangements), 461-155-0300 (shelter-in-kind standard for OSIP, OSIPM, QMB), 461-160-0580 (excluded resource - community spouse provision in the OSIP and OSIPM programs except OSIP-EPD and OSIPM-EPD), and 461-160-0620 (income deductions and client liability for Long Term Care Services and Waivered Services) are being amended to reflect the Federal Cost of Living Adjustments that happen every January. This keeps Oregon in line with current Federal Income standards for Department Medicaid programs. These rules are also being amended to add cross-references to other rule numbers and update cross-references to definitions that are being moved to other rule numbers.

OAR 461-135-0950 about the eligibility of inmates for public assistance, medical assistance, and food stamps is being amended to correct a rule cross reference.

OAR 461-135-0960 about eligibility for the OSIPM (Oregon Supplemental Income Program Medical) and SAC (Medical Coverage for Children in Substitute or Adoptive Care) programs for individuals in state psychiatric institutions and training centers is being amended to indicate the current facilities covered in this rule.

OAR 461-140-0210 and 461-140-0242 is being amended concerning the GA (General Assistance, currently closed), GAM (General Assistance Medical, currently closed), OSIP (Oregon Supplemental Income Program), OSIPM (Oregon Supplemental Income Program Medical, providing medical coverage to the elderly and individuals with disabilities), and QMB (Qualified Medicare Beneficiaries) programs to no longer impose a disqualification for a transfer of assets for less than fair market value, for clients in standard living arrangements as defined in OAR 461-110-0110. Federal regulations allow states the option of imposing disqualifications for this group of clients. The Department is exercising its option to no longer impose a disqualification. OAR 461-140-0210 concerning Extended Medical (EXT), Medical Assistance Assumed (MAA), Medical Assistance to Families (MAF), Refugee Medical (REFM) and Substitute or Adoptive Care (SAC) programs is also being amended to restrict the imposition of a disqualification for a transfer of assets for less than fair market value to specific non-standard living arrangement situations. Federal regulations allow states the option of restricting the imposition of disqualifications for this group of clients.

OAR 461-140-0220 is being amended to remove the disqualification for a transfer of assets for less than fair market value for clients in standard living arrangements in the GA (General Assistance, currently closed), GAM (General Assistance Medical, currently closed), OSIP (Oregon Supplemental Income Program), OSIPM (Oregon Supplemental Income Program Medical, providing medical coverage to the elderly and individuals with disabilities), and QMB (Qualified Medicare Beneficiaries) programs. This rule is also being amended to replace the reference regarding the life expectancy table from the table in the Centers for Medicare and Medicaid State Medicaid Manual, with a reference to the actuarial tables of the Office of the Chief Actuary of the Social Security Administration. This rule is also being amended to correct, update, and add cross-references to other rules.

OAR 461-140-0270 about disqualification due to a resource transfer is being amended to remove the reference to transfers of resource in the rule title and replacing it with a reference to transfers of assets.

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This rule is also being amended to include the Extended Medical (EXT) program as a program subject to the requirements of this rule. This rule change does not affect disqualification in the Refugee (REF) or Temporary Assistance to Needy Families (TANF) programs because these programs only impose disqualifications for invalid transfer of resources.

OAR 461-140-0296 concerning the GA (General Assistance, currently closed), GAM (General Assistance Medical, currently closed), OSIP (Oregon Supplemental Income Program), OSIPM (Oregon Supplemental Income Program Medical, providing medical coverage to the elderly and individuals with disabilities), and QMB (Qualified Medicare Beneficiaries) programs is being amended to no longer impose a disqualification for a transfer of assets for less than fair market value for clients in standard living arrangements. The Department is exercising its option under federal regulations to no longer impose a disqualification for this group of clients. Also, the Department is opting to begin the disqualification period the month following the month of the transfer, for transfers of assets that occurred prior to July 1, 2006. The rule is also being amended to replace the reference regarding the life expectancy table from the table in the Centers for Medicare and Medicaid State Medicaid Manual with a reference to the actuarial tables of the Office of the Chief Actuary of the Social Security Administration. This rule is also being amended to clarify that although the DRA allows calculating partial month disqualifications, the Department will exercise its option to accumulate multiple fractional transfers and not impose a disqualification for a transfer of assets involving an income cap trust until a full month is involved. This rule is also being amended to update cross-references to definitions that are being added or moved to other rule numbers.

OAR 461-140-0300 is being amended to permit the waiver of a disqualification due to an asset transfer if certain hardship requirements are met by clients in the Extended Medical (EXT), Medical Assistance Assumed (MAA), Medical Assistance to Families (MAF), Refugee Medical (REFM) and Substitute and Adoptive Care (SAC) programs.

OAR 461-145-0020 and OAR 461-145-0022 which concern the treatment of annuities for eligibility purposes are being amended to replace the reference to the life expectancy table from the table in the Centers for Medicare and Medicaid State Medicaid Manual, with a reference to the actuarial tables of the Office of the Chief Actuary of the Social Security Administration, a change that affects clients of the OSIP (Oregon Supplemental Income Program), OSIPM (Oregon Supplemental Income Program Medical, providing medical coverage to the elderly and individuals with disabilities) and QMB (Qualified Medicare Beneficiaries) programs. These rules are also being amended to be consistent with the simultaneous change to no longer disqualify clients in standard living arrangements for transfers of assets for less than fair market value in division 140. These rules are also being amended to clarify that for an annuity that meets the criteria of the rule, monthly annuity payments will be counted as unearned income to the annuitant, regardless of who may be designated as the payee. These rules are also being amended to update cross-references to definitions that are being added or moved to other rule numbers.

OAR 461-145-0108 is being amended to update section cross-references to match section renumbering in other rules.

OAR 461-145-0130 is being amended to clarify current policy regarding the treatment of earned income in the eligibility process for public assistance, medical assistance, and food stamps.

OAR 461-145-0140 about the treatment of the earned income tax credit in the eligibility process for food stamps, public assistance, and medical programs is being amended to align food stamp policy with TANF. The Farm Security and Rural Investment Act of 2002, section 4102 allows the state to simplify the treatment of some income types by allowing it to align food stamp policies with TANF. This amendment will exclude earned income tax credit as both income

and resources for food stamps. The current policy requires the income be counted as a resource if it is retained for 12 months.

OAR 461-145-0175 about the treatment of Family Abuse Prevention Act (FAPA) payments authorized by the courts to victims of domestic violence in the eligibility process for food stamps, public assistance, and medical assistance is being amended to align food stamp policy with TANF. The Farm Security and Rural Investment Act of 2002, section 4102 allows the state to simplify the treatment of some income types by aligning food stamp and TANF policies. This amendment will exclude the first \$2,500 FAPA payments as income and count any amount over \$2,500 as a resource for food stamps. The current policy requires the income be counted as unearned income for food stamps.

OAR 461-145-0185 and 461-145-0343 are being adopted so that there are separate rules that cover the treatment of the value of manufactured and mobile homes as well as floating homes and houseboats as part of the eligibility process for public assistance, medical assistance, and food stamps. These topics are currently covered in OAR 461-145-0220, 461-145-0250, and 461-145-0420.

OAR 461-145-0220 about the treatment of a home in the eligibility process is being amended for the OSIP (Oregon Supplemental Income Program), OSIPM (Oregon Supplemental Income Program Medical, providing medical coverage to the elderly and individuals with disabilities), and QMB (Qualified Medicare Beneficiaries) programs to change the definition of contiguous property that is considered part of the home of the filing group. This rule is also being amended to update cross-references to definitions that are being added or moved to other rule numbers.

OAR 461-145-0250 is being amended to add an exclusion to the counting of income-producing property for eligibility in the MAA (Medical Assistance Assumed) and TANF programs. This rule is also being amended to relocate definitions to OAR 461-001-0000 and cross-reference definitions in that rule and other rules.

OAR 461-145-0280 — about the treatment of in-kind income in the eligibility process for medical assistance, public assistance, and food stamps — is being amended to state that in-kind income does not include shelter-in-kind income for all programs, that in-kind income does not include child support in the Medical Assistance Assumed (MAA), Medical Assistance to Families (MAF), Oregon Health Plan (OHP), Refugee Medical (REFM), Substitute Adoptive Care (SAC), and Temporary Assistance to Needy Families (TANF) programs, and that in-kind income does not include an expenditure by a business entity that benefits a principal in the OHP program. This rule is also being amended to clarify that in the Extended Medical (EXT) program all in-kind income is excluded, and that in the REFM program, in-kind income (except child support) is excluded. This rule is also being amended to remove the definition of in-kind income and to add cross-references to other rules.

OAR 461-145-0310 about the treatment of life estates in the eligibility process for medical assistance, public assistance, and food stamps, is being amended to add and correct cross references to other rules and to move a definition to OAR 461-001-0000.

OAR 461-145-0330 concerning the treatment of loans and interest on loans is being amended to replace the reference regarding the life expectancy table from the table in the Centers for Medicare and Medicaid State Medicaid Manual, with the actuarial tables of the Office of the Chief Actuary of the Social Security Administration, a change which impacts client of the GA (General Assistance, currently closed), GAM (General Assistance Medical, currently closed), OSIP (Oregon Supplemental Income Program), OSIPM (Oregon Supplemental Income Program Medical, providing medical coverage to the elderly and individuals with disabilities), and QMB (Qualified Medicare Beneficiaries) programs. This rule is also being amended to include the policy on the treatment of purported loans that fail to meet the requirements of the rule and to cross-reference rules that explain technical terms used.

OAR 461-145-0470 is being amended to clarify that in the Medical Assistance Assumed (MAA), Medical Assistance to Families

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(MAF), Oregon Health Plan (OHP), Refugee (REF), Refugee Medical (REFM), Substitute Adoptive Care (SAC) and Temporary Assistance to Needy Families (TANF) programs child support payments made to a third party for shelter expenses are treated in accordance with OAR 461-145-0080. This rule is also being amended to add the Extended Medical (EXT) program the programs that exclude shelter-in-kind income (except child support). This rule is also being amended to relocate a definition to a rule where definitions are more easily located and to add and correct cross-references to other rules.

OAR 461-145-0505 about the treatment of spousal support in the eligibility process for food stamps, public assistance, and medical assistance is being amended to move definitions to OAR 461-001-0000, update and add cross-references to definitions in other rules, clarify the rule, and indicate how the rule applies to the EXT (Extended Medical Assistance), MAA (Medical Assistance Assumed), MAF (Medical Assistance to Families), SAC (Medical Coverage for Children in Substitute or Adoptive Care), and TANF programs.

OAR 461-145-0580 about the treatment of veterans benefits in the eligibility process for public assistance, medical assistance, and food stamps is being amended to change the treatment these payments for QMB clients (Qualified Medicare Beneficiaries) so that the rule is clear that Veteran's Aid and Attendance payments are excluded for all QMB clients. This rule is also being amended to clarify that in the OSIP and OSIPM programs, when aid and attendance payments are received, the Veterans benefit payment is made up of both a pension and aid-and-attendance, the entire amount is excluded in the eligibility determination and counted in the benefit or patient liability calculations. Other sections of the rule are being amended to add cross-references and use more precise language.

OAR 461-150-0055 is being amended to clarify that the Oregon Health Plan (OHP) budget month for clients losing eligibility for the Breast and Cervical Cancer Medical (BCCM) and the Extended Medical (EXT) programs is the last month of their EXT eligibility period. This rule is also being amended to add cross-references to other rules.

OAR 461-155-0225 about the income standard for the OHP (Oregon Health Plan) program is being amended to add and correct cross references to other rules.

OAR 461-155-0250 about income and payment standards in the OSIP (Oregon Supplemental Income Program) and OSIPM (Oregon Supplemental Income Program Medical) programs is also being amended to clarify how to deal with SIP (supplemental income) payments for SSI spouses when waived services are involved. The rule is being amended to indicate that if the Social Security Administration considers the spouses as a couple for payment, then there is no SIP payment unless the client is blind; if the client is blind, the payment is at the couple, not individual, standard. This rule is also being amended to clarify that the 250 percent federal poverty level (FPL) adjusted income standard for the OSIPM-EPD (Employed Persons with Disabilities) program is only for earned income, and unearned income is not involved in this calculation. This rule is being further amended to update cross-references to defined terms.

OAR 461-155-0660 is being amended to only allow an accommodation allowance for clients who have a documented cost associated with accommodations, or who have a live-in provider. The title of the rule is being changed to clarify that the rule is to be used to help clients who have a disability and who have increased costs due to an accommodation issue, or who need help maintaining their residence while confined for a short time to a medical or care facility. This rule is also being amended because there is no need to allow home adaptations in this rule since OAR 461-155-0551 allows home adaptations.

OAR 461-160-0010 about the use of resources for determining financial eligibility for public assistance, medical assistance, and food stamp programs is being amended to remove language that gives service clients with a liability the ability to have more than the allowed resources and still be eligible. This rule is also being amend-

ed to move definitions to OAR 461-001-0000, update and add cross-references to definitions in other rules, and clarify the rule.

OAR 461-160-0090 about the OSIP-EPD and OSIPM-EPD programs is being amended to remove a definition of an employment and independence expense, cite the definition of this term being moved to OAR 461-001-0035 which differs slightly from the one being removed in this rule, and add cross-references to other rules.

OAR 461-160-0560 is being amended and renumbered to 461-001-0030 to locate the definitions specific to the OSIP and OSIPM long-term care and waived programs in the same division (461-001) as other rules focusing on definitions. This rule is being amended to clarify the applicability of the rule, including removing its applicability to the OHP program. Some of the definitions themselves are being changed.

OAR 461-160-0610, 461-160-0620, and 461-185-0050 are being amended to comply with the federal statute and regulation whereby those individuals who are identified as eligible for Medicaid under the "Pickle Amendment" may receive benefits for in-home services provided under a Home and Community Based Waiver are not required to contribute any of their income toward the cost of their Medicaid-funded services. OAR 461-160-0620 is also being amended to indicate that adult disabled children, disabled widows and widowers, and widows or widowers who qualify under OAR 461-135-0820 are required to contribute toward the cost of their Medicaid-funded services if they reside in a nursing facility, an intermediate care facility for the mentally retarded (ICF/MR), or a state psychiatric institution.

OAR 461-165-0180 about the eligibility of child care providers is being amended to update cross-references to definitions that are being moved to other rule numbers and to fix an internal cross-reference.

OAR 461-170-0020 and 461-170-0103 are being amended to add a new reporting requirement in the Food Stamp program for those households containing only individuals who are elderly or have disabilities whose income is already at the countable income limit at certification or recertification. These rules are also being amended to add cross-references to other rules. OAR 461-170-0103 is also being amended to remove references to Unemployment Compensation holds and to state the Department in the Food Stamp program will act on a monthly computer match with the Department of Corrections that indicates a member is incarcerated.

OAR 461-170-0130 is being amended to include the QMB (Qualified Medicare Beneficiaries, additional medical coverage for Medicare recipients) program in the list of Medicaid programs that are required — when a client, who is required to report a change in circumstances, makes a timely report of change that could reduce or end medical benefits — to review each individual in the filing group for eligibility for other medical programs prior to reducing or ending medical benefits. If additional information is needed to act on the reported change by the client, members of the benefit group remain eligible from the date the change was reported until the Department determines their eligibility in accordance with application processing time frames. This rule is also being amended to cross-reference rules that explain technical terms.

OAR 461-175-0010 and 461-175-0250 are being amended to make it easier to understand the requirements that apply to mass change notices and to state that some of the requirements and exceptions to other decision notice requirements in the current rules apply only in the Food Stamp program. While the current rules treat mass change notice as exempt from requirements that apply to other decision notices, the proposed amendment treats mass change notices as a subcategory of the other types of notices.

OAR 461-180-0085 is being amended to include the QMB (Qualified Medicare Beneficiaries, additional medical coverage for Medicare recipients) program in the list of Medicaid programs for which, when eligibility for the program ends, the Department must consider the eligibility criteria for all other Medicaid programs before

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closing the case. This rule is also being amended to cross-reference rules that explain technical terms.

OAR 461-180-0090 is being amended for the OSIP (Oregon Supplemental Income Program) and OSIPM (Oregon Supplemental Income Program Medical, providing medical coverage to the elderly and individuals with disabilities) programs to allow clients who are under the age of 21 assumed eligibility for Medicaid effective the month prior to the client's initial month of federal Supplemental Security Income (SSI) payment eligibility.

OAR 461-190-0110 is being amended and renumbered to OAR 461-001-0025 to locate the definitions specific to the JOBS program in the same division (461-001) as other rules focusing on definitions. This rule is being amended to include definitions from OAR 461-190-0161 so that there are fewer rules containing the definitions for this program. Some cross-references are being added and some of the definitions themselves are being changed, including clarifying the term "case plan" in connection with a Domestic Violence Assistance Agreement. OAR 461-190-0161 is being repealed and its definitions are being relocated into OAR 461-001-0025.

OAR 461-195-0301, 461-195-0305, 461-195-0310, and 461-195-0325 about personal injury claims and liens, are being amended as a consequence of a recent U.S. Supreme Court decision that changed how states may recover from the proceeds of insurance settlements for accident related public assistance. These rules are also being amended to clarify Department processes, update information, and further delineate the responsibilities of the Department, prepaid managed care organizations (MCO's), and recipients of public assistance. These rules implement state law allowing recovery of public assistance funds when a judgment, settlement or compromise includes amounts of public assistance paid on behalf of a recipient.

OAR 461-195-0611 about Intentional Program Violations (IPVs) is being amended to clarify the process if there is a determination that an IPV waiver was signed under duress.

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

Rules Coordinator: Annette Tesch—(503) 945-6067

461-001-0000

Definitions

Defined terms are often italicized throughout this chapter of rules. If a defined term is accompanied by a cross-reference to a rule defining the term, subsequent usages of that term in the same rule refer to the same definition cross-referenced earlier in the rule. In this chapter of rules, unless the context indicates otherwise:

(1) A reference to Division, Adult and Family Services Division (or AFS), Senior and Disabled Services Division (or SDS), or any other agency formerly part of the Department of Human Services shall be taken to mean the Department of Human Services (DHS), except that the rule in which reference occurs only regulates programs covered by chapter 461 of the Oregon Administrative Rules.

(2) A reference to an Administrator of an agency mentioned in section (1) shall be taken to mean the Director of DHS.

(3) "Address Confidentiality Program" (ACP) means a program of the Oregon Department of Justice, which provides a substitute mailing address and mail forwarding service for ACP participants who are victims of domestic violence, sexual assault, or stalking.

(4) "Adjusted income" means the amount determined by subtracting income deductions from countable income (see OAR 461-140-0010). Specific rules on the deductions are found in division 461-160.

(5) "Adoption assistance" means financial assistance provided to families adopting children with special needs. Adoption assistance may be state or federally funded. Federal adoption assistance is authorized by the Adoption Assistance and Child Welfare Act of 1980 (Pub. L. No. 96-272, 94 Stat. 500 (1980)). State adoption assistance is authorized by ORS 418.330 to 418.335.

(6) "Assets" mean income and resources.

(7) "Basic decision notice" means a decision notice mailed no later than the date of action given in the notice.

(8) "Budgeting" means the process of calculating the benefit level.

(9) "Budget month" means the calendar month from which nonfinancial and financial information is used to determine eligibility and benefit level for the payment month.

(10) "Capital asset" means property that contributes toward earning self-employment income, including self-employment income from a microenterprise, either directly or indirectly. A capital asset generally has a useful life of over one year and a value, alone or in combination, of \$100 or more.

(11) "Caretaker" means an individual who is responsible for the care, control, and supervision of a child. The status of caretaker ends once the individual no longer exercises care, control, and supervision of the child for 30 days.

(12) "Caretaker relative" means a caretaker who meets the requirements of one of the following subsections:

(a) Is one of the following relatives of the dependent child:

(A) Any blood relative, including those of half-blood, and including first cousins, nephews, or nieces, and individuals of preceding generations as denoted by prefixes of grand, great, or great-great.

(B) Stepfather, stepmother, stepbrother, and stepsister.

(C) An individual who legally adopts the child and any individual related to the individual adopting the child, either naturally or through adoption.

(b) Is or was a spouse of an individual listed in subsection (a) of this section.

(c) Met the definition of caretaker relative under subsection (a) or (b) of this section before the child was adopted (notwithstanding the child's subsequent adoption).

(13) "Certification period" means the period for which a client is certified eligible for a program.

(14) "Child" includes natural, step, and adoptive children. The term child does not include an unborn.

(a) In the ERDC program, a child need not have a biological or legal relationship to the caretaker but must be in the care and custody of the caretaker, must meet the citizenship or alien status requirements of OAR 461-120-0110, and must be:

(A) Under the age of 18; or

(B) Under the age of 19 and in secondary school or vocational training at least half time.

(b) In the GA, GAM, and OSIP programs, a child is an individual under the age of 18.

(c) In the OHP program, child means an individual, including a minor parent, under the age of 19.

(d) In the OSIPM and QMB programs, child means an unmarried individual living with a parent who is:

(A) Under the age of 18; or

(B) Under the age of 22 and attending full time secondary, post secondary or vocational-technical training designed to prepare the individual for employment.

(15) "Community based care" is any of the following:

(a) Adult foster care — Room and board and 24 hour care and services for the elderly or for disabled people 18 years of age or older. The care is contracted to be provided in a home for five or fewer clients.

(b) Assisted living facility — A program approach, within a physical structure, which provides or coordinates a range of services, available on a 24-hour basis, for support of resident independence in a residential setting.

(c) In-home Services — People living in their home receiving services determined necessary by the Department.

(d) Residential care facility — A facility that provides residential care in one or more buildings on contiguous property for six or more individuals who have physical disabilities or are socially dependent.

(e) Specialized living facility — Identifiable services designed to meet the needs of individuals in specific target groups which exist as the result of a problem, condition or dysfunction resulting from a physical disability or a behavioral disorder and require more than basic services of other established programs.

(f) Independent choices — In-home Services recipients in demonstration sites who receive a cash benefit to coordinate in-home services under a section 1115 (42 U.S.C. 1315) demonstration waiver.

(16) "Continuing benefit decision notice" means a decision notice that informs the client of the right to continued benefits and is mailed in time to be received by the date benefits are, or would be, received.

(17) "Countable" means that an available asset (either income or a resource) is not excluded and may be considered by some programs to determine eligibility.

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(18) "Custodial parents" mean parents who have physical custody of a child. Custodial parents may be receiving benefits as dependent children or as caretaker relatives for their own children.

(19) "Decision notice" means a written notice of a decision by the Department regarding an individual's eligibility for benefits in a program.

(20) "Department" means the Department of Human Services (DHS).

(21) "Dependent child", in the EXT, MAA, MAF, REFM, and TANF programs, means the following:

(a) An individual who is not a caretaker relative of a child in the household, is unmarried or married but separated, and is under the age of 18, or 18 years of age and a full time student in secondary school or the equivalent level of vocational or technical training; or

(b) A minor parent whose parents have chosen to apply for benefits for the minor parent. This does not apply to a minor parent who is married and living with his or her spouse.

(22) "Domestic violence" means the occurrence of one or more of the following acts between family members, intimate partners, or household members:

(a) Attempting to cause or intentionally, knowingly or recklessly causing physical injury or emotional, mental or verbal abuse.

(b) Intentionally, knowingly or recklessly placing another in fear of imminent serious physical injury.

(c) Committing sexual abuse in any degree as defined in ORS 163.415, 163.425 and 163.427.

(d) Using coercive or controlling behavior.

(23) "Domestic violence shelters" are public or private nonprofit residential facilities providing services to victims of domestic violence. If the facility serves other people, a portion must be used solely for victims of domestic violence.

(24) "Eligibility" means the decision as to whether an individual qualifies, under financial and nonfinancial requirements, to receive program benefits.

(25) "Equity value" means fair market value minus encumbrances.

(26) "Fair market value" means the amount an item is worth on the open market.

(27) "Financial institution" means a bank, credit union, savings and loan association, investment trust, or other organization held out to the public as a place receiving funds for deposit, savings, checking, or investment.

(28) "HPN" means a health plan new/noncategorical client eligible under OHP-OPU.

(29) "Income-producing property" means any real or personal property that generates income for the financial group. Examples of income-producing property are:

(a) Livestock, poultry, and other animals.

(b) Farmland, rental homes (including a room or other space in the home or on the property of a member of the financial group), vacation homes, condominiums.

(30) "Initial month" of eligibility means any of the following:

(a) In all programs, the first month a benefit group (see OAR 461-110-0750) is eligible for a program benefit in Oregon after a period during which the group is not eligible.

(b) In all programs except the FS program, the first month a benefit group is eligible for a program benefit after there has been a break in the program benefit of at least one full calendar month. If benefits are suspended for one month, that is not considered a break.

(c) In the FS program:

(A) The first month for which the benefit group is certified following any period during which they were not certified to participate, except for migrant and seasonal farm workers (see OAR 461-001-0015).

(B) For migrant and seasonal farmworkers, the first month for which the benefit group is certified following any period of one month or more during which they were not certified to participate.

(d) In the OHP program, the first month of a redetermination or recertification period.

(31) "In-kind income" means income in a form other than money (such as food, clothing, cars, furniture, and payments made to a third party).

(32) "Legally married" means a marriage uniting a man and a woman according to the provisions of either:

(a) The statutes of the state where the marriage occurred;

(b) The common law of the state in which the man and woman previously resided while meeting the requirements for common law marriage in that state; or

(c) The laws of a country in which the man and woman previously resided while meeting the requirements for legal or cultural marriage in that country.

(33) "Life estate" means the right to property limited to the lifetime of the individual holding it or the lifetime of some other individual. In general, a life estate enables the owner of the life estate to possess, use and obtain profits from property during the lifetime of a designated individual while actual ownership of the property is held by another individual. A life estate is created when an individual owns property and then transfers their ownership to another while retaining, for the rest of their life, certain rights to that property. In addition, a life estate is established when a member of the financial group (see OAR 461-110-0530) purchases a life estate interest in the home of another individual.

(34) "Lodger" means a member of the household group (see OAR 461-110-0210) who---

(a) Is not a member of the filing group; and

(b) Pays the filing group for room and board.

(35) "Long-term care" means the system through which the Department provides a broad range of social and health services to eligible adults who are aged, blind, or have disabilities for extended periods of time. This includes nursing homes and state hospitals (Eastern Oregon and Oregon State Hospitals).

(36) "Lump-sum income" means income received too infrequently or irregularly to be reasonably anticipated, or received as a one-time payment. Lump-sum income includes:

(a) Retroactive benefits covering more than one month, whether received in a single payment or several payments.

(b) Income from inheritance, gifts, winnings and personal injury claims.

(37) "Marriage" means the union of a man and a woman who are legally married.

(38) "Microenterprise" means a sole proprietorship, partnership, or family business with fewer than five employees and capital needs no greater than \$35,000.

(39) "Minor parent", in the ERDC, EXT, MAA, MAF, and TANF programs, means a parent under the age of 18.

(40) "Nonstandard living arrangement" is defined as follows:

(a) In the GA, GAM, OSIP, OSIPM, and QMB programs, a client is considered to be in a nonstandard living arrangement when the client is applying for or receiving services in any of the following locations:

(A) A nursing facility.

(B) An intermediate care facility for the mentally retarded (ICF/MR).

(C) A psychiatric institution, if the individual is not yet 21 years of age or has reached the age of 65.

(D) A community-based setting covered by a waiver under Title XIX of the Social Security Act.

(b) In all programs except GA, GAM, OSIP, OSIPM, and QMB, a nonstandard living arrangement means each of the following locations:

(A) Foster care.

(B) Residential Care Facilities.

(C) Drug or Alcohol Residential Treatment Facilities.

(D) Homeless or Domestic Violence Shelters.

(E) Lodging house if paying for room and board.

(F) Correctional facilities.

(G) Medical institutions.

(41) "Ongoing month" means one of the following:

(a) For all programs except FS and OHP, any month following the initial month of eligibility, if there is no break in the program benefit of one or more calendar months.

(b) For the FS and OHP programs, any month in the certification period following the initial month of eligibility.

(42) "Parent" means the biological or legal (step or adoptive) mother or father of an individual or unborn child.

(a) If the mother lives with a male and either she or the male claims that he is the father of the child or unborn, and no one else claims to be the father, he is treated as the father even if paternity has not been legally established.

(b) A stepparent relationship exists if:

(A) The individual is legally married to the child's biological or adoptive parent; and

(B) The marriage has not been terminated by legal separation, divorce or death.

(c) A legal adoption erases all prior legal and blood relationships and establishes the adoptive parent as the legal parent. However, the biological parent is also considered a parent if both of the following are true:

(A) The child lives with the biological parent; and

(B) The legal parent (the adoptive parent) has given up care, control and supervision of the child.

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(43) "Payment month" means, for all programs except EA, the calendar month for which benefits are issued.

(44) "Payment period" means, for EA, the 30-day period starting with the date the first payment is issued and ending on the 30th day after the date the payment is issued.

(45) "Periodic income" means income received on a regular basis less often than monthly.

(46) "Primary person" for all programs except FS, means the filing group member who is responsible for providing information necessary to determine eligibility and calculate benefits. The primary person for individual programs is as follows:

(a) For EXT, MAA, MAF, and TANF, the parent or caretaker relative.

(b) For ERDC, the caretaker.

(c) For FS, see OAR 461-001-0015.

(d) For GA, GAM, OSIP, OSIPM, and QMB, the client or their spouse.

(e) For OHP, REF, and REFM, the applicant, caretaker, caretaker relative or parent.

(47) "Real property" means land, buildings, and whatever is erected on or affixed to the land and taxed as real property.

(48) "Reimbursement" means money or in-kind compensation provided specifically for an identified expense.

(49) "Safe homes" mean private homes that provide a few nights lodging to victims of domestic violence. The homes must be recognized as such by the local domestic violence agency, such as crisis hot lines and shelters.

(50) "Shelter costs" mean, in all programs except the Food Stamp program, housing costs (rent or mortgage payments, property taxes) and utility costs, not including cable TV or non-basic telephone charges. In the Food Stamp program, see OAR 461-160-0420.

(51) "Shelter-in-kind" means an agency or person outside the household group (see OAR 461-110-0210) provides the shelter of the financial group (see OAR 461-110-0530), or makes a payment to a third party for some or all of the shelter costs of the financial group.

(a) For all programs except OSIP, OSIPM, and QMB, shelter-in-kind does not include temporary shelter provided by a domestic violence shelter, homeless shelter, or residential alcohol and drug treatment facilities.

(b) For OSIP, OSIPM, and QMB, shelter-in-kind also includes situations where the client has no shelter costs.

(52) "Sibling" means the brother or sister of an individual. "Blood-related" means they share at least one biological or adoptive parent. "Step" means they are not related by blood, but are related by the marriage of their parents.

(53) "Spousal support" means income paid (voluntarily, per court order or per administrative order) by a separated or divorced spouse to a member of the financial group (see OAR 461-110-0530).

(54) "Spouse" means an individual who is legally married to another individual. In the ERDC and FS programs, spouse includes an individual who is not legally married to another, but is presenting themselves to the community as the husband or wife by:

(a) Representing themselves as husband and wife to relatives, friends, neighbors or tradespeople; and

(b) Sharing living expenses or household duties.

(55) "Stable income" means income that is the same amount each time it is received.

(56) "Standard living arrangement" means a location that does not qualify as a nonstandard living arrangement.

(57) "Teen parent" means, for TANF and JOBS, a parent under the age of 20 who has not completed a high school diploma or GED.

(58) "Timely continuing benefit decision notice" means a decision notice that informs the client of the right to continued benefits and is mailed no later than the time requirements in OAR 461-175-0050.

(59) "Trust funds" mean money, securities, or similar property held by a person or institution for the benefit of another person.

(60) "USDA meal reimbursements" mean cash reimbursements made by the Oregon Department of Education for family day-care providers who serve snacks and meals to children in their care.

(61) "Variable income" means earned or unearned income that is not always received in the same amount each month.

Stat. Auth.: ORS 411.060, 411.816 & 418.100

Stats. Implemented: ORS 411.060, 411.816 & 418.100

Hist.: AFS 28-1978, f. & ef. 7-13-78; AFS 54-1984, f. 12-28-84, ef. 1-1-85; AFS 21-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07

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.

(l) 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) 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 hallway 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.

(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.

(4) 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.

(5) 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).

(6) 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

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(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

461-001-0020

Definitions; FS OFSET Components and Activities

The following definitions apply to rules about the Food Stamp OFSET program in chapter 461:

(1) **Assessment:** An activity that involves gathering information to identify a client's strengths, interests, family circumstances, status in the OFSET program, goals, and vocational aptitudes and preferences and to mutually determine an employment goal, the level of the client's participation in the OFSET program, and which support services are needed to be able to participate in the components and activities

(2) **Basic education:** A component intended to ensure functional literacy for all OFSET clients. Basic education activities are high school attendance, English as a second language (ESL) instruction, adult basic education (ABE) instruction, and services that result in obtaining a general equivalency diploma (GED).

(3) **Case plan:** The case plan (also called a personal plan or personal development plan) is a written outline, developed together by the client and case manager, with input from partners as appropriate, listing activities for the client. The components and activities are identified during the assessment and are intended to reduce the effect of barriers to the client's self-sufficiency, employment, job retention and wage enhancement. The case plan also identifies the support services the Department will make available to help the client complete the plan.

(4) **English as a second language (ESL):** An activity in the basic education component. ESL classes are designed to give clients with limited English proficiency better working skills in the language.

(5) **Job search:** A component that focuses on clients looking for and obtaining employment.

(6) **Job skills training:** A component that includes training designed to improve skills in locating and competing for employment in the local labor market and may include writing resumes and receiving instruction in interviewing skills.

(7) **Other employment-related activities:** A component composed of other activities related to employment, including:

(a) Participation in a program of the Workforce Investment Act;

(b) A program authorized by section 236 of the Trade Act of 1974 (19 U.S.C. 2296)

(c) **Sheltered work or supported work:** A component that gives clients intensive staff support, skill training, intervention and counseling that will enable them to function independently at work.

(d) **Vocational training:** A component designed to provide classroom training in vocational and technical skills or equivalent knowledge and abilities in a specific job area. Examples are Project Independence, Women in Transition, and Nurses Aid certification.

(e) **Work search agreement:** See case plan in section (3) of this rule.

Stat. Auth.: ORS 411.816

Stats. Implemented: ORS 411.816

Hist.: SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07

461-001-0025

Definitions of Terms, Components, and Activities; JOBS Program

The following definitions of terms, components, and activities apply to rules about the JOBS program in Chapter 461.

(1) **Activity:** An action or set of actions to be taken by the client, as specified in the case plan, intended to reduce barriers and increase the likelihood of self sufficiency, employment, job retention, and wage enhancement.

(2) **Assessment:** An activity of the program entry component that involves gathering information to identify the strengths, interests, family circumstances, status in the JOBS program, and vocational aptitudes and preferences of the client and to mutually determine an employment goal, the level of participation of the client in the JOBS program, and which support services are needed.

(3) **Barrier:** A personal condition or circumstance that reduces the likelihood the client will become employed or the client's ability to participate in an activity listed in the case plan.

(4) **Basic education:** A component intended to ensure functional literacy for all JOBS clients. Basic education activities are high school attendance, English as a second language (ESL) instruction, adult basic education (ABE) instruction, and services that result in obtaining a general equivalency diploma (GED). The component is discussed in OAR 461-190-0171 and 461-190-0181.

(5) **BASIS testing:** An activity in the program entry component. The BASIS test establishes the functional literacy level of the client.

(6) **Case plan** (formerly also known as an employment development plan (EDP) — and also known as a personal plan or personal development plan): A written outline, developed by the client and case manager, with input from partners as appropriate, listing activities and goals for the client. The activities and goals are identified during the assessment and are intended to reduce the effect of barriers to the self sufficiency, employment, job retention, and wage enhancement of the client. The case plan also identifies the support service payments the Department will make to help the client complete the plan. Completing a case plan is an activity of the program entry component. The DHS 1543 — Domestic Violence Assistance Agreement - is the case plan for clients with safety concerns about domestic violence.

(7) **Component:** A set of one or more activities of the JOBS program. Components of the JOBS program are basic education, job readiness, job search, job skills training, JOBS Plus, microenterprise, OJT, program entry, sheltered or supported work, UN work program, work experience, work supplementation, and vocational training. Components are described in OAR 461-190-0161.

(8) **Degree Completion Initiative (DCI):** A component in which a limited number of TANF recipients may participate for up to 12 months to complete an educational degree at a two- or four-year educational institution as defined at OAR 461-190-0195(2)(b). This component is discussed at OAR 461-190-0195.

(9) **Employer contact:** A client communication with an employer or employer's representative through a visit, phone call or mail to request consideration for employment.

(10) **English as a second language (ESL):** An activity in the basic education component. ESL classes are designed to give clients with limited English proficiency better working skills in the language.

(11) **Job readiness:** A component designed to prepare clients to compete in the local labor market. The sole activity is life skills.

(12) **Job search:** A component that focuses on clients looking for and obtaining employment. It is designed to improve skills in locating and competing for employment in the local labor market and may include writing resumes, receiving instruction in interviewing skills, and participating in group and individual job search. The component is discussed in OAR 461-190-0201.

(13) **Job skills training:** A component designed to provide classroom training in vocational and technical skills or equivalent knowledge and abilities in a specific job area. The component and activity are both called job skills training.

(14) **JOBS Plus program (JOBS Plus):** A component that provides TANF clients with on-the-job training and pays their benefits as wages. See the rules at OAR 461-190-0401 and following.

(15) **Life skills:** The activity of the job readiness component. The activity develops employment-preparation skills and skills and attitudes that are commonly found in the workplace.

(16) **Microenterprise:** A component in which the client is self-employed in a sole proprietorship, partnership, or family business that has fewer than five employees and has capital needs no greater than \$35,000.

(17) **On-the-job training (OJT):** A component and activity in which a client works for an employer for a contracted period. The employer trains the client and is reimbursed by the Department, usually at 50 percent of the wages of the participant, for those training costs.

(18) **Program entry:** The component that includes all the activities that prepare a client to actively participate in the JOBS program. Program entry activities are assessment, BASIS testing and writing the initial case plan.

(19) **Progress (good or satisfactory):** A client participating in an education or training activity makes good progress or satisfactory progress by meeting a standard of achievement measured in a period of less than one year (such as a term or quarter). The standard is established in writing by the educational institution or training program consistent with its evaluation standards. The appropriate state or local education agency and the Department must approve the standard before it is applicable with respect to a client. Standards must include:

(a) In an education activity, both a qualitative measure of progress, such as a specific grade point average, and a quantitative measure, such as a time limit for completion of the activity.

(b) In a training activity, both a qualitative measure of progress, such as gains in competency or proficiency levels, and a quantitative measure, such as a time limit for completion of the activity.

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(20) Sheltered work or supported work: A component that gives clients intensive staff support, skill training, intervention and counseling that will enable them to function independently at work.

(21) Subsidized employment: A job in which the wages paid to an employee are subsidized by a state or local employment and training program.

(22) Support services: Services that case-managed clients need to participate successfully in activities outlined in their case plan, seek and maintain employment, or remove barriers.

(23) Teen parent: Custodial parent under age 20.

(24) Transition services: Services included in a client's case plan when the client becomes employed or becomes ineligible for cash benefits because of an increase in income or resources.

(25) UN work program: A component in which TANF clients work in unsubsidized employment and may also participate in another JOBS work site training activity.

(26) Vocational Training: A component of the JOBS program that provides JOBS participants with access to specific vocational training that will lead to a career with an appropriate wage level and opportunity for employment.

(27) Work experience: A component in which the client works without pay at a job site to develop good work habits and basic vocational skills that enhance the likelihood the client will become employed. Work experience is available through private for-profit businesses, nonprofit organizations or public agencies.

(28) Work supplementation: Up to six months of work-site training provided by an employer. The component and activity are both called work supplementation. In work supplementation, the Department subsidizes the wages of the participant by providing up to \$200 per month to the employer.

Stat. Auth.: ORS 411.060, 418.100

Stats. Implemented: ORS 411.060, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 9-1991, f. 3-29-91, cert. ef. 4-1-91; AFS 10-1991, f. & cert. ef. 4-19-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 17-1992, f. & cert. ef. 7-1-92; AFS 5-1993, f. & cert. ef. 4-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; 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 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 40-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 18-1998, f. & cert. ef. 10-2-98; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; Renumbered from 461-190-0110, SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07

461-001-0030

Definitions; OSIP, OSIPM Long-Term Care or Waivered

These terms apply to rules in chapter 461 about OSIP and OSIPM long-term care and waived clients:

(1) Community spouse: An individual who is legally married to an institutionalized spouse and is not in a medical institution or nursing facility.

(2) Continuous period of care: A period of at least 30 consecutive days of care in a long-term care facility or waiverable home or community-based setting. There must be sufficient evidence to show there is a reasonable expectation that the client will remain in care for at least 30 consecutive days. For the purposes of this policy, an interruption in care (for example, leaving and then returning to a nursing home, or switching from one type of care to another) that lasts less than 30 days is not considered a break in the 30 consecutive days of care. A new period of care begins if care is interrupted for 30 or more days.

(3) Eligible dependent:

(a) For cases with a community spouse, eligible dependents are minor (under the age of 21) or dependent children, dependent parents, or dependent siblings of the institutionalized or community spouse who are residing with the community spouse and are claimed as tax dependents by either spouse.

(b) For cases without a community spouse, eligible dependents are minor (under the age of 21) or dependent children living in the client's household group.

(4) Institutionalized spouse: An individual who is in long-term care or receiving waiverable home or community-based services for a continuous period and is married to a community spouse.

(5) Waivered services are services needed to keep an individual out of a long-term care facility. Waivered services are:

- (a) In-home services.
- (b) Services in a residential care facility.
- (c) Services for an individual in an assisted living facility.
- (d) Adult foster care services.
- (e) Home adaptations to accommodate a client's physical condition.

(f) Home-delivered meals provided in conjunction with in-home services.

(g) Specialized Living Facilities.

(h) Adult Day Care.

(i) Community transition services.

(6) Waivered client: A client receiving Title XIX waived services for a continuous period.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.700

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 5-2002, f. & cert. ef. 4-1-02; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 4-2005, f. & cert. ef. 4-1-05; Renumbered from 461-160-0560, SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07

461-001-0035

Definitions; OSIP-EPD and OSIPM-EPD

The following definitions apply to the rules of the OSIP-EPD and OSIPM-EPD programs in chapter 461:

(1) Approved account refers to a segregated account in a financial institution, the purpose of which is to save to use for future disability-related expenses that would increase the individual's independence and employment potential. Also included in this definition are accounts regulated by the Internal Revenue Code and used for retirement planning, such as IRAs, 401(k)s, TSAs, and KEOGHs.

(2) Attached to the workforce refers to a person who is employed and has, in each countable quarter, earnings sufficient to receive credit from the Social Security Administration (SSA) for a quarter of coverage for purposes of obtaining Social Security benefits (see 42 U.S.C. § 413).

(3) Blind work expenses (BWEs) refers to those costs defined by SSA that can be used as reductions to earned income as defined in 20 CFR 416.1112(c)(8).

(4) Client contribution refers to the amount that must be paid monthly as a condition of eligibility for the EPD program. This contribution is the combination of the Cost Share and the Premium.

(5) Cost share refers to the amount of unearned income in excess of the OSIP income and payment standard that is given to the state.

(6) Disabled or has a disability refers to having a physical or mental impairment, or a combination of these impairments, that meets the definition of disability used by SSA when determining eligibility for Supplemental Security Income (SSI) and Social Security Disability Insurance (SSDI) as defined in 20 CFR Part 404.

(7) Disability determination refers to the process used to establish whether the individual's disability meets the definitions used by SSA in determining eligibility for SSI and SSDI.

(8) Employment refers to an ongoing work activity for which income is received and a potential tax liability is incurred.

(9) Employment and independence expense (EIE) refers to the cost of any expense that can be reasonably expected to enhance the independence and employment potential of the individual.

(10) Impairment related work expenses (IRWEs) refers to those costs defined by SSA that can be used as reductions to earned income. To be allowed, the item or service must be related to the impairment and necessary to enable the person to perform their job as defined in 20 CFR 416.976.

(11) Past relevant work (PRW) refers to work done within the past 15 years, that was substantial gainful activity, and that lasted long enough for the worker to learn how to do it.

(12) Premium refers to the payment given to the state that is based on a graduated percentage of the total income of the individual.

(13) Substantial gainful activity (SGA) refers to the term used by SSA to describe a level of work activity and earnings. In the EPD program, a person is engaging in SGA if their earnings are at or above the EPD income standard.

Stat. Auth.: ORS 411.060, 411.070, 414.042

Stats. Implemented: ORS 411.060, 411.070, 414.042

Hist.: 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 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 10-2003(Temp) f. & cert. ef. 5-1-03 thru 9-30-03; SSP 17-2003, f. & cert. ef. 7-1-03; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; Renumbered from 461-110-0115, SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07

461-105-0010

Rights of Clients

Clients of the Department in programs regulated by chapter 461 of these rules have the following rights and the right to be informed of them:

(1) The right to information about the programs administered by the Department.

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(2) The right to confidentiality for individually identifiable information to the extent provided under federal and state law and the administrative rules of the Department.

(3) The right to refuse social services unless:

(a) The service is court-ordered;

(b) The service is related to a case plan as defined in OAR 461-001-0020 or 461-001-0025; or

(c) Treatment is required under OAR 461-135-0085.

(4) The right, upon expressing dissatisfaction with an action of the Department, to obtain the Department's standard form for requesting a hearing.

(5) The right to request a hearing within 45 days (90 days for FS) of the date of notice informing clients that their benefits are:

(a) Authorized.

(b) Reduced, ended, or denied.

(c) Changed to vendor, protective, or two-party payments.

(6) The right to apply for any program administered by the Department.

(7) The right to have a decision on eligibility made by the Department:

(a) In the Food Stamp program, within 30 days from the filing date.

(b) In the OSIPM program, within 90 days from the date of request if a disability decision must be made, and in all other cases within 45 days.

(c) In all other programs, within 45 days from the date of request.

(8) The right to apply for and receive benefits and services from the Department and its contractors, grantees, agents, and providers of services who receive payments from the Department which are funded in whole or in part with federal funds without discrimination on the basis of race, color, national origin, religion, gender, disability, or political beliefs.

(9) The right to courteous, fair and dignified treatment by Department personnel.

Stat. Auth.: ORS 411.060, 411.816 & 418.100

Stats. Implemented: ORS 411.060, 411.816 & 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 11-1999, f. & cert. ef. 10-1-99; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07

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.

(b) A resident of a nonprofit public or private residential care facility.

(c) A resident of a homeless or domestic violence shelter.

(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 28-1992, f. & cert. ef. 10-1-92; AFS 1-1993, f. & cert. ef. 2-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 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

461-110-0410

Filing Group; OSIP, OSIPM, QMB

(1) In the OSIP and OSIPM programs (except OSIP-EPD, OSIPM-EPD, and OSIPM-IC):

(a) For applicants age 18 and older who live in a standard living arrangement (see OAR 461-001-0000), the filing group consists of applicants and the spouse (see OAR 461-001-0000) of an applicant.

(b) For applicants who are under the age of 18 living in a standard living arrangement and are not assumed eligible, the filing group consists of applicants and each parent (see OAR 461-001-0000) of these applicants.

(2) In the OSIP and OSIPM programs (except OSIP-EPD, OSIPM-EPD, and OSIPM-IC), when individuals live in a nonstandard living arrangement (see OAR 461-001-0000), the filing group consists only of the individual applying for benefits.

(3) In the OSIP-EPD, OSIPM-EPD, and OSIPM-IC programs, the filing group consists only of the individual applying for benefits.

(4) In the QMB program, whether in a standard or nonstandard living arrangement, the filing group consists of applicants and the following household members:

(a) The spouse of an applicant.

(b) Each parent of children under age 21, if the children are applying and are not assumed eligible.

(c) Children under age 21, if the parent wants to include these children in the need group (see OAR 461-110-0630).

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 1-1993, f. & cert. ef. 2-1-93; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; 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

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11-2001, f. 6-29-01, cert. ef. 7-1-01; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07

461-110-0530

Financial Group

(1) A financial group refers to the filing group members whose income and resources count in determining eligibility and benefits.

(2) The financial group in the EXT, MAA, MAF, REF, REFM, SAC, and TANF programs 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) The financial group for OHP 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) For all programs other than EXT, MAA, MAF, OHP, REF, REFM, SAC, and TANF, the financial group consists of all the individuals in the filing group.

Stat. Auth.: ORS 411.060, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.816, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 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

461-110-0630

Need Group

(1) The need group consists of the individuals whose basic and special needs are used in determining eligibility and benefit level.

(2) In the EA, REF, and REFM programs, the need group consists of the members of the financial group (see OAR 461-110-0530) who meet all nonfinancial eligibility requirements, except that members disqualified for an intentional program violation are not in the need group.

(3) In the ERDC program, the need group consists of each member of the financial group.

(4) In the EXT program, the need group consists of each member of the financial group.

(5) In the FS program, the need group consists of the members of the financial group who meet all nonfinancial eligibility requirements, except the following people are not in the need group:

(a) A member disqualified for an intentional program violation.

(b) A fleeing felon under OAR 461-135-0560.

(c) A person violating a condition of state or federal parole, probation, or post-prison supervision under OAR 461-135-0560.

(6) In the GA and GAM programs, the need group consists of each member of the financial group except that the following people may not be in the need group:

(a) A fleeing felon under OAR 461-135-0560.

(b) A person in violation of a condition of state or federal parole, probation, or post-prison supervision under OAR 461-135-0560.

(7) In the MAA and TANF programs, the need group is formed as follows:

(a) Except as provided in subsection (b) of this section, the need group consists of the members of the financial group who meet all nonfinancial eligibility requirements other than the citizenship and alien status requirements of OAR 461-120-0110.

(b) The need group cannot include:

(A) A parent who is in foster care and for whom foster care payments are being made.

(B) An unborn child.

(C) In the TANF program:

(i) A person who cannot be in the need group because of a disqualification penalty.

(ii) A fleeing felon under OAR 461-135-0560.

(iii) A person violating a condition of state or federal parole, probation, or post-prison supervision under OAR 461-135-0560.

(8) In the MAF program, the need group consists of the members of the financial group who meet all nonfinancial eligibility requirements, except for the following people:

(a) A parent who is in foster care and for whom foster care payments are being made.

(b) The father of an unborn child who has no eligible dependent children.

(9) In the OHP program, the need group consists of each member of the financial group. An unborn child of a pregnant female is included in the need group.

(10) In the OSIP, OSIPM, QMB, and SAC programs, the need group consists of each member of the financial group.

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 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 6-1991(Temp), f. & cert. ef. 2-8-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 7-2006(Temp), f. 3-31-06, cert. ef. 4-1-06 thru 9-28-06; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07

461-110-0750

Benefit Group

(1) A benefit group refers to the individuals who receive benefits.

(2) Except as provided in section (3) of this rule, for individuals not assumed eligible (see OAR 461-135-0010), the benefit group consists of the individuals from the need group (see OAR 461-110-0630) requesting benefits who:

(a) Meet all nonfinancial eligibility requirements;

(b) Have resources below the resource limit; and

(c) Have income below the Income Limits/Payment Standards.

(3) In the GA and GAM programs, the following individuals are not in the benefit group:

(a) An individual receiving or deemed to be receiving SSI or SSDI benefits.

(b) An individual who meets the non-disability eligibility requirements under Title II of the Social Security Act.

(4) For individuals assumed eligible (see OAR 461-135-0010), the benefit group consists of the individuals who are in the benefit group of the program used to assume eligibility.

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; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; 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 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 8-2006, f. & cert. ef. 6-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07

461-115-0010

Application Process; General

(1) A client may apply for one or more programs using one application, under the time frames and eligibility requirements that apply to each program for which the client is applying. The Department redetermines eligibility at assigned intervals and whenever a client's eligibility becomes questionable.

(2) If the Department requires additional information to determine eligibility, the client is entitled to a written notice that includes a statement of the specific information needed to determine eligibility and the date by which the client must provide the required information.

(3) The Department ensures that an application form is readily available to anyone requesting one and assists clients who are unable to complete the application form or gather information necessary to verify eligibility.

(4) The Department must screen each applicant to determine whether the applicant has an emergent need, is eligible for expedited food stamp services, or is at risk of being a victim of domestic violence (see OAR 461-001-0000).

(5) In the Food Stamp program, a filing group is entitled to establish a filing date on the date they request benefits.

(6) If a client files an application containing the client's name and address, the Department must send the client a decision notice.

(7) A client may withdraw an application at any time.

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 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 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07

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:

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(1) 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.

(2) An application is complete if all of the following requirements are met:

(a) All information necessary to determine the client's eligibility and benefit amount is provided on the application for all people in the filing group.

(b) The applicant, even if homeless, provides a mailing address.

(c) The application is signed. A person required but unable to sign the application may sign with a mark, witnessed by another person.

(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, 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 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 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 its mother's benefit group. 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) For all other programs, an application is required.

(5) A new application is required to add a person to a benefit group, other than a newborn child, according to the following requirements:

(a) In the ERDC and Food Stamp programs, a new application is not required.

(b) In the EXT, MAA, MAF, OHP, REFM, SAC, and TANF programs, a person 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 other programs, a new application is required.

(6) Clients whose TANF grant is closing may request ERDC orally or in writing.

(7) For all programs except EXT, FS, MAA, MAF, and OHP, 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 & 411.816, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 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

461-115-0530

Certification Period; OHP

(1) For an OHP applicant (except OHP-CHP) not currently receiving BCCM, EXT, MAA, MAF, OHP, OSIPM, REFM, or SAC benefits, the initial OHP certification period (see OAR 461-001-0000) begins on the effective date for starting medical benefits (described in OAR 461-180-0090) and includes the following six calendar months. All other OHP certification periods (except OHP-CHP) are for six months.

(2) For an OHP-CHP applicant not currently receiving BCCM, EXT, MAA, MAF, OHP, OSIPM, REFM, or SAC benefits, the initial OHP-CHP certification period begins on the effective date for starting medical benefits (described in OAR 461-180-0090) and includes the following twelve calendar months. All other OHP-CHP certification periods are for twelve months.

(3) A client's OHP benefits end before the end of the certification period if the client no longer meets the program eligibility requirements or the program ends.

(4) To establish a new certification period, an OHP benefit group (see OAR 461-110-0750) must complete a redetermination of eligibility and be found eligible.

(5) When an individual wishes to be added to an OHP benefit group already certified for OHP, the entire group must establish a new certification period. If, as a result of the new redetermination process, the new filing group (see OAR 461-110-0400) is ineligible, the original benefit group remains eligible for the remainder of its certification period.

(6) If a member leaves an OHP benefit group, that individual and other members of the benefit group remain eligible for the remainder of the certification period.

(7) If a current OHP client moves into another current OHP filing group, that client and the members of that filing group who are OHP-eligible are combined into one benefit group if the client is required to be in the current household's OHP filing group. The certification period for the new benefit group ends the later of the date the current client's certification period or the filing group's period was set to end.

(8) A pregnant woman found eligible for the OHP-OPP program is not assigned a certification period — she is eligible for the period described in OAR 461-135-0010.

Stat. Auth.: ORS 409.050 & 411.060

Stats. Implemented: ORS 409.050, 411.060, 2006 Or. Laws ch. 5

Hist.: AFS 2-1994, f. & cert. ef. 2-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; AFS 22-2001, f. & cert. ef. 10-1-01; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 5-2003, f. 2-26-03, cert. ef. 3-1-03; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 9-2006(Temp), f. & cert. ef. 6-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07

461-115-0540

Certification Period; OSIP-EPD and OSIPM-EPD

(1) In the OSIP-EPD and OSIPM-EPD programs, the Department determines eligibility and assigns a redetermination date by which the next determination of eligibility is required. The Department determines the length of the certification period (see OAR 461-001-0000) based on the stability of the client's circumstances, as follows:

(a) The period may extend up to 12 months if the client's circumstances are sufficiently predictable.

(b) If the client's circumstances are not stable or changes are expected in the near future, the period may be a minimum of three and a maximum of six months.

(2) To receive uninterrupted benefits for the next certification period, OSIP-EPD and OSIPM-EPD clients must submit a completed redetermination form in the last month of their current certification period.

Stat. Auth.: ORS 411.060, 411.070

Stats. Implemented: ORS 411.060, 411.070

Hist.: 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 17-2000, f. 6-28-00, cert. ef. 7-1-00; SSP 17-2003, f. & cert. ef. 7-1-03; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07

ADMINISTRATIVE RULES

461-115-0651

Required Verification and When to Verify; FS

(1) The Department must give households at least 10 days to provide required verification.

(2) All of the following information must be verified when a client initially applies for food stamp benefits:

(a) The identity of the applicant and any authorized representative or alternate payee.

(b) Residency.

(c) Alien status.

(d) Social Security Number (SSN) or application for an SSN.

(e) Countable income.

(f) Medical expenses, if they are used as a deduction.

(g) An order to pay child support and the amount actually paid.

(h) Any information that is incomplete, inaccurate, inconsistent, or outdated, including unresolved issues that impact eligibility or the benefit amount.

(3) All of the following information must be verified when a client reapplies for food stamp benefits within 30 days of a previous certification:

(a) A change in source of income, or the amount of stable income has changed by more than \$50.

(b) The amount of variable income from any source.

(c) Previously unreported medical expenses, and recurring medical expenses which have changed by more than \$25.

(d) Any changes in the legal obligation to pay child support, the obligated amount, and the amount the client is paying for children that live in a different household group.

(e) Any information that is incomplete, inaccurate, inconsistent, or outdated, including unresolved issues that impact eligibility or the benefit amount.

(4) For cases using the Change Reporting System (CRS) and the Monthly Reporting System (MRS), the following changes reported during the certification period must be verified:

(a) For CRS, a change in source of income, or the amount of stable income has changed by more than \$50.

(b) For CRS, the amount of variable income from any source.

(c) Changes in reported medical expenses by more than \$25, and previously unreported medical expenses.

(d) Any changes in the legal obligation to pay child support, the obligated amount, and the amount the client is paying for children that live in a different household group.

(e) Any information that is incomplete, inaccurate, inconsistent, or outdated, including unresolved issues that impact eligibility or the benefit amount.

(5) For cases using the Simplified Reporting System (SRS), each of the following changes reported during the certification period must be verified in accordance with OAR 461-170-0103:

(a) Alien status and SSN or application for an SSN when a new member joins the benefit group.

(b) Countable income.

(c) Medical expenses, if used as a deduction.

(d) An order to pay child support and the amount actually paid, if used as a deduction.

(6) A claimed expense or cost may be used to determine the food stamp benefit only when the client provides the required or requested verification.

(7) In addition to the verification required by sections (2) to (5) of this rule, the income for a client must be verified:

(a) Each month for a client in MRS.

(b) Every six months for a client in SRS.

Stat. Auth.: ORS 411.816

Stats. Implemented: ORS 411.816

Hist.: AFS 12-2001, f. 6-29-01, cert. ef. 7-1-01; AFS 22-2001, f. & cert. ef. 10-1-01; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 20-2004(Temp), f. & cert. ef. 9-7-04 thru 12-31-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 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

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) Medicare recipients.

(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.

(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, 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

461-120-0125

Alien Status; Not REF or REFM

(1) For purposes of this chapter of rules, an individual 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. 1253(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.

ADMINISTRATIVE RULES

(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) In all programs except the Food Stamp program 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) In the Food Stamp program a non-citizen who has been battered or subjected to extreme cruelty in the United States by a spouse or parent or by a member of the spouse or parent's family residing in the same household as the non-citizen at the time of the abuse; a non-citizen whose child has been battered or subjected to battery or cruelty; or a non-citizen child whose parent has been battered.

(2) A person meets the alien status requirements if he or she is one of the following:

(a) An American Indian born in Canada to whom the provisions of section 289 of the INA (8 U.S.C. 1359) apply.

(b) A member of an Indian tribe, as defined in section 4(e) of the Indian Self-Determination and Education Act (25 U.S.C. 450b(e)).

(3) In the ERDC and TANF programs, an individual meets the alien status requirements if he or she is one of the following:

(a) An individual who is a qualified non-citizen.

(b) A non-citizen who is currently a victim of domestic violence or who is at risk of becoming a victim of domestic violence.

(c) A "victim of a severe form of trafficking in persons" certified under the Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (2000), as amended.

(d) A family member of a victim of a severe form of trafficking in persons who holds a visa for family members authorized by the Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. 108-193, 117 Stat. 2875 (2003).

(4) In the BCCM, MAA, MAF, OHP, OSIPM, QMB, and SAC programs, a qualified non-citizen meets the alien status requirements if he or she satisfies one of the following situations:

(a) Was a qualified non-citizen before August 22, 1996.

(b) Physically entered the United States before August 22, 1996, and was continuously present in the United States between August 22, 1996, and the date qualified-noncitizen status was obtained. An individual is not continuously present in the United States if he or she is absent from the United States for more than 30 consecutive days or for a total of more than 90 days.

(c) Is an individual granted any of the following alien statuses:

(A) Refugee under section 207 of the INA.

(B) Asylum under section 208 of the INA.

(C) Deportation being withheld under section 243(h) of the INA.

(D) Cubans and Haitians who are either public interest or humanitarian parolees.

(E) An individual granted immigration status under section 584(a) of the Foreign Operations, Export Financing and Related Program Appropriations Act of 1988.

(F) A "victim of a severe form of trafficking in persons" certified under the Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (2000), as amended.

(G) A family member of a victim of a severe form of trafficking in persons who holds a visa for family members authorized by the Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. 108-193, 117 Stat. 2875 (2003).

(d) Meets the alien status requirements in section (2), (7), or (8) of this rule.

(e) In the OSIPM program, is receiving SSI benefits.

(f) In the QMB program, is receiving SSI and Medicare Part A benefits.

(5) In the GA and GAM programs, an individual meets the alien status requirement if he or she is one of the following:

(a) An individual who is blind or has a disability, was lawfully residing in the United States on August 22, 1996, and is now a qualified non-citizen.

(b) An individual granted one of the following statuses, but only for seven years following the date the status is granted:

(A) Refugee under section 207 of the INA.

(B) Asylum under section 208 of the INA.

(C) Deportation being withheld under section 243(h) of the INA.

(D) An individual granted immigration status under section 584(a) of the Foreign Operations, Export Financing and Related Program Appropriations Act of 1988.

(E) Cubans and Haitians who are either public interest or humanitarian parolees.

(F) A "victim of a severe form of trafficking in persons" certified under the Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (2000), as amended.

(G) A family member of a victim of a severe form of trafficking in persons who holds a visa for family members authorized by the Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. 108-193, 117 Stat. 2875 (2003).

(c) An individual who meets one of the alien status requirements in section (2) or (7) of this rule.

(6) In the OSIP program, an individual meets the alien status requirement if he or she is one of the following:

(a) An individual who is blind or has a disability, was lawfully residing in the United States on August 22, 1996, and is now a qualified non-citizen.

(b) A qualified noncitizen who physically entered the United States on or after August 22, 1996, has had the qualified noncitizen status for at least five years, and has forty qualifying quarters of coverage as defined in section (10) of this rule.

(c) An individual granted one of the following statuses, but only for seven years following the date the status is granted:

(A) Refugee under section 207 of the INA.

(B) Asylum under section 208 of the INA.

(C) Deportation being withheld under section 243(h) of the INA.

(D) An individual granted immigration status under section 584(a) of the Foreign Operations, Export Financing and Related Program Appropriations Act of 1988.

(E) Cubans and Haitians who are either public interest or humanitarian parolees.

(F) A "victim of a severe form of trafficking in persons" certified under the Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (2000), as amended.

(G) A family member of a victim of a severe form of trafficking in persons who holds a visa for family members authorized by the Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. 108-193, 117 Stat. 2875 (2003).

(d) An individual receiving SSI benefits.

(e) An individual who meets one of the alien status requirements in section (2) or (7) of this rule.

(7) In all programs except ERDC and TANF, a qualified non-citizen meets the alien status requirement if he or she is:

(a) A veteran of the United States Armed Forces who was honorably discharged for reasons other than alien status and who fulfilled the minimum active-duty service requirements described in 38 U.S.C. ' 5303A(d).

(b) A member of the United States Armed Forces on active duty (other than active duty for training).

(c) The spouse or a dependent child of an individual described in subsection (a) or (b) of this section.

(d) In the FS program, a qualified non-citizen who meets the requirement in section (10) of this rule.

(8) Except as provided in sections (2), (4), (5), and (7) of this rule, a non-citizen who entered the United States or was given qualified non-citizen status on or after August 22, 1996:

(a) Is ineligible for the BCCM, MAA, MAF, OHP, OSIPM, QMB, and SAC programs for five years beginning on the date the non-citizen received his or her qualified non-citizen status.

(b) Meets the alien status requirement following the five-year period.

(9) In the FS program, an individual meets the alien status requirement if he or she is one of the following:

(a) An individual granted any of the following alien statusesC

(A) Refugee under section 207 of the INA.

(B) Asylum under section 208 of the INA.

(C) Deportation being withheld under section 243(h) of the INA.

(D) Cubans and Haitians who are either public interest or humanitarian parolees.

(E) An individual granted immigration status under section 584(a) of the Foreign Operations, Export Financing and Related Program Appropriations Act of 1988.

(F) A "victim of a severe form of trafficking in persons" certified under the Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (2000), as amended.

(G) A family member of a victim of a severe form of trafficking in persons who holds a visa for family members authorized by the Trafficking

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Victims Protection Reauthorization Act of 2003, Pub. L. 108-193, 117 Stat. 2875 (2003).

(b) A qualified non-citizen under 18 years of age.

(c) A non-citizen who has been residing in the United States for at least five years while a qualified non-citizen.

(d) A non-citizen who is lawfully residing in the United States and who was a member of a Hmong or Highland Laotian tribe at the time that the tribe rendered assistance to United States personnel by taking part in a military or rescue operation during the Vietnam era (as defined in 38 U.S.C. 101).

(e) The spouse, the un-remarried surviving spouse, or an unmarried dependent child, of an individual described in subsection (d) of this section.

(f) A qualified non-citizen who has a disability, as defined in OAR 461-001-0015.

(10) A client who is lawfully admitted to the United States for permanent residence under the INA and has worked 40 qualifying quarters of coverage as defined under title II of the Social Security Act, or can be credited with such qualifying quarters as provided under 8 U.S.C. 1645, meets the alien status requirements for the FS program, subject to the following provisions:

(a) No quarter beginning after December 31, 1996, is a qualifying quarter if the client received any federal, means-tested benefit during the quarter. Federal means-tested benefits include FS, TANF, and Medicaid (except emergency medical).

(b) For the purpose of determining the number of qualifying quarters of coverage, a client is credited with all of the quarters of coverage worked by a parent of the client while the client was under the age of 18 and all of the qualifying quarters worked by a spouse of the client during their marriage, during the time the client remains married to such spouse or such spouse is deceased.

(c) A lawful permanent resident who would meet the alien status requirement, except for a determination by the Social Security Administration (SSA) that he or she has fewer than 40 quarters of coverage, may be provisionally certified for food stamp benefits while SSA investigates the number of quarters creditable to the client. A client provisionally certified under this section who is found by SSA, in its final administrative decision after investigation, not to have 40 qualifying quarters is not eligible for food stamp benefits received while provisionally certified. The provisional certification is effective according to the rule on effective dates for opening benefits, OAR 461-180-0080. The provisional certification cannot run more than six months from the date of original determination by SSA that the client does not have sufficient quarters.

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

Stat. Auth.: ORS 411.060, 411.816 & 418.100

Stats. Implemented: ORS 411.060, 411.816 & 418.100

Hist.: AFS 17-1992, f. & cert. ef. 7-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 32-1996(Temp), f. & cert. ef. 9-23-96; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 22-1998, f. 10-30-98, cert. ef. 11-1-98; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; 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; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 36-2003(Temp), f. 12-31-03 cert. ef. 1-1-04 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 10-2004(Temp), f. & cert. ef. 4-9-04 thru 6-30-04; SSP 14-2004(Temp), f. & cert. ef. 5-11-04 thru 6-30-04; 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 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 11-2006(Temp), f. 6-30-06, cert. ef. 7-1-06 thru 9-30-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07

461-125-0370

Disability as the Basis of Need; OSIP and OSIPM

(1) In the OSIP and OSIPM programs (except OSIP-EPD and OSIPM-EPD), a client meets the eligibility requirement to have a disability if the requirements of one of the following subsections are met:

(a) The client is receiving Social Security Disability Income (SSDI) or Supplemental Security Income (SSI) based on disability. Eligibility continues as long as the client remains eligible for SSDI or SSI.

(b) The client was eligible for and received Aid to the Disabled benefits in Oregon in December 1973. These grandfathered cases continue to be eligible as long as they are continuously disabled as defined by Oregon requirements that were in effect in 1973.

(c) The Department has determined the client meets the listing of impairments found in 20 C.F.R. Part 404, Subpart P, Appendix 1; meets the medical vocational guidelines found in 20 C.F.R. Part 404, Subpart P, Appendix 2 for SSI; or meets the definition of disability in 20 C.F.R. § 416.905.

(d) The Social Security Administration (SSA) has determined the client meets the listing of impairments found in 20 C.F.R. Part 404, Subpart P, Appendix 1; meets the medical vocational guidelines found in 20 C.F.R. Part 404, Subpart P, Appendix 2; or meets the definition of disability in 20 C.F.R. § 416.905 or 20 C.F.R. § 404.1505.

(2) If the Department finds the client eligible for OSIPM in the absence of a disability determination by SSA, the client remains eligible, provided that the client continues to meet the disability criteria for eligibility for OSIPM, until SSA denies the disability claim in a final administrative decision.

(3) For OSIP and OSIPM, a disability determination made by SSA that is unfavorable to a client is binding on the Department unless the requirements of at least one of the following subsections are met (see 42 C.F.R. § 435.541(c)(1) and (c)(4)):

(a) SSA made the determination for a reason other than disability.

(b) The client alleges a disabling condition different from, or in addition to, that considered by SSA in making its determination.

(c) More than 12 months after the most recent SSA determination denying disability, the client alleges that his or her condition has changed or deteriorated since that SSA determination, and the client has not made application to SSA based on these allegations.

(d) The client alleges less than 12 months after the most recent SSA determination denying disability that the condition which SSA evaluated has changed or deteriorated since that SSA determination; and one or both of the following apply:

(A) The client has requested reconsideration or reopening of the most recent SSA determination denying disability and SSA has declined to consider the new allegations.

(B) It is clear that the client no longer meets SSI eligibility requirements unrelated to disability status but may satisfy comparable Medicaid eligibility requirements.

(4) In the OSIP-EPD and OSIPM-EPD programs, a person is disabled or has a disability if the person has a physical or mental impairment, or a combination of these impairments, that meets the definition of disability used by SSA when determining eligibility for SSI or SSDI under 20 C.F.R. Part 404. The determination is made as follows:

(a) A determination by SSA that the individual is disabled or has a disability is accepted by the Department.

(b) If the client was determined to have a disability by SSA and lost their SSDI eligibility due to their own income, the SSA determination remains effective for one year from the date that the client loses eligibility for SSDI.

(c) If there is no currently effective SSA determination finding the individual has a disability, the case is referred to the Department's central office for a disability determination using the standards of 20 C.F.R. Parts 404 and 416 and considering all relevant medical and vocational information.

(d) For OSIPM-EPD, a person is engaging in substantial gainful activity (SGA) if their earnings are at or above the EPD Income Standard.

(e) For OSIPM-EPD, any work activity engaged in during the OSIPM-EPD application process or certification period is not evaluated as past relevant work (PRW).

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

Stat. Auth.: ORS 411.060, 411.070 & 414.042

Stats. Implemented: ORS 411.060, 411.070 & 414.042

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1991, f. & cert. ef. 10-1-91; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; SSP 9-2003(Temp), f. & cert. ef. 4-11-03 thru 6-30-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07

461-130-0310

Participation Classifications: Exempt, Mandatory, and Volunteer

To administer the employment programs of the Food Stamp, Refugee, and TANF programs, the Department assigns clients to one or more participation classifications — exempt, mandatory, and volunteer.

(1) In the REF and TANF programs, a client is exempt when the client is exempt from disqualification in the employment programs covered by chapter 461 of the administrative rules. The following REF and TANF clients are exempt from disqualification in the employment programs covered by chapter 461:

(a) A client 20 years of age and older who is in the ninth month of pregnancy or experiencing medical complications due to pregnancy that prevent participation in employment or self-sufficiency components (see OAR 461-001-0020) of an employment program.

(b) A client during the first 90 days after giving birth.

(c) A VISTA volunteer.

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(d) A client who, in order to participate in an employment program, must travel an unreasonable distance from the home of the client or remain away from home overnight.

(e) A REF client 65 years of age and older.

(f) A TANF client 60 years of age and older.

(g) A non-citizen who is not authorized to work in the United States.

(h) A recipient of supplemental security income (SSI) from the Social Security Administration.

(i) A caretaker relative (see OAR 461-001-0000) who is non-needy.

(2) In the Food Stamp program, the following clients are exempt:

(a) A client with weekly countable income (see OAR 461-001-0000) from employment or self-employment (see OAR 461-145-0930) at least equal to the federal minimum wage multiplied by 30 hours. This includes migrant and seasonal farm workers (see OAR 461-001-0015) who are under contract or similar agreement with an employer or crew chief to begin employment within 30 days

(b) A client with a physical or mental condition that prevents performance of any work.

(c) A client who is responsible for the care of a dependent child in the household under 6 years of age or an individual in the household who has a disability that substantially reduces or eliminates the individual's ability to care for himself or herself.

(d) A client who provides care for at least 30 hours a week for an individual in another household who has a disability that substantially reduces or eliminates the individual's ability to care for himself or herself.

(e) A client enrolled at least half-time, as defined by the school, in any high school or equivalent program recognized by a school district or enrolled at least half-time in any school, training program, or institution of higher education. Clients remain exempt during normal periods of class attendance, vacation and recess but no longer qualify for the student exemption when a break in enrollment occurs due to graduation, suspension or expulsion or when the student drops out of school or does not intend to register for the next normal school term (excluding summer term).

(f) A client receiving REF or TANF benefits, while a mandatory participant in the JOBS program.

(g) A client who is in receipt of unemployment insurance benefits or has completed an application for unemployment insurance benefits and is waiting for an initial decision on the claim, if the client was required to register for work at an office of the Oregon Employment Department.

(h) A participant in a drug or alcohol treatment and rehabilitation program.

(i) A pregnant client.

(j) A client living in an area where the OFSET program is available to clients but who:

(A) Lacks adequate dependent care;

(B) Does not have adequate transportation available; or

(C) Experiences a barrier to employment, such as being homeless or having a short-term physical or mental limitation or a serious family problem.

(3) In the REF and TANF programs, all clients are mandatory. A parent of a child who receives TANF is mandatory if the parent is in the same filing group with the child (even if the parent is not in the TANF benefit group), unless the parent is otherwise exempt under section (1) of this rule.

(4) In the Food Stamp program, a mandatory client is an individual in the need group (see OAR 461-110-0630); who is 16 or 17 years of age and a primary person (see OAR 461-001-0015), or 18 years of age and older but not yet 60; and who is not exempt under section (2) of this rule.

(5) A client cannot be disqualified for conduct that occurred while a volunteer.

(a) In the REF and TANF programs, a volunteer is a client who is exempt from disqualification (see section (1) of this rule) who chooses to participate in an employment program.

(b) In the Food Stamp program, a volunteer is a client who is not a mandatory client who chooses to participate in an employment program.

Stat. Auth.: ORS 411.060, 411.816 & 418.100

Stats. Implemented: ORS 411.060, 411.816 & 418.100

Hist.: AFS 17-1998, f. & cert. ef. 10-1-98; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 12-2000(Temp), f. 5-1-00, cert. ef. 5-1-00 thru 9-30-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07

461-130-0315

General Requirements, REF and TANF Programs

In the REF and TANF programs:

(1) A mandatory (see OAR 461-130-0310) client must do the following:

(a) Complete the assessment (see OAR 461-001-0025) process and provide sufficient information for the Department to determine whether they must participate in an employment program.

(b) Register for an employment program by completing forms provided by the Department. A mandatory client who fails to register is ineligible for benefits.

(c) Meet all participation requirements of OAR 461-130-0325.

(2) A mandatory client who fails to meet a participation requirement without good cause (see OAR 461-130-0327) is subject to disqualification in accordance with OAR 461-130-0330, except that a mandatory client who is exempt (see OAR 461-130-0310) is not subject to disqualification but does not receive the incentive payment authorized by OAR 461-135-0210.

Stat. Auth.: ORS 411.060, 418.100

Stats. Implemented: ORS 411.060, 418.100

Hist.: AFS 17-1998, f. & cert. ef. 10-1-98; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07

461-130-0325

Participation Requirements

(1) A mandatory (see OAR 461-130-0310) client selected by the Department to participate in an employment program of the Food Stamp, REF, or TANF program must do all the following:

(a) Accept a bona fide offer of employment, whether temporary, permanent, full-time, part-time, or seasonal.

(b) Maintain employment.

(A) In the REF and TANF programs, a client fails to maintain employment when:

(i) The client has been or would be found to have quit work without good cause or to have been discharged for misconduct in accordance with the unemployment insurance compensation law of Oregon.

(ii) The client voluntarily reduces earnings or hours of employment or does not accept an increase in hours worked that would result in increased earnings.

(B) In the Food Stamp program, a client fails to maintain employment by:

(i) Voluntarily leaving a job 30 days or less prior to the date of application for food stamps or at any time thereafter,

(ii) Being dismissed for striking while a federal, state or county employee, or

(iii) Reducing hours of work to less than 30 each week.

(C) Sub-paragraph (B)(i) of this subsection applies only if the client is required to register for work, or is exempt from work registration due to employment according to OAR 461-130-0310(2)(a), has a job that averages not less than 30 hours each week or has provided average weekly earnings not less than the federal minimum wage multiplied by 30 hours and quits the job, or quits working under a JOBS Plus agreement more than twice (see OAR 461-190-0426). Changes in employment status caused by a reduction in work hours while working for the same employer, being fired from a job, terminating a self-employment enterprise or resigning from a job at the demand of the employer do not constitute a failure to maintain employment.

(c) Schedule and keep required employment-related appointments and interviews.

(d) Notify the Department's case manager or the JOBS contractor of the reason for not keeping employment-related appointments and interviews, not attending scheduled classes and activities, or not completing case management activities. Notification must be made within three working days from the date of a missed appointment, interview, class, or activity.

(e) In the REF and TANF programs, complete all case management assignments specified on the case plan (see OAR 461-001-0025) or other similar plans approved by the Department. In the Food Stamp program, complete all work activities and components specified on the case plan (see OAR 461-001-0020).

(2) For clients receiving food stamps, a household containing a client who was exempt from participation in employment programs only by OAR 461-130-0310(2)(f) or (g), but not any other provision, and who fails to comply with a requirement of the TANF or unemployment compensation program that is comparable to a requirement of an employment program of the Food Stamp program, must be treated as though the client had failed to comply with the corresponding requirement of the Food Stamp program employment program. If the client fails to comply with a requirement that is not comparable, the client loses the exemption authorized by OAR 461-130-0310(2)(f) or (g) and must comply with the requirements of the Food Stamp program employment programs.

Stat. Auth.: ORS 411.060, 411.816 & 418.100

Stats. Implemented: ORS 411.060, 411.816 & 418.100

ADMINISTRATIVE RULES

Hist.: AFS 17-1998, f. & cert. ef. 10-1-989; AFS 12-2000(Temp), f. 5-1-00, cert. ef. 5-1-00 thru 9-30-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07

461-130-0327

Good Cause

(1) A client is excused for good cause from a failure to comply with a requirement of an employment program, including an activity in a case plan (both terms defined in OAR 461-001-0025) in the following circumstances:

(a) Participation in a required activity in a case plan would have an adverse effect on or risk to the client's physical or mental health or would expose the client to increased risk of domestic violence.

(b) When the failure to comply is caused by the failure of the Department to timely provide or authorize a support service payment in the JOBS program.

(c) Appropriate child care, or day care for an individual in the household who has a disability that substantially reduces or eliminates the individual's ability to care for himself or herself, cannot be obtained. "Appropriate child care" means that:

(A) Both the provider and the place where care is provided meet health, safety, and provider requirements as required in OAR 461-165-0180;

(B) The care accommodates the parent's work schedule; and

(C) The care meets the specific needs of the child, such as age and special-needs requirements.

(d) The work attachment position or employment offered is vacant due to a strike, lockout, or other labor dispute.

(e) The work attachment position or employment requires the client to join a union, and the client has religious objections to unions.

(f) The client belongs to a union and the employment violates the conditions of the client's membership in the union.

(g) The wage for the client's current or potential job is:

(A) Less than applicable minimum wage; or

(B) If minimum wage laws do not apply, the wage (rate for piece work) is less than that normally paid for similar work.

(h) The client's prospective employer engages in employment practices that are illegally discriminatory on the basis of age, sex, race, religious or political belief, marital status, disability, or ethnic origin.

(i) The client's participation in a required activity in a case plan would prevent or interfere with the client's participation in an activity of the Grande Ronde Tribe's NEW program.

(j) The client's failure to participate is due to a circumstance beyond his or her reasonable control.

(k) When the failure to comply is caused by an aspect of the client's disability.

(l) The following are also "good cause" criteria in the Food Stamp program:

(A) The client has no means of transportation and would have to walk an unreasonable distance to meet the participation requirement. An "unreasonable distance" is a distance that requires a commute of more than two hours each day. The client must make a good-faith effort to secure the needed transportation.

(B) Lack of adequate child care for children who have reached age 6 but are under age 12.

(2) In the REF, REFM, and TANF programs, a client is excused from a failure to comply with a requirement of an employment program for good cause when the client is in her seventh or eighth month of pregnancy and either works in a job that requires her to work more than 10 hours each week or has a case plan that requires her to participate more than 10 hours each week.

(3) In the REF and REFM programs, a client is excused from a failure to comply with a requirement of an employment program for good cause in the following circumstances:

(a) The client quits a full-time job to accept another full-time job with a wage at least equal to the wage of the first job.

(b) The client makes a good faith effort to complete an activity on the case plan but is unable to do so.

(4) In the Food Stamp program, a client has good cause for not accepting employment or for leaving a job under the following circumstances:

(a) The hours or nature of the job interferes with the client's religious observances, convictions, or beliefs.

(b) The client accepts employment or enrolls at least half-time in any recognized school, training program, or institution of higher education that requires the client to quit a job.

(c) A client accepts employment or schooling in another county, requiring the benefit group to move and the client to quit a job.

(d) A client less than 60 years of age resigns, and the employer recognizes the resignation as retirement.

(e) The client leaves a job to follow a type of employment that moves from one area to another, such as migrant labor or construction.

(f) The client accepts a job that, for reasons beyond the control of the client, does not materialize or results in fewer work hours or a lower wage than the client's previous job.

(g) Work demands or conditions, such as not being paid for work or not being paid on schedule, make employment unreasonable.

(h) The wage for the client's current or potential job is less than applicable minimum wage or, if minimum wage laws do not apply, the wage (rate for piece work) is less than that normally paid for similar work.

(i) The work schedule for the job in question does not conform to hours customary to the occupation or the hours worked each week are more than those customary to the occupation.

(j) The client is not obligated to accept a job during the first 30 days of registration for employment if the job is not in the client's field of experience.

(5) The Department does not require a client to provide verification of good cause if providing the verification would expose the client to increased risk of domestic violence.

Stat. Auth.: ORS 411.060, 411.816 & 418.100

Stats. Implemented: ORS 411.060, 411.816 & 418.100

Hist.: AFS 17-1998, f. & cert. ef. 10-1-98; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 11-1999, f. & cert. ef. 10-1-99; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07

461-130-0335

Removing Disqualifications; Effect on Benefits

(1) In the Food Stamp and TANF programs, a filing group is not subject to disqualification due to a member's conduct if that individual leaves the household. Should the member join another filing group, that group is subject to the member's most recent disqualification.

(2) In the TANF program, a disqualification ends when the Department changes the participation classification of the disqualified individual to exempt (see OAR 461-130-0310) or when the client complies with the requirements of the employment program. For a client who becomes exempt, the disqualification ends on the first day of the month in which the client informs the Department of the facts that justify the change. For a client whose disqualification ends through compliance with the requirements of the employment program, see section (5) below.

(3) In the Food Stamp program, the disqualification ends the first day of the month following the month in which information is provided to the Department justifying the change in the client's participation classification, even if the date falls within the disqualification period provided in OAR 461-130-0330(2).

(4) An applicant who would be subject to disqualification but withdraws the application before benefits are approved is not subject to disqualification.

(5) REF and TANF clients who are disqualified for failure to meet requirements of the JOBS program must comply before the disqualification can be removed.

(a) If a client requests an opportunity to comply with the participation requirements prior to the effective date of a proposed disqualification, the Department will amend the case plan (see OAR 461-001-0025) to enable the client to comply with the requirements for the time remaining until the effective date of disqualification. If the client meets participation requirements during that period, the disqualification penalty is not imposed but the month in which the disqualification penalty was to be imposed counts as a month of disqualification.

(b) On or after the date the disqualification was proposed to take effect, a client who states in person to an appropriate employee of the Department a desire to comply with participation requirements must be assigned an activity (see OAR 461-001-0025) not later than the following work day and must be offered the opportunity to sign an acknowledgment of the assignment. The disqualification ends when the client participates in the activity. If the Department assigns no activity to occur within that period of time, the client's signed acknowledgment alone constitutes compliance with the requirement to participate.

(6) When the Department removes a disqualification due to a client's compliance with participation requirements, cash benefits are restored as set forth in subsections (a) and (b) of this section. Once the client's disqualification reaches the sixth month, the Department may establish a period of cooperation during which the client must comply with the requirements of his or her case plan (see OAR 461-001-0025 and 461-190-0151)

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before cash benefits are restored. The period of cooperation must not extend beyond 30 days from the date the client states in person to an appropriate employee of the Department a desire to comply with participation requirements.

(a) When the disqualification is removed during the first month of disqualification, the client is eligible for cash benefits for the whole month.

(b) When the disqualification is removed during the second through sixth months of disqualification, the client is eligible for cash benefits effective the date the client began to comply with participation requirements.

Stat. Auth.: ORS 411.060, 411.816, 418.100
Stats. Implemented: ORS 411.060, 411.816, 418.100
Hist.: AFS 17-1998, f. & cert. ef. 10-1-98; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07

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 people 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 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 persons are assumed eligible for OSIPM (except OSIPM-EPD and OSIPM-EPD):

(a) A recipient of SSI benefits.

(b) A person 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.

(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 REF 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

461-135-0070

Specific Requirements; MAA, MAF and TANF

(1) To be eligible for the MAA, MAF or TANF programs, a client must be one of the following:

(a) A dependent child (see OAR 461-001-0000). However, dependent children for whom foster care payments are made for more than 30 days are not eligible while the payments are being made for them.

(b) A caretaker relative (see OAR 461-001-0000) of an eligible dependent child. However, caretaker relatives to whom foster care payments are made for more than 30 days are not eligible while the payments are being made for them.

(c) A caretaker relative of a dependent child, when the dependent child is ineligible for TANF because of one of the following reasons:

(A) The child is receiving SSI.

(B) The child is in foster care, but is expected to return home within 30 days.

(C) The child is disqualified from TANF for failure to comply with requirements of the JOBS program (see the rules in division 130 of this chapter of rules) or requirements related to mental health or drug and alcohol (see OAR 461-135-0085), except that a caretaker relative is not eligible for TANF if the case is in a level three disqualification (see OAR 461-130-0330(1) and 461-135-0085).

(d) An essential person. An essential person is a member of the household group (see OAR 461-110-0210) who:

(A) Is not required to be in the filing group;

(B) Provides a service necessary to the health or protection of a member of the benefit group (see OAR 461-110-0750) who has a mental or physical disability; and

(C) Is less expensive to include in the benefit group than the cost of purchasing this service from another source.

(e) A parent of an unborn, as follows:

(A) For TANF and MAA, any parent whose only child is an unborn child once the mother's pregnancy has reached the calendar month before the month in which the due date falls.

(B) For the TANF and MAA programs, the father of an unborn child, if there is another dependent child in the filing group.

(C) For MAF, a mother whose only child is an unborn once the mother's pregnancy has reached the calendar month immediately before the month in which the due date falls.

(2) A client is eligible for MAA or MAF if the client is:

(a) Eligible for MAA or MAF under OAR 461-135-0010; or

(b) A minor parent (see OAR 461-001-0000) ineligible for TANF only because:

(A) The minor refuses to live with a parent or legal guardian as required by OAR 461-135-0080; or

(B) The income of the minor exceeds the income standards because the Department required the minor to return to live with a parent, if the minor parent meets the conditions in OAR 461-135-0080(2).

(3) Clients are eligible for MAF even while ineligible for TANF if they are ineligible for TANF only because they are:

(a) Families who would be eligible for the TANF program if they were allowed the following deductions from income:

(A) The earned income deductions authorized by OAR 461-160-0190.

(B) The unearned income support deduction authorized by OAR 461-160-0200.

(b) Self-employed families who would be eligible for TANF if the cost of producing the self-employment income were subtracted from their gross sales or receipts in accordance with OAR 461-145-0920.

(c) Families that include an ineligible non-citizen or the father of an unborn who would be eligible for TANF if the ineligible non-citizen's or father's income is counted in accordance with OAR 461-160-0120.

(d) Individuals who would be eligible for TANF if the assets of the following household members were not counted:

(A) An unmarried parent of a dependent child or unborn in the eligibility group.

(B) A child in common of parents in the eligibility group.

(C) The spouse and children of a caretaker relative in the need group (see OAR 461-110-0630).

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(e) The spouse of a caretaker relative, but only if the spouse is the parent of a dependent child.

(4) A family is ineligible for TANF if the family meets the requirements of all of the following subsections:

(a) The family lives in Klamath county.

(b) The family meets any of the following conditions:

(A) The family has a single custodial parent who is a member of the Klamath Tribes, or the single custodial parent is not a Klamath Tribes member and at least 50 percent of the dependent children are Klamath Tribes members;

(B) The family has two custodial parents who are members of the Klamath Tribes, or only one of the two custodial parents is a Klamath Tribes member and at least 50 percent of the dependent children are Klamath Tribes members; or

(C) The family has a caretaker relative who is not the custodial parent and at least 50 percent of the dependent children are Klamath Tribes members.

(c) The family is eligible for the Klamath Tribes TANF program or would be eligible for the Klamath Tribes TANF program if not for the failure of the family to cooperate with program requirements.

(5) If a parent or caretaker relative is a member of the Siletz Tribe (Confederated Tribes of Siletz Indians of Oregon) and the family lives in Benton, Clackamas, Lane, Lincoln, Linn, Marion, Multnomah, Polk, Tillamook, Washington or Yamhill county, the entire filing group is ineligible for TANF. The only exception is when the Siletz Tribes determines the group ineligible for its TANF program, based on eligibility factors other than failure to cooperate with Siletz TANF program requirements.

(6) If a parent or caretaker relative covered by section (4) or (5) of this rule fails to follow through with a Department referral to the Klamath or Siletz Tribal TANF program, the entire filing group is ineligible for TANF.

Stat. Auth.: ORS 411.060, 414.047 & 418.100

Stats. Implemented: ORS 411.060, 414.047 & 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 9-1991, f. 3-29-91, cert. ef. 4-1-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 26-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 25-1997(Temp), f. 12-31-97, cert. ef. 1-1-98 thru 4-30-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 26-1998(Temp), f. 12-30-98, cert. ef. 1-1-99 thru 3-31-99; AFS 2-1999, f. 3-26-99, cert. ef. 4-1-99; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07

461-135-0075

Limitation on Eligibility Period; TANF

(1) No benefit group (see OAR 461-110-0750) may receive a TANF grant if the group contains an adult or minor parent head of household who has received a TANF grant in excess of 60 months in Oregon except as noted in sections (2) and (3) below.

(2) The time limit will not include any month in which:

(a) An adult received an Oregon TANF grant prior to July 1, 2003;

(b) The family resided in Indian Country (as defined in 18 U.S.C. 1151) and 50% or more of the adult residents of that area were unemployed; or

(c) The individual who is now a parent or pregnant was in that month a minor child and neither the head of a household nor married to the head of a household.

(3) Except as provided in sections (4) to (6) of this rule, a benefit group may receive a TANF grant in excess of 60 months if the group contains an individual who meets any of the following requirements:

(a) Is a victim of domestic violence.

(b) Has a certified learning disability.

(c) Has a verified alcohol and drug or mental health condition that keeps the client from obtaining or keeping employment.

(d) Has a physical disability as defined by the Americans with Disabilities Act.

(e) Has a child with a disability, which prevents the parent from obtaining or keeping employment.

(f) Is a parent caring for a family member who has a disability, is in the home, and is not attending school full-time.

(g) Is currently battered or subject to extreme cruelty. For purposes of this rule, an individual is battered or subject to extreme cruelty if the individual has been subjected to one or more of the following:

(A) Physical acts that resulted in, or threatened to result in, physical injury to the individual.

(B) Sexual abuse.

(C) Sexual activity involving a dependent child.

(D) Being forced as the caretaker relative of a dependent child to engage in nonconsensual sexual acts or activities.

(E) Threats of, or attempts at, physical or sexual abuse.

(F) Mental abuse.

(G) Neglect or deprivation of medical care.

(h) Is subject to the 60-month time limit prior to July 1, 2008 because of TANF grants received outside of Oregon. An extension based only on this subsection expires on June 30, 2008.

(4) A TANF grant in excess of 60 months and each monthly continuation of such an excess grant, if based on the conditions described in subsections (3)(b) to (3)(f) of this rule, requires documentation not more than two years old from a licensed or certified professional qualified to make such a determination.

(5) Except as provided in section (4) of this rule and in other requirements for TANF eligibility, an extension or renewed (if there is a break in benefits after the 60-month point) TANF grant under this rule may be valid for a period of up to five years at a time. Each such excess grant may be further extended upon or after expiration, subject to the other requirements of this rule, including section (6).

(6) The Department may deny an extension or a request for a renewed TANF grant to a benefit group who qualifies under section (3) of this rule if granting the request would cause the Department to exceed its statutory extension allotment under 42 U.S.C. 608(a)(7)(C)(ii). The following priority system will apply if extensions or requests for renewed TANF grants must be denied:

(a) First priority group: Clients who qualify under section (4) of this rule (which includes subsections (3)(b) to (3)(f) of this rule) and clients who qualify under subsection (3)(a) or (3)(g) based on an incident occurring within two years of the extension or requested renewal date.

(b) Second priority group: Clients who qualify under subsection (3)(a) or (3)(g) based on an incident occurring between two and five years of the extension or requested renewal date.

(c) Third priority group: Clients who qualify under subsection (3)(a) or (3)(g) based on an incident occurring between five and ten years of the extension or requested renewal date.

(d) Fourth priority group: Clients who qualify under subsection (3)(a) or (3)(g) based on an incident occurring more than ten years before the extension or requested renewal date.

(7) Each benefit group that qualifies for a TANF grant under this rule must also meet all other TANF eligibility requirements. To be eligible for an extension of TANF under this rule, each adult and minor parent head of household must comply with the requirements of his or her case plan, unless good cause (see OAR 461-130-0327) exists.

(8) If a benefit group qualifies for an extension under this rule, any disqualifications that have been accrued remain in place.

Stat. Auth.: ORS 411.060, 418.100

Stats. Implemented: ORS 411.060, 411.117, 418.100, 418.131

Hist.: AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07

461-135-0210

TANF Cooperation Incentive Payment

(1) A TANF client or caretaker relative (see OAR 461-001-0000) of a TANF client who volunteers to comply, and continues to comply, with a case plan in the JOBS program (see OAR 461-001-0025) may volunteer to receive an incentive payment. The incentive payment is made to clients in the JOBS program to motivate and recognize their progress toward employment and self-sufficiency. The incentive payment, in the amount authorized by OAR 461-155-0035, is added to the client's cash grant if the client meets the requirements of this rule and volunteers to receive the payment.

(2) A TANF client or caretaker relative of a TANF client may not receive the incentive payment if the client's grant is reduced because of an intentional program violation (see OAR 461-195-0611), a failure to comply with a requirement of the Child Support program (see OAR 461-120-0340), or a failure to comply with any other requirement of the TANF program.

Stat. Auth.: ORS 411.060 & 418.100

Stats. Implemented: ORS 411.060 & 418.100

Hist.: AFS 41-1996(Temp), f. & cert. ef. 12-31-96; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 23-2000(Temp), f. 9-29-00, cert. ef. 10-1-00 thru 12-31-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07

461-135-0400

Specific Requirements; ERDC

The Department makes payments for child care, including care covered by the ERDC program, subject to the provisions of division 165 of this chapter of rules. To be eligible for ERDC, a filing group (see OAR 461-110-0350) must meet the following requirements:

(1) For a filing group to be eligible for the ERDC-BAS program:

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(a) At least one caretaker (see OAR 461-001-0000) must receive income from employment, including employment through a work study program. For clients who are in the start-up phase of self-employment, working on commission, or participating in job-related training that is a condition of employment, the requirement to have earned income may be waived for three months; and

(b) A child who needs child care must meet the citizenship or alien status requirements of OAR 461-120-0110.

(2) In the ERDC-SBG program:

(a) At least one caretaker must be an undergraduate student without a bachelor's degree. The student must have been admitted to a two- or four-year post-secondary institution that is eligible for federal financial aid and must be registered for at least twelve quarter hours — or an equivalent number of credit hours in an institution that does not use the quarter system — that count toward graduation.

(b) In addition to meeting the requirements of subsection (a) of this section, a student who applies for the ERDC-SBG program on or after July 1, 2005 must have been admitted to a two- or four-year non-profit, generally accredited institution of higher education located in Oregon, including community colleges, that is eligible for federal financial aid.

(c) A caretaker who meets the requirements of subsection (a) of this section must attend school for at least:

(A) Three out of four school quarters per or two semesters each academic year; or

(B) In an institution that does not use the quarter or semester system, a portion of the academic year equivalent to the portion required by paragraph (A) of this subsection.

(d) A student may use ERDC-SBG benefits for child care needed in order to work during an absence from school or to attend school during a term in which the student is attending school less than 12 credit hours if:

(A) The student intends to attend school at least 12 credit hours the following term; and

(B) The absence or part-time status does not exceed:

(i) One out of four school quarters for students on the quarter system.

(ii) The summer break period for students in the semester system.

(iii) In an institution that does not use the quarter or semester system, a portion of the academic year equivalent to the portion allowed by subparagraph (i) or (ii) of this paragraph.

(e) Students must maintain good standing according to the standards of the institution they are attending.

(f) Students must complete at least 36 quarter hours — or the equivalent in an institution that does not use the quarter system — that count toward graduation each academic year.

(g) Participation in the student child care program is limited to a total of six years.

(3) The family must have an allowable child care need as described in OAR 461-160-0040. If in the filing group there are two adults who are required to be in the filing group, and if one of the adults is unemployed, the unemployed adult is considered available to provide child care, making the group ineligible, except in the following situations:

(a) The unemployed adult is physically or mentally unable to provide adequate child care.

(b) The unemployed adult is unavailable to provide care while participating in requirements of a case plan (see OAR 461-001-0020 and 461-001-0025) other than requirements associated with post-secondary education. In the ERDC-SBG program only, the unemployed adult meets the requirements of section (2) of this rule.

(4) The caretaker must use a child care provider who meets the requirements in OAR 461-165-0160 and 461-165-0180.

(5) A client is not eligible for a child care payment in the ERDC program for more than six calendar months if the client is unwilling to obtain for the child a Certificate of Immunization Status.

(6) It is a requirement for eligibility in the ERDC-BAS program that child care is necessary to enable the caretaker to remain employed.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; 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 13-1994, f. & cert. ef. 7-1-94; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 35-2003(Temp), f. 12-31-03 cert. ef. 1-1-04 thru 3-31-04; 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 7-2005, f. & cert. ef. 7-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07

461-135-0475

Specific Requirements; Assessment Program

(1) This rule explains the Assessment program. The eligibility criteria of the Assessment program are the same as the TANF program. The purposes of the Assessment program are:

(a) To help individuals find employment or other alternatives before they become dependent on public assistance;

(b) To assess the employment potential of clients in the labor market;

(c) To determine the services clients need to enhance their employability and their likelihood of becoming self sufficient; and

(d) To provide basic living expenses immediately to families in need.

(2) Applicants for TANF whose unverified application indicates the client meets the TANF eligibility requirements are placed in the Assessment program. Their applications for the TANF program are also considered applications for the Assessment program. The Assessment program is open for not longer than 45 days following the date of request (see OAR 461-115-0030). Clients in the Assessment program are subject to the requirements of the JOBS program, described in divisions 130 and 190 of this chapter of rules, and they are subject to the requirements of OAR 461-135-0085 pertaining to substance abuse and mental health, except that the penalty for a client in the Assessment program who fails to comply with the requirements of those rules is closure of the Assessment program (see section (5) of this rule).

(3) Once a client is found eligible for the Assessment program, the client and the Department prepare a case plan (see OAR 461-001-0025) that specifies the basic living expenses and support service payments the client will receive through the Assessment program and lists the activities of the client (see OAR 461-001-0025). The case plan may be adjusted while the client is in the Assessment program to reflect changing needs.

(4) Clients in the Assessment program receive assistance, listed in the case plan, for basic living expenses, and the Department makes support service payments listed in the case plan, as follows:

(a) The Department will provide the client with basic living expenses necessary to stabilize the household so the client can accomplish the activities in the case plan. Basic living expenses covered by this section are limited to the current need of the client for shelter, utilities, household supplies (other than food), and personal incidentals that the client cannot meet with other, immediately available resources. Payments under this subsection are limited to 200 percent of the payment standard for the benefit group (see OAR 461-155-0030(2)). Payment for "past expenses" is made only when the need of the client cannot be adequately met by a less expensive alternative.

(b) Support service payments are available through the JOBS program (see OAR 461-190-0211 and 461-190-0221) in the same manner they are available to a TANF client.

(5) The Assessment program is closed in any of the following circumstances:

(a) The client is unlikely to become employed within 45 days following the date of request, whether due to the employability of the client, the unstable housing situation of the family, or other causes.

(b) The client fails to comply with a requirement of an employment program or the case plan or fails to comply with the requirements of OAR 461-135-0085.

(c) In any circumstance that would make a client ineligible for TANF.

(d) Upon the placement of the client in a JOBS Plus assignment.

Stat. Auth.: ORS 411.060 & 418.100

Stats. Implemented: ORS 411.060 & 418.100

Hist.: AFS 9-1997, f. & cert. ef. 7-1-97; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 2-1999, f. 3-26-99, cert. ef. 4-1-99; AFS 9-1999, f. & cert. ef. 7-1-99; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07

461-135-0506

Transitional Benefit Alternative (TBA) in the Food Stamp Program

(1) This rule establishes the transitional benefit alternative (TBA). A client participating in TBA continues to receive food stamp benefits without reduction during the transition period. The transition period is five months. If the filing group (see OAR 461-110-0370) separates into two groups during the TBA period, only the group containing the head of household continues in the TBA.

(2) Clients in the Food Stamp program who receive a cash grant in the TANF program may participate in TBA when the TANF benefits are stopped, except as provided in section (4) of this rule.

(3) The benefit level for the transition period is based on countable income for FS during the last month before TBA begins, but the TANF grant is not counted as income. Once it is established, the TBA benefit level is changed only when:

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(a) The filing group submits a new application in the Food Stamp program and will receive more food stamps if they are not using the TBA reporting system;

(b) A member of the filing group leaves and applies for food stamps as a member of another household; or

(c) The Department initiates a change identified in OAR 461-170-0200.

(4) A household may not participate in TBA in each of the following situations:

(a) A member of the filing group is receiving benefits of the TANF program.

(b) The TANF benefits are stopped because the household does not reside in Oregon.

(c) The TANF benefits are stopped because of a change that results in ineligibility for TANF and the household failed to report the change timely.

(d) As of the date the TANF case closed, an individual in the household was serving a penalty imposed in the TANF program.

(e) The TANF benefits are stopped at the request of the household after the household is informed of an impending disqualification in the TANF program.

(f) The head of household becomes ineligible for the Food Stamp program because he or she lives in an institution or in a facility that provides at least 50 percent of the meals.

(g) A member of the financial group (see OAR 461-110-0530) is subject to a penalty in the Food Stamp program because of the individual's conduct, for instance, because the individual:

(A) Was excluded from the need group under OAR 461-110-0630(5);

(B) Was penalized for failure to meet a requirement of an employment program;

(C) Was ineligible for food stamps under OAR 461-105-0410; or

(D) Was ineligible for or disqualified from participation in the Food Stamp program because of a failure to comply with a requirement of the program to provide complete and accurate information to the Department.

(5) Once the TBA benefits have ended, a client's eligibility for the Food Stamp program is determined on the basis of a new application.

Stat. Auth.: ORS 411.816

Stats. Implemented: ORS 411.816

Hist.: SSP 13-2003, f. 6-12-03, cert. ef. 6-16-03; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07

461-135-0510

Residents of Institutions; FS

In the Food Stamp program:

(1) Individuals who live in an institution that provides them with at least 50 percent of their meals are treated as follows:

(a) An individual in a general hospital, state institution, intermediate care facility, or semi-skilled or skilled nursing facility is not eligible.

(b) A resident of a residential care facility can receive benefits only if:

(A) The facility is public or nonprofit, serves no more than 16 residents, and is licensed by the State of Oregon according to regulations issued under Section 1616(e) of the Social Security Act;

(B) The resident applies through an authorized representative who is an employee of the facility, unless the facility determines that the resident can apply on his or her own;

(C) The individual is blind or has a disability (see OAR 461-001-0015); and

(D) The individual meets all other FS eligibility requirements.

(2) The following are not considered institutions:

(a) Domestic violence shelters.

(b) Public or private nonprofit shelters for homeless people.

(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.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, 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

461-135-0520

Eligibility Requirements for ABAWD; FS

This rule establishes eligibility requirements for receipt of food stamps for certain adults.

(1) An able-bodied adult without dependents (ABAWD) is a client 18 years of age or over, but under the age of 50, without dependents. For the

purpose of this definition, "without dependents" means there is no child under the age of 18 years in the client's filing group.

(2) An ABAWD who does not meet one of the exemption criteria in OAR 461-130-0310(2) must do one of the following, as designated in his or her Department-approved plan.

(a) Work for pay or as a volunteer an average of 20 hours or more per week. Voluntary work must be performed for a private for-profit or non-profit employer or a governmental agency. For self-employed clients, countable income after deducting the costs of producing income must average at least the federal minimum wage times 20 hours per week. A client may meet the requirement of this subsection by combining different work activities in one month as long as the 20-hour requirement is met.

(b) Participate in a program under the Workforce Investment Act of 1998, Pub. L. No. 105-220, 112 Stat. 936 (1998).

(c) Participate in a program under section 236 of the Trade Act of 1974, Pub. L. 93-618, 88 Stat. 2023, (1975) (19 U.S.C. 2296).

(d) Comply with the OFSET requirements described in OAR 461-001-0020, 461-130-0320, 461-130-0325, and 461-190-0600.

(3) Under a waiver from the United States Department of Agriculture, the limitation on eligibility for food stamps contained in section 6(o)(2) of the Food Stamp Act (7 U.S.C. 2015(o)(2)) is not applicable.

(4) An ABAWD who fails to comply with the requirements of section (2) of this rule is subject to the disqualification provided in OAR 461-130-0330(2).

(5) An ABAWD involved in the activities specified in section (2) of this rule or an OFSET activity listed in his or her case plan (see OAR 461-001-0020) is eligible for support service payments for necessary transportation or other costs related to completing the activity.

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

Stat. Auth.: ORS 411.816

Stats. Implemented: ORS 411.816

Hist.: AFS 39-1996(Temp), f. 11-27-96, cert. ef. 12-1-96; 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 5-1997, f. 4-30-97, cert. ef. 5-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 6-1998(Temp), f. 3-30-98, cert. ef. 4-1-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 15-1998(Temp), f. 9-15-98, cert. ef. 10-1-98 thru 10-31-98; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 22-1998, f. 10-30-98, cert. ef. 11-1-98; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 12-2000(Temp), f. 5-1-00, cert. ef. 5-1-00 thru 9-30-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 8-2001, f. & cert. ef. 5-1-01; AFS 8-2002, f. & cert. ef. 5-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07

461-135-0708

Criteria for Developing a Plan for Self-support; GA, GAM, OSIP, OSIPM and QMB

(1) A client and the Department may develop a plan for self-support in the GA, GAM, OSIP, OSIPM, and QMB programs for a client who:

(a) Meets the applicable disability or impairment criteria; and

(b) Is not eligible for SSI.

(2) A plan for self-support allows a client to retain a portion of his or her nonexcluded assets for a specific period of time to meet a specific occupational goal. The plan may provide for specialized or advanced education or training for clients with a severe disability.

(3) To be approved, a plan for self-support must meet all of the following criteria:

(a) The plan must be in writing and approved by the Department.

(b) The plan must identify a realistic occupational goal, considering the client's physical limitations and capabilities.

(c) The goal of the plan must be to provide the client with income necessary to meet his or her needs, not just for improving potential earning capability or increasing self-sufficiency within the home.

(d) Resources designated to support the plan must be kept in a separate bank account with a specific savings or planned disbursement goal for using the resources. Previously commingled funds must be put in a separate bank account in order for them to be considered designated for the plan.

(e) The duration of the plan must be limited to the time necessary to complete the plan but cannot exceed thirty-six months plus an additional 12 months if necessary for completion of education or training.

(4) A client must do all of the following to comply with a plan for self-support:

(a) Report any changes in circumstances that require a change to the current plan.

(b) Follow through with the plan without any break in excess of the longer of:

(A) Normal vacations from school or training.

(B) Three months, unless the reasons are beyond his or her control.

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(5) If a client fails to comply with the requirements of section (4) of this rule, program eligibility is redetermined without the resource exclusions allowed by OAR 461-145-0405.

(6) The client and the Department may revise a plan for self-support or may agree to a new plan. To be new, the plan must not have any relationship to the old plan. When a plan is revised or a new plan established:

(a) Resources designated to support the old plan may become a part of the revised or new plan.

(b) If changes are made in the amount of resources to support the plan, eligibility and the payment amount for program benefits are redetermined.

(c) If the duration of the revised plan in addition to the months the old plan was in effect exceeds the time limits in subsection (3)(e) of this rule, approval is limited to the remainder of the maximum period only.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 10-2002, f. & cert. ef. 7-1-02; Renumbered from 461-140-0440, SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07

461-135-0725

Specific Requirements; OSIP-EPD, OSIPM-EPD

(1) To be eligible for OSIP-EPD and OSIPM-EPD, an individual must:

(a) Have a disability, as defined in OAR 461-125-0370(2);

(b) Have adjusted income below the limit provided in OAR 461-155-0250(6);

(c) Be attached to the workforce as defined in OAR 461-001-0035. Once found eligible, a client remains attached to the workforce while not working if the employer treats the client as an employee, such as when the client is absent from the job under the provisions of the Family Medical Leave Act; and

(d) Not be assumed eligible for OSIPM, as defined in OAR 461-135-0010(6).

(2) If an OSIP-EPD or OSIPM-EPD client becomes unemployed and meets all financial and nonfinancial eligibility requirements for the other OSIP or OSIPM sub-programs except for resources, the client may retain eligibility for OSIP-EPD or OSIPM-EPD for 12 months in order to spend down to the OSIP or OSIPM resource limit. The 12-month period begins the first of the month following the loss of employment.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: 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 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; SSP 10-2003(Temp), f. & cert. ef. 5-1-03 thru 9-30-03; SSP 17-2003, f. & cert. ef. 7-1-03; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07

461-135-0750

Eligibility for People in Long-Term Care or Waivered Services; OSIPM

(1) A client who meets the requirements of section (2) of this rule is eligible for services in any of the following locations:

(a) A nursing facility.

(b) An intermediate care facility for the mentally retarded (ICF/MR).

(c) A psychiatric institution, if the individual is not yet 21 years of age or has reached the age of 65.

(d) A community-based setting covered by a waiver under Title XIX of the Social Security Act.

(2) An individual who resides in a location listed in section (1) of this rule is eligible for OSIPM if the individual:

(a) Meets the eligibility requirements for the OSIPM program except that income is above the program standards;

(b) Has income at or below 300 percent of the full SSI standard; has established a qualifying trust as specified in OAR 461-145-0540(9)(c); or is eligible for the OSIPM-EPD program; and

(c) Meets one of the following eligibility standards:

(A) The criteria in OAR 411-015-0100.

(B) The level-of-need criteria for an ICF/MR.

(C) The eligibility standards for medically fragile children in OAR 411-350-0010.

(D) The eligibility standards for the CIIS behavioral program in OAR 411-300-0100 to 411-300-0220.

Stat. Auth.: ORS 411.060, 411.070 & 414.042

Stats. Implemented: ORS 411.060, 411.070 & 414.042

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 11-2001, f. 6-29-01, cert. ef. 7-1-01; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07

461-135-0780

Eligibility for Pickle Amendment Clients; OSIPM

(1) A client is eligible for OSIPM under the so-called Pickle amendment (Pub. L. No. 94-566, § 503, title V, 90 Stat. 2685 (1976)), if he or she meets all other eligibility requirements, and:

(a) Is receiving SSB;

(b) Was eligible for and receiving SSI or state supplements but became ineligible for those payments after April 1977; and

(c) Would be eligible for SSI or state supplement if the SSB COLA increases paid under section 215(i) of the Social Security Act, after the last month the client was both eligible for and received SSI or a supplement and was entitled to SSB, were deducted from current SSB benefits.

(2) The SSB amount received by the client when he or she became ineligible for SSI or OSIP is used as the client's countable income. If the amount cannot be determined, it is calculated in accordance with sections (3) and (4) of this rule.

(3) Determine the month in which the person was entitled to Social Security and received SSI in the same month. Use the table in section (4) of this rule to find the percentage that applies to that month. Multiply the present amount of the person's and if applicable the spouse's Social Security benefits by the applicable percentage. This amount is the person's countable Social Security for purposes of the Pickle Amendment. Add that figure to any other countable income the person has, if the total is less than the OSIP income standard plus the \$20 unearned income disregard the person is Pickle eligible. All other financial and non-financial eligibility criteria must be met.

(4) The following guide contains the calculations used to determine the SSB for prior years: [Calculations not included. See ED. NOTE.]

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

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.070

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 30, 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 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; SSP 14-2003(Temp), f. & cert. ef. 6-18-03 thru 9-30-03; 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 4-2005, f. & cert. ef. 4-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07

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 a person 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 a person being held involuntarily in a detention center awaiting trial or a person 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 person is released on parole, probation, or post-prison supervision;

(B) The person is on home- or work-release, unless the person is required to report to a public institution for an overnight stay; or

(C) The person 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 persons for more than 36 hours.

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(C) A Department of Corrections institution (see ORS 421.005): a facility used for the incarceration of persons 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 persons 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) 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.

(5) 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 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. For purposes of this subsection, 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 improve if the substance abuse discontinues or declines.

(6) 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 person.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.113

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

461-135-0960

Age Criteria for Individuals in State Psychiatric Institutions and Training Centers; OSIPM, SAC

(1) Individuals residing in state psychiatric institutions (Blue Mountain Recovery Center, Oregon State Hospital, or the Portland Oregon State Hospital) may be eligible for OSIPM or SAC benefits if they are:

(a) Sixty-five years of age or older;

(b) Under 21 years of age; or

(c) Twenty-one years of age or older, if the basis of need is disability or blindness; eligibility was determined before the client reached 21 years of age; and the individual entered the institution before reaching 21 years of age.

(2) There is no age limit for individuals in the state training center (Eastern Oregon Training Center which is an intermediate care facility for the mentally retarded or ICF/MR) to be eligible for OSIPM or SAC.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 4-1998, f. 2-25-98, cert. ef. 3-1-98; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07

461-140-0210

Asset Transfer; General Information and Timelines

(1) OAR 461-140-0210 to 461-140-0300 regulate the effect of a transfer of an asset on a client.

(2) If an asset is transferred during the periods of time listed in section (4) or (5) of this rule and if the transfer is made in whole or in part for the purpose of establishing or maintaining eligibility for benefits:

(a) In the EXT, MAA, MAF, REFM, and SAC programs, the filing group is disqualified if:

(A) A member of the financial group (see OAR 461-110-0530) transferred the asset; and

(B) The client is an inpatient in a nursing facility, or is an inpatient in a medical institution in which payment for the client is based on a level of care provided in a nursing facility.

(b) In the FS, REF, and TANF programs, the filing group is disqualified if:

(A) The asset was a resource; and

(B) A member of the financial group transferred the resource.

(c) In the GA, GAM, OSIP, and OSIPM programs, a client in a non-standard living arrangement (see OAR 461-001-0000) is disqualified if the client or the spouse of the client transferred the asset.

(3) In all programs except ERDC and OHP, clients in financial groups whose members transfer an asset covered under section (2) of this rule within the time periods listed in section (4) or (5) of this rule must report the transfer as soon as practicable and must provide information requested by the Department concerning the transfer.

(4) In the EXT, FS, MAA, MAF, REF, REFM, SAC, and TANF programs, a transfer of an asset may be disqualifying if the transfer occurs:

(a) In the EXT, MAA, MAF, REFM, and SAC programs, during the three years preceding the date of request (see OAR 461-115-0030).

(b) In the Food Stamp program, during the three months preceding the filing date or during a certification period (see OAR 461-001-0000) if the asset was a resource.

(c) In the REF and TANF programs, during the three years preceding the date of request (see OAR 461-115-0030) if the asset was a resource.

(5) In the GA, GAM, OSIP, and OSIPM programs, for a client in a nonstandard living arrangement, a transfer of an asset may be disqualifying if the transfer occurs:

(a) On or before June 30, 2006 and as described in one of the following paragraphs:

(A) On or after the date that is 60 months prior to the date of request — for assets that are transferred without compensation equal to or greater than fair market value from a revocable trust (see OAR 461-145-0540(7)(c)).

(B) On or after the date that is 60 months prior to the date of request —for assets that are transferred without compensation equal to or greater than fair market value to an irrevocable trust (see OAR 461-145-0540(8)(a)).

(C) On or after the date that is 60 months prior to the date of request — when there is a change in circumstances that makes assets in an irrevocable trust unavailable to the client (see OAR 461-145-0540(8)(d)).

(D) On or after the date that is 36 months prior to the date of request — for assets transferred without compensation equal to or greater than fair market value from an irrevocable trust (see OAR 461-145-0540(8)(b) and (c)).

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(E) On or after the date that is 36 months prior to the date of request — for other asset transfers made without compensation equal to or greater than fair market value.

(b) On or after:

(A) July 1, 2006; and

(B) The date that is 60 months prior to the date of request.

(6) The duration of the period of disqualification or ineligibility is set out in OAR 461-140-0260 to 461-140-0300.

Stat. Auth.: ORS 409.050, 411.060, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.117, 411.816, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 18-1993(Temp), f. & cert. ef. 10-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07

461-140-0220

Determining if a Transfer of an Asset is Disqualifying

A transfer of an asset is not disqualifying if the requirements of one of the following sections are met:

(1) Except as otherwise provided in OAR 461-140-0242, the transferred item was either:

(a) An excluded asset other than a home or real property; or

(b) Personal property such as jewelry or furniture.

(2) The asset was sold or traded:

(a) In all programs except the Food Stamp program, for compensation equal to or greater than fair market value.

(b) In the Food Stamp program, for compensation near, equal to or greater than fair market value.

(3) The asset was transferred between members of the same financial group, including members who are ineligible aliens or disqualified people.

(4) The transfer settled a legally enforceable claim against the asset or client.

(5) Except in the OSIP and OSIPM programs, a court ordered the transfer.

(6) In the OSIP and OSIPM programs, a court ordered the transfer and:

(a) The transfer occurs more than 36 months or 60 months before the date of request (see OAR 461-115-0030), whichever is applicable under OAR 461-140-0210(5); or

(b) There is an institutionalized spouse, and — after performing the calculations required in OAR 461-160-0580(2) — the amount of resources allocated to a community spouse does not exceed the largest of the four amounts set forth in OAR 461-160-0580(2)(f).

(7) The client was a victim of fraud, misrepresentation, or coercion, and legal steps have been taken to recover the asset.

(8) In the OSIP and OSIPM programs, for a client in a nonstandard living arrangement (see OAR 461-001-0000), the asset is an annuity purchased on or before December 31, 2005, the client or the spouse of the client is the annuitant, and the entire amount of principal and earned interest is paid in equal installments during the actuarial life expectancy of the annuitant. For purposes of this section, the actuarial life expectancy is established by the Period Life Table of the Office of the Chief Actuary of the Social Security Administration.

(9) In the OSIP and OSIPM programs, the client is in a standard living arrangement (see OAR 461-001-0000).

(10) In the OSIP and OSIPM programs, for a client in a nonstandard living arrangement (see OAR 461-001-0000):

(a) The asset is an annuity purchased from January 1, 2006 through June 30, 2006, and the client or the spouse of the client is the annuitant.

(b) The asset is an annuity purchased on or after July 1, 2006, and the annuity meets the requirements of OAR 461-145-0022(10).

Stat. Auth.: ORS 411.060, 411.816 & OAR 418.100

Stats. Implemented: ORS 411.060, 411.816 & OAR 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 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; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 2-2002(Temp), f. & cert. ef. 2-26-02 thru 6-30-02; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07

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.

(c) The title to the asset was transferred to the person's child who is blind or has a disability under the criteria of the Social Security Administration.

(d) The title to the asset was transferred to 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. This transfer must be 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.

(e) The transfer was made to a trust described in OAR 461-145-0540(9).

(f) The transfer is a transfer described in OAR 461-160-0580(2).

(g) The resource is transferred by the community spouse after the Department has determined the community spouse's resource allowance in accordance with OAR 461-160-0580 and the resource has not been attributed to the institutionalized spouse. Notwithstanding this subsection, a transfer of a resource by a community spouse who is receiving or applying for benefits remains subject to all rules regarding the transfer of an asset by a client.

(2) A transfer of a home by a client or the spouse of the client is a disqualifying transfer unless the title was transferred to the client's:

(a) Child under age 21;

(b) Sibling who has equity interest in the home and was residing in the home for at least one year immediately before the client's admission to long-term care; or

(c) Son or daughter who resided with the client for at least two years immediately prior to the client's admission to long-term care and provided care that permitted the client to reside at home rather than in an institution or long-term care facility. A son or daughter provides the care required by this subsection by doing at least five of the following for the client on a regular basis, without receiving payment from the Department:

(A) Prepares meals.

(B) Shops for food and clothing.

(C) Helps maintain the home.

(D) Assists with financial affairs.

(E) Runs errands.

(F) Provides transportation.

(G) Provides personal services.

(H) Arranges for medical appointments.

(I) Assists with medication.

(3) If a transfer described in subsection (1)(a) of this rule is made for less than fair market value, there is a rebuttable presumption that the asset was transferred for the purpose of establishing or maintaining eligibility.

(4) To rebut the presumption in section (3) 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.

(5) The fact that a recipient was already eligible for benefits is not sufficient to rebut the presumption in section (3) 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

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Stats. Implemented: ORS 411.060 & 411.710
Hist.: AFS 18-1993(Temp), f. & cert. ef. 10-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07

461-140-0270

Disqualification Due to An Asset Transfer; EXT, MAA, MAF, REF, REFM, SAC, TANF

In the EXT, MAA, MAF, REF, REFM, SAC, and TANF programs:

(1) A financial group (see OAR 461-110-0530) in which a member is disqualified due to the transfer of an asset is disqualified for the number of months equal to the *uncompensated value* (see OAR 461-140-0250) divided by the TANF payment standard (see OAR 461-155-0030).

(2) The disqualification period starts the date the Department imposes the disqualification by terminating benefits for the period calculated above or, in the case of an applicant, by denying benefits for the same period of time measured from the date of application.

Stat. Auth.: ORS 411.060 & 418.100

Stats. Implemented: ORS 411.060, 411.632 & 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07

461-140-0296

Length of Disqualification Due to An Asset Transfer; GA, GAM, OSIP, OSIPM

(1) This rule applies to clients in the GA, GAM, OSIP, and OSIPM programs who live in a *nonstandard living arrangement* (see OAR 461-001-0000).

(2) A financial group containing a member disqualified due to the transfer of an asset is disqualified from receiving benefits. The length of a disqualification period resulting from the transfer is the number of months equal to the uncompensated value (see OAR 461-140-0250) for the transfer divided by the following dollar amount:

(a) If the initial month (see OAR 461-001-0000) is on or after October 1, 1993 and prior to October 1, 1998 — \$2,595.

(b) If the *initial month* is on or after October 1, 1998 and prior to October 1, 2000 — \$3,320.

(c) If the *initial month* is on or after October 1, 2000 and prior to October 1, 2002 — \$3,750.

(d) If the *initial month* is on or after October 1, 2002 and prior to October 1, 2004 — \$4,300.

(e) If the *initial month* is on or after October 1, 2004 and prior to October 1, 2006 — \$4,700.

(f) If the *initial month* is on or after October 1, 2006 — \$5,360.

(3) For transfers by a client and the spouse of a client that occurred before July 1, 2006:

(a) Add together the *uncompensated value* of all transfers made in one calendar month, and treat this total as one transfer.

(b) If the uncompensated value of the transfer is less than the applicable dollar amount identified in subsections (2)(a) to (2)(e) 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)(e) 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 section overlap, the periods are applied sequentially so that no two penalty periods overlap.

(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)(e) 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)(e) 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)(e) 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)(e) of this rule.

(b) The quotient resulting from the calculation in section (2) of this rule is not rounded. The whole number of the quotient is the number of full

months the financial group is disqualified. The remaining decimal or fraction of the quotient is used to calculate an additional partial month disqualification. This remaining decimal or fraction is converted to an additional number of days by multiplying the decimal or fraction by the number of days in the month following the last full month of the disqualification period. If this calculation results in a fraction of a day, the fraction of a day is rounded down.

(c) The first month of the disqualification is the later of:

(A) The month following the month the asset was transferred.

(B) The date of request (see OAR 461-115-0030) for medical benefits as long as the client submits an application, and would otherwise be eligible but for this disqualification period.

(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) A disqualification period is assessed for the value of an annuity beyond the actuarial life expectancy of the annuitant if subsections (a) and (b) of this section both apply:

(a) Either:

(A) A client or the spouse of a client purchase an annuity on or before December 31, 2005; or

(B) An OSIPM client purchases an annuity on or after July 1, 2006.

(b) If the annuity pays benefits beyond the actuarial life expectancy of the annuitant, as determined by the Period Life Table of the Office of the Chief Actuary of the Social Security Administration, a disqualification period is assessed for the value of the annuity beyond the actuarial life expectancy of the annuitant.

(8) A single transfer of an asset may cause a disqualification for both a medical assistance program under this rule and the SSI cash grant. The period of the disqualification is likely to be longer for SSI than for the medical assistance program, so a person may be eligible again for the medical assistance program while still disqualified from receiving SSI. The provisions of this rule are applied without regard to the related disqualification for SSI.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 17-1998, f. & cert. ef. 10-1-98; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 26-2000, f. & cert. ef. 10-4-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07

461-140-0300

Adjustments to the Disqualification for Asset Transfer

(1) The disqualification imposed under OAR 461-140-0260 is not adjusted once applied in the Food Stamp program.

(2) In all other programs, the disqualification ends if the transfer that caused the disqualification is rescinded. The duration of the disqualification is recalculated if the terms of the transfer are modified.

(3) In the EXT, GA, GAM, MAA, MAF, OSIP, OSIPM, REFM, and SAC programs, the Department may waive the disqualification if the disqualification would create an undue hardship on the client. For purposes of this section, the disqualification would create an undue hardship if the requirements of subsections (a) and (b) of this section are met:

(a) The client has no other means for meeting his or her needs. The client has the burden of proving that no other means exist by:

(A) Exploring and pursuing all reasonable means to recover the assets to the satisfaction of the Department, including legal remedies and consultation with an attorney; and

(B) Cooperating with the Department to take action to recover the assets.

(b) The disqualification would deprive the client of:

(A) Medical care such that the client's health or life would be endangered; or

(B) Food, clothing, shelter, or other necessities of life without which the health or life of the client would be endangered.

(4) As authorized by ORS 411.620, the Department retains the authority to bring a civil suit or action to set aside a transfer of assets for less than

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fair market value and may seek recovery of all costs associated with such an action.

(5) Notwithstanding the granting of an undue hardship waiver under section (3) of this rule, the Department is not precluded from recovering public assistance from any assets in which the client held an interest, or in which the client previously held an interest, at the time the undue hardship waiver was granted.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060 & 411.632

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 26-2000, f. & cert. ef. 10-4-00; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07

461-145-0001

Adoption Assistance

(1) In all programs except ERDC and FS, adoption assistance (see OAR 461-001-0000) is treated as follows:

(a) The portion of adoption assistance that is for the special needs of the child is excluded, including needs such as special diet, special clothing, counseling, and medical costs not covered under Title XIX.

(b) The rest of the adoption assistance is counted as unearned income.

(2) In the ERDC program, adoption assistance is excluded.

(3) In the Food Stamp program, adoption assistance is counted as unearned income.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060 & 411.122

Hist.: AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 24-2001, f. & cert. ef. 11-1-01; SSP 16-2004(Temp), f. & cert. ef. 7-1-04 thru 9-30-04; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07

461-145-0020

Annuities; Not OSIPM

(1) For the purposes of this rule:

(a) An annuity does not include benefits that are set up and accrued in a regularly funded retirement account while an individual is working, whether maintained in the original account or used to purchase an annuity, if the Internal Revenue Service recognizes the account as dedicated to retirement or pension purposes. (The treatment of pension and retirement plans is covered in OAR 461-145-0380)

(b) The definition of "child" in OAR 461-001-0000 does not apply.

(c) "Child" means a biological or adoptive child who is:

(A) Under age 21; or

(B) Any age and meets the Social Security Administration criteria for blindness or disability.

(d) "Commercial annuities" mean contracts or agreements (not related to employment) by which an individual receives annuitized payments on an investment for a lifetime or specified number of years.

(2) An annuity is counted as a resource if:

(a) The annuity does not make regular payments for a lifetime or specified number of years; or

(b) The annuity does not qualify for exclusion as a resource under subsection (4)(c) of this rule.

(3) If an annuity is a countable resource under this rule, the cash value is equal to the amount of money used to establish the annuity, plus any additional payments used to fund the annuity, plus any earnings, minus any regular payments already received, minus any early withdrawals, and minus any surrender fees.

(4) Commercial annuities and payments from such annuities are counted as follows:

(a) In all programs except OSIP, OSIPM, and QMB, annuity payments are counted as unearned income to the annuitant.

(b) In the OSIP and QMB programs:

(A) For a client in a nonstandard living arrangement (see OAR 461-001-0000), if a client or the spouse of a client purchases or transfers an annuity prior to January 1, 2006, the transaction may be subject to the rules on asset transfers at OAR 461-140-0210 and following. For an annuity that is not disqualifying or for a client in a standard living arrangement (see OAR 461-001-0000), the annuity payments are counted as unearned income to the annuitant.

(B) If a client or the spouse of a client purchases an annuity on or after January 1, 2006, the annuity is counted as a resource unless it is excluded under paragraph (C) of this subsection.

(C) An annuity described in paragraph (B) of this subsection is excluded as a resource if the criteria in subparagraphs (i), (ii), and (iii) of this paragraph are met, except that if an unmarried client is the annuitant, the requirements of subparagraph (iv) of this paragraph must also be met

and if a spouse of a client is the annuitant, the requirements of subparagraph (v) of this paragraph must also be met.

(i) The annuity is irrevocable.

(ii) The annuity pays principal and interest out in equal monthly installments within the actuarial life expectancy of the annuitant. For purposes of this subparagraph, the actuarial life expectancy is established by the Period Life Table of the Office of the Chief Actuary of the Social Security Administration.

(iii) The annuity is issued by a business that is licensed and approved to issue commercial annuities by the state in which the annuity is purchased.

(iv) If an unmarried client is the annuitant, the annuity must specify that upon the death of the client, the first remainder beneficiary is either of the following:

(I) The Department, for all funds remaining in the annuity up to the amount of medical benefits provided on behalf of the client.

(II) The child of the client, if the Department is the next remainder beneficiary (after this child), up to the amount of medical benefits provided on behalf of the client, in the event that the child does not survive the client.

(v) If a spouse of a client is the annuitant, the annuity must specify that, upon the death of the spouse of the client, the first remainder beneficiaries are either of the following:

(I) The client, in the event that the client survives the spouse; and the Department, in the event that the client does not survive the spouse, for all funds remaining in the annuity up to the amount of medical benefits provided on behalf of the client.

(II) A child of the spouse; and the client in the event that this child does not survive the spouse.

(D) If an annuity is excluded under paragraph (C) of this subsection, annuity payments are counted as unearned income to the annuitant.

(c) For OSIPM, see OAR 461-145-0022.

Stat. Auth.: ORS 411.060, 411.816 & 418.100

Stats. Implemented: ORS 411.060, 411.816 & 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07

461-145-0022

Annuities; OSIPM

In the OSIPM program:

(1) For the purposes of this rule:

(a) An annuity does not include benefits that are set up and accrued in a regularly funded retirement account while an individual is working, whether maintained in the original account or used to purchase an annuity, if the Internal Revenue Service recognizes the account as dedicated to retirement or pension purposes. (The treatment of pension and retirement plans is covered in OAR 461-145-0380.)

(b) The definition of "child" in OAR 461-001-0000 does not apply.

(c) "Child" means a biological or adoptive child who is:

(A) Under age 21; or

(B) Any age and meets the Social Security Administration criteria for blindness or disability.

(d) "Commercial annuity" means a contract or agreement (not related to employment) by which an individual receives annuitized payments on an investment for a lifetime or specified number of years.

(2) An annuity that does not make regular payments for a lifetime or specified number of years is a resource.

(3) When a client applies for medical benefits, both initially and at periodic redetermination (see OAR 461-115-0050 and 461-115-0430), the client must report any annuity owned by the client or a spouse of the client.

(4) By signing the application for assistance, a client and the spouse of a client agree that the Department, by virtue of providing medical assistance, becomes a remainder beneficiary as described in sections (8) and (10) of this rule, under any commercial annuity purchased on or after February 8, 2006, unless the annuity is included in the community spouse's resource allowance under OAR 461-160-0580(2)(c).

(5) If the Department is notified about a commercial annuity, the Department will notify the issuer of the annuity about the right of the Department as a preferred remainder beneficiary, as described in sections (8) and (10) of this rule, in the amount of medical assistance provided to the client.

(6) For a client in a nonstandard living arrangement (see OAR 461-001-0000), if a client or the spouse of a client purchases or transfers a commercial annuity prior to January 1, 2006, the transaction may be subject to the rules on asset transfers at OAR 461-140-0210 and following. For an

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annuity that is not disqualifying, the annuity payments are counted as unearned income to the annuitant.

(7) Sections 8 and 9 of this rule apply to a commercial annuity if:

(a) The client is in a nonstandard living arrangement, and the client or the spouse of the client purchases an annuity from January 1, 2006 through June 30, 2006; or

(b) The client is in a standard living arrangement (see OAR 461-001-0000), and the client or the spouse of a client purchase an annuity on or after January 1, 2006.

(8) A commercial annuity covered by section (7) of this rule is counted as a resource unless the annuity is excluded by meeting the following requirements:

(a) If an unmarried client is an annuitant, the annuity must meet the requirements of subsection (8)(c) of this rule, and the annuity must specify that upon the death of the client, the first remainder beneficiary is either of the following:

(A) The Department, for all funds remaining in the annuity up to the amount of medical benefits provided on behalf of the client.

(B) The child of the client, if the Department is the next remainder beneficiary (after this child), up to the amount of medical benefits provided on behalf of the client, in the event that the child does not survive the client.

(b) If a spouse of a client is the annuitant, the annuity must meet the requirements of subsection (8)(c) of this rule, and the annuity must specify that, upon the death of the spouse of the client, the first remainder beneficiaries are either of the following:

(A) The client, in the event that the client survives the spouse; and the Department, in the event that the client does not survive the spouse, for all funds remaining in the annuity up to the amount of medical benefits provided on behalf of the client.

(B) A child of the spouse; and the client in the event that this child does not survive the spouse.

(c) An annuity covered by section (7) of this rule may not be excluded unless the annuity meets all of the following requirements:

(A) The annuity is irrevocable.

(B) The annuity pays principal and interest out in equal monthly installments within the actuarial life expectancy of the annuitant. For purposes of this paragraph, the actuarial life expectancy is established by the Period Life Table of the Office of the Chief Actuary of the Social Security Administration.

(C) The annuity is issued by a business that is licensed and approved to issue a commercial annuity by the state in which the annuity is purchased.

(9) If an annuity is excluded as a resource under section (8) of this rule, the annuity payments are counted as unearned income to the annuitant. If an annuity is a countable resource under section (8) of this rule, the cash value is equal to the amount of money used to establish the annuity, plus any additional payments used to fund the annuity, plus any earnings, minus any regular monthly payments already received, minus early withdrawals, and minus any surrender fees.

(10) This section lists the requirements for a commercial annuity purchased by the client or the spouse of the client on or after July 1, 2006, when a client is in a nonstandard living arrangement, and the annuity names the client or the community spouse as the annuitant. Annuities that meet all of the requirements of this section are counted as unearned income to the annuitant. The treatment of annuities that do not meet all requirements of this section is covered in sections (11) and (12) of this rule.

(a) The annuity must comply with one of the following paragraphs:

(A) The first remainder beneficiary is the spouse of the client, and in the event that the spouse transfers any of the remainder of the annuity for less than fair market value (see OAR 461-001-0000), the Department is the second remainder beneficiary for up to the total amount of medical benefits paid on behalf of the client.

(B) The first remainder beneficiary is the annuitant's child, and in the event that the child or a representative on behalf of the child transfers any of the remainder of the annuity for less than fair market value, the Department is the second remainder beneficiary for up to the total amount of medical benefits paid on behalf of the client.

(C) The first remainder beneficiary is the Department for up to the total amount of medical benefits paid on behalf of the client.

(b) The annuity must be irrevocable and nonassignable.

(c) The annuity pays principal and interest out in equal monthly installments within the actuarial life expectancy of the annuitant. For purposes of this subsection, the actuarial life expectancy is established by the

Period Life Table of the Office of the Chief Actuary of the Social Security Administration.

(d) The annuity is issued by a business that is licensed and approved to issue a commercial annuity by the state in which the annuity is purchased.

(11) If the client is the annuitant and a commercial annuity does not meet all of the requirements of section (10) of this rule, or the spouse of the client is the annuitant and a commercial annuity does not meet the requirements of subsection (10)(a) of this rule, there is a disqualifying transfer of assets under OAR 461-140-0210 and following. See OAR 461-140-0296(6) and (7) for calculation of the disqualification period.

(12) Regardless of whether a commercial annuity is a disqualifying transfer of assets, if the annuity does not meet all of the requirements of section (10) of this rule, the annuity is counted as a resource with cash value equal to the amount of money used to establish the annuity, plus any additional payments used to fund the annuity, plus any earnings, minus any regular monthly payments already received, minus early withdrawals, and minus any surrender fees.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07

461-145-0025

Approved Accounts; OSIP-EPD and OSIPM-EPD

(1) All money in an *approved account* (see OAR 461-001-0035) is excluded as a resource during the determination of eligibility.

(2) Only money from the client's own earned income, or money contributed from an employer based on earnings, may be deposited into an approved account.

(3) A retirement-related *approved account* must be set up in a financial institution and must comply with IRS regulations.

(4) An asset purchased with money from an approved account is excluded if the asset is for an employment and independence expense (see OAR 461-001-0035).

(5) If money from the *approved account* is used for a purpose not consistent with the definition of approved account in OAR 461-001-0035, the client will be prohibited from utilizing an approved account for the next 12 months for the purposes of the determination of eligibility.

Stat. Auth.: ORS 411.060, 411.070 & 414.042

Stats. Implemented: ORS 411.060, 411.070 & 414.042

Hist.: AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; SSP 17-2003, f. & cert. ef. 7-1-03; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07

461-145-0055

Capital Assets

(1) In all programs except FS, MAA, and TANF, the equity value (see OAR 461-001-0000) of a capital asset (see OAR 461-001-0000) is treated according to the rules for the asset.

(2) In the FS program, a capital asset used in a business is excluded as follows:

(a) Non-farm assets are excluded as long as the financial group (see OAR 461-110-0530) is actively engaged in self-employment activities.

(b) Farm assets are excluded for one year from the date the individual quit self-employment as a farmer.

(3) In the MAA and TANF programs:

(a) For a self-employed client participating in the microenterprise component of the JOBS program, the value of a capital asset is excluded.

(b) For all other clients, the value of a capital asset is counted according to the rules in this division of rules.

Stat. Auth.: ORS 411.060, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.816, 418.100

Hist.: AFS 1-1999, f. 3-26-99, cert. ef. 4-1-99; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07

461-145-0108

Dividends, Interest and Royalties

(1) Dividends are counted as unearned income, unless the dividends are from a trust described in OAR 461-145-0540(9), in which case the dividends are excluded.

(2) Interest income is counted as unearned income.

(3) Royalties are counted as unearned income, except that royalties are counted as earned income if the client is actively engaged in the activity from which the royalties are accrued.

Stat. Auth.: ORS 411.060, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.816, 418.100

Hist.: SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07

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461-145-0130

Earned Income; Treatment

(1) Earned income is countable in determining eligibility for programs, subject to sections (2) to (8) of this rule.

(2) A flexible benefit used to pay for child care or health insurance costs is excluded unless it is reimbursed by the Department or allowed as an earned income deduction.

(3) JOBS Plus income is earned income and is treated as follows:

(a) In the TANF program:

(A) JOBS Plus income earned by an NCP-PLS client is counted in determining initial TANF eligibility.

(B) When determining the need for a TANF supplement for a TANF-PLS client, the income is treated as follows:

(i) It is excluded in determining the countable income limit and in calculating the benefit equivalency standards.

(ii) It is counted in calculating the wage supplement.

(C) JOBS Plus wages received after the client's last month of work under a JOBS Plus agreement are counted.

(b) In the FS program:

(A) JOBS Plus income earned by an NCP-PLS client:

(i) Is counted in determining initial FS eligibility.

(ii) Is excluded in determining ongoing eligibility.

(B) JOBS Plus wages received after the client's last month of work under an NCP-PLS or TANF-PLS JOBS Plus agreement are counted.

(c) For programs other than FS and TANF, NCP-PLS and TANF-PLS income is counted.

(d) For all programs, client wages received under the Oregon Employment Department UI JOBS Plus or the Tribal TANF JOBS programs are counted as earned income.

(4) Welfare-to-Work work experience income is treated as follows:

(a) In the EXT, MAA, MAF, and TANF programs, the income is earned income, and the first \$260 is excluded each month.

(b) In the FS and OHP programs, the income is earned income.

(5) In the ERDC and OHP programs, earned income of a child is excluded.

(6) In the EXT, MAA, MAF, SAC, and TANF programs:

(a) Earned income of the following children is excluded:

(A) Dependent children under the age of 19 years, and minor parents under the age of 18 years, who are full-time students in grade 12 or below (or the equivalent level of vocational training, in GED courses), or in home schooling approved by the local school district.

(B) Dependent children under the age of 18 years who are attending school part-time (as defined by the institution) and are not employed full-time.

(C) Dependent children too young to be in school.

(b) Income remaining after the month of receipt is a resource.

(c) In-kind earned income is excluded (see OAR 461-145-0280 and 461-145-0470).

(7) In the FS program, the following types of income are excluded:

(a) The earned income of an individual under the age of 18 years who is under the parental control of another member of the household and is:

(A) Attending elementary or high school;

(B) Attending GED classes recognized by the local school district;

(C) Completing home-school elementary or high school classes recognized by the local school district; or

(D) Too young to attend elementary school.

(b) In-kind earned income.

(c) Deductions from base pay for future educational costs under Pub. L. No. 99-576, 100 Stat. 3248 (1986), for clients on active military duty.

(d) Income remaining after the month of receipt is a resource.

(8) In the OHP program, earned in-kind income (see OAR 461-145-0280) is excluded unless it is an expenditure by a business entity that benefits a principal (see OAR 461-145-0088).

Stat. Auth.: ORS 411.060, 411.816 & 418.100

Stats. Implemented: ORS 411.060, 411.700, 411.816, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 9-1990, f. & cert. ef. 3-2-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 17-1992, f. & cert. ef. 7-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 1-1993, f. & cert. ef. 2-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 19-1994, f. & cert. ef. 9-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 17-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 32-1996(Temp), f. & cert. ef. 9-23-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 8-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 11-1999, f. & cert. ef. 10-1-99; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 7-2000(Temp), f. 3-10-00, cert. ef. 3-10-00 thru 9-1-00; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 12-2001, f. 6-29-01, cert. ef. 7-1-01; AFS 17-2001(Temp), f. 8-31-01, cert. ef. 9-1-01 thru 9-30-01; AFS 22-2001, f. & cert. ef. 10-1-01; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07

461-145-0140

Earned Income Tax Credit (EITC)

(1) There are federal and state earned income tax credit (EITC) programs for low-income families. An EITC may be received in one of two ways:

(a) As an advance in the employee's paycheck.

(b) As one annual payment received at the time of the normal income tax returns.

(2) In the GA, GAM, OSIP, OSIPM, and QMB programs, the EITC is counted as follows:

(a) An advance payment is considered earned income.

(b) An annual payment is considered a resource.

(3) In all programs except GA, GAM, OSIP, OSIPM, and QMB, the EITC is excluded.

Stat. Auth.: ORS 411.060, 411.700, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.700, 411.816, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 6-1991(Temp), f. & cert. ef. 2-8-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07

461-145-0175

Family Abuse Prevention Act (FAPA) Payments

(1) Family Abuse Prevention Act (FAPA) payments are court-ordered payments to victims of domestic violence made under authority of ORS 107.718(1)(h). A payment is considered available when actually received by the victim of abuse.

(2) For all programs covered by this chapter of rules, the first \$2,500 is excluded. The excess above \$2,500 is counted as a resource.

Stat. Auth.: ORS 411.060, 411.816 & 418.100

Stats. Implemented: ORS 411.060, 411.816 & 418.100

Hist.: AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07

461-145-0185

Floating Homes and Houseboats

(1) Floating homes and houseboats are treated in the same manner as real property under OAR 461-145-0420.

(2) Floating homes and houseboats are subject to OAR 461-145-0220 and 461-145-0250 if applicable.

Stat. Auth.: ORS 411.060, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.816, 418.100

Hist.: SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07

461-145-0220

Home

(1) Home defined: A home is the place where the filing group lives. A home may be a house, boat, trailer, mobile home, or other habitation. A home also includes the following:

(a) Land on which the home is built and contiguous property.

(A) In all programs except FS, GA, GAM, OSIP, OSIPM, and QMB, property must meet all the following criteria to be considered contiguous property:

(i) It must not be separated from the land on which the home is built by land owned by people outside the financial group.

(ii) It must not be separated by a public right-of-way, such as a road.

(iii) It must be property that cannot be sold separately from the home.

(B) In the FS, GA, GAM, OSIP, OSIPM, and QMB programs, contiguous property is property not separated from the land on which the home is built by land owned by people outside the financial group.

(b) Other dwellings on the land surrounding the home that cannot be sold separately from the home.

(2) Exclusion of home and other property:

(a) For a client who has an initial month (see OAR 461-001-0000) of long-term care or waived services on or after January 1, 2006:

(A) For purposes of this subsection:

(i) The definition of "child" in OAR 461-001-0000 does not apply.

(ii) "Child" means a biological or adoptive child who is:

(I) Under age 21; or

(II) Any age and meets the Social Security Administration criteria for blindness or disability.

(B) The value of a home is excluded if the client or the spouse of the client occupies the home and the equity in the home is \$500,000 or less.

(C) The home is countable as a resource if the client has equity in the home of more than \$500,000, unless one of the following requirements is met:

(i) The spouse of the client occupies the home.

(ii) The child of the client occupies the home.

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(iii) The client is legally unable to convert the equity value in the home to cash.

(iv) The home equity is excluded under OAR 461-145-0250.

(b) For all other filing groups, the value of a home is excluded when the home is occupied by any member of the filing group.

(c) In the Food Stamp program only, the value of land is excluded while the group is building or planning to build their home on it, except that if the group owns (or is buying) the home they live in and has separate land they intend to build on, only the home in which they live is excluded, and the land they intend to build on is treated as real property in accordance with OAR 461-145-0420.

(3) Exclusion during temporary absence: If the value of a home is excluded under section (2) of this rule, the value of this home remains excluded in each of the following situations:

(a) In all programs except the GA, GAM, OSIP, OSIPM, and QMB programs, during the temporary absence of all members of the filing group from the property, if the absence is due to illness or uninhabitability (from casualty or natural disaster), and the filing group intends to return home.

(b) In the Food Stamp program, when the financial group is absent because of employment or training for future employment.

(c) In the GA, GAM, OSIP, OSIPM, and QMB programs, when the client is absent to receive care in a medical institution, if one of the following is true:

(A) The absent client is a single adult who has provided evidence that he or she will return to the home. The evidence must reflect the subjective intent of the client, regardless of the client's medical condition. A written statement from a competent client is sufficient to prove the intent.

(B) The home remains occupied by the client's spouse, child, or a relative dependent on the client for support. The child must be less than 21 years of age or, if over the age of 21, blind or an individual with a disability as defined by SSA criteria.

(d) In the MAA, MAF, REF, REFM, SAC, and TANF programs, when all members of the filing group are absent because:

(A) The members are employed in seasonal employment and intend to return to the home when the employment ends; or

(B) The members are searching for employment, and the search requires the members to relocate away from their home. If all members of the filing group are absent for this reason, the home may be excluded for up to six months from the date the last member of the filing group leaves the home to search for employment. After the six months, if a member of the filing group does not return, the home is no longer excluded.

Stat. Auth.: ORS 411.060, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.816, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 5-2002, f. & cert. ef. 4-1-02; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07

461-145-0250

Income-Producing Property

(1) Income from *income-producing property* (see OAR 461-001-0000) is counted as follows:

(a) If a member of the financial group (see OAR 461-110-0530) actively manages the property 20 hours or more per week, the income is treated in the same manner as self-employment income (see OAR 461-145-0910, 461-145-0920, and 461-145-0930).

(b) If a member of the financial group does not actively manage the property 20 hours or more per week, the income is counted as unearned income with exclusions allowed only in accordance with OAR 461-145-0920.

(2) The equity value (see OAR 461-001-0000) of income-producing property is treated as follows:

(a) In the EA, ERDC, and OHP programs, it is excluded.

(b) In the FS program, it is counted as a resource except to the extent described in each of the following situations:

(A) If the property produces an annual countable income similar to other properties in the community with comparable market value, the equity value of the property is excluded.

(B) The equity value of income-producing livestock, poultry, and other animals is excluded.

(C) If selling the resource would produce a net gain to the financial group of less than \$1,500, the equity value is excluded.

(c) In the GA, GAM, OSIP, OSIPM, and QMB programs, it is counted as a resource, except:

(A) If the property produces an annual countable income of at least six percent of its equity value, the value of the property is excluded up to a maximum of \$6,000.

(B) The total equity value is excluded if all the following are true:

(i) The property is used in a trade or business.

(ii) The property is essential to the client's self-support.

(iii) The property produces an annual countable income of at least six percent of its equity value.

(d) In the MAA, MAF, REF, REFM, SAC, and TANF programs, it is counted as a resource, except that in the MAA and TANF programs, it is excluded for a self-employed client participating in the microenterprise component of the JOBS program.

Stat. Auth.: ORS 411.060, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.700, 411.816, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 19-1994, f. & cert. ef. 9-1-94; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07

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 OHP program, 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:

(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 but not designated as child support, are treated as follows:

(A) In the ERDC program, these third-party payments are excluded.

(B) In the FS program, these third-party payments are excluded unless they are transitional housing payments for the homeless.

(C) In the MAA, MAF, REFM, SAC, and TANF programs, except for child support (see OAR 461-145-0080), these third-party payments are excluded.

(D) In all other programs except OHP, these third-party payments are excluded.

Stat. Auth.: ORS 409.050, 411.060, 411.816 & 418.100

Stats. Implemented: ORS 409.050, 411.060, 411.816 & 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 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. 7-1-99; 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

461-145-0310

Life Estate

(1) For all programs except OSIP, OSIPM, and QMB, if a financial group (see OAR 461-110-0530) is living in real property (see OAR 461-001-0000) while a member holds a life estate (see OAR 461-001-0000) in this property, the property is treated as a home (see OAR 461-145-0220). In all other situations, a life estate is treated as real property (see OAR 461-145-0420).

(2) In the OSIP, OSIPM, and QMB programs:

(a) A transfer for less than fair market value (see OAR 461-001-0000) in which a member of the financial group retains a life estate is a disqualifying transfer. A transfer is considered for less than fair market value if the fair market value of the transferred resource on the day prior to the transfer is greater than the sum of the value of the rights conferred by the life estate plus the compensation received for the transfer. For purposes of this sub-

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section, the value of the rights conferred by the life estate is established by the Life Estate and Remainder Interest Table of the federal Centers for Medicare and Medicaid Services, State Medicaid Manual, section 3258.9(A).

(b) If a member of the financial group purchases a life estate interest in the home of another individual on or after July 1, 2006, the purchase is considered a transfer of resources unless the client resides in this home for at least 12 consecutive months after the date of the purchase. The value of the transfer for a client who does not reside in the home for at least 12 consecutive months is calculated by using the purchase price of the life estate.

Stat. Auth.: ORS 411.060, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.700, 411.816, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07

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, "reverse-annuity mortgage" means an arrangement in which a homeowner borrows against the equity in the home and receives regular monthly tax-free payments from the lender. A "reverse-annuity mortgage" is sometimes referred to in the private sector as a reverse mortgage or a home equity conversion mortgage.

(3) The proceeds of a home equity loan or reverse-annuity mortgage are considered loans under this rule.

(4) 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 all other 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.

(5) Payments for a purported loan that do not meet the requirements of section (4) of this rule are treated as unearned income.

(6) When a member of a financial group receives cash proceeds from a loan:

(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 is treated in accordance with OAR 461-140-0070.

(c) In the GA, GAM, OSIP, OSIPM, and QMB programs, a loan is excluded as income. The loan is a resource if retained in the month following the month of receipt (notwithstanding OAR 461-140-0070).

(7) Except as provided in section (8) of this rule, if a member of a financial group has made a loan and is receiving return payments as a result:

(a) The interest payment is unearned income.

(b) The payment of principal is excluded.

(8) In the GA, GAM, OSIP, OSIPM, and QMB programs, if a client or a spouse of a client uses funds to purchase a promissory note, loan, or mortgage in a transaction occurring on or after July 1, 2006, 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, 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, cert. ef. 10-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07

461-145-0340

Lodger Income

(1) Lodger income is the amount a lodger (see OAR 461-001-0000) pays the filing group for room (rent) and board (meals).

(2) Lodger income is counted as follows:

(a) In the MAA, MAF, SAC, and TANF programs, lodger income not excluded under OAR 461-155-0350 is treated as self-employment income.

(b) In all other programs, lodger income is treated as self-employment income.

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 16-1990, f. 6-29-90, cert. ef. 7-1-90; 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 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 9-2001, f. & cert. ef. 6-1-01; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07

461-145-0343

Manufactured and Mobile Homes

(1) Manufactured and mobile homes are treated in the same manner as real property under OAR 461-145-0420.

(2) Manufactured and mobile homes are subject to OAR 461-145-0220 and 461-145-0250 if applicable.

Stat. Auth.: ORS 411.060, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.816, 418.100

Hist.: SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07

461-145-0440

Reimbursement

(1) In the ERDC program, a reimbursement (see OAR 461-001-0000) is excluded, except that a reimbursement for child care from a source outside of the Department is counted as unearned income.

(2) In the Food Stamp program:

(a) A cash reimbursement for a normal household living expense, such as rent or payment on a home loan, personal clothing, or food eaten at home, is unearned income.

(b) Any other reimbursement is treated as follows:

(A) A noncash reimbursement is excluded.

(B) A cash reimbursement is excluded if used for the identified expense, unless the expense is covered by program benefits.

(C) A reimbursement is counted as periodic or lump-sum income if not used for the identified expense.

(D) A reimbursement for an item already covered by the benefit group's benefits is counted as periodic or lump-sum income.

(3) In all programs except ERDC and FS, a reimbursement is treated as follows:

(a) A noncash reimbursement is excluded.

(b) A cash reimbursement is excluded if used for the identified expense, unless the expense is covered by program benefits.

(c) A reimbursement is counted as periodic or lump-sum income if not used for the identified expense.

(d) A reimbursement for an item already covered by the benefit group's benefits is counted as periodic or lump-sum income.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.700 & 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 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07

461-145-0470

Shelter-in-Kind Income

(1) 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.

(2) In the EXT, MAA, MAF, REF, REFM, SAC, and TANF programs, except for child support (see OAR 461-145-0080), shelter-in-kind payments are excluded.

(3) In the FS program, shelter-in-kind housing and utility payments are excluded.

(4) In the OSIP, OSIPM, and QMB programs, shelter-in-kind payments from HUD are excluded. Other shelter-in-kind income is treated as follows:

(a) If all shelter costs (see OAR 461-001-0000) are covered by a payment, the Shelter-in-Kind Standard for total shelter is counted as unearned income.

(b) If only rent or mortgage costs are covered by a payment, the Shelter-in-Kind Standard for housing costs is counted as unearned income.

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(c) If the client has no shelter costs, the Shelter-in-Kind Standard for total shelter is counted as unearned income.

(5) In the OHP program, shelter-in-kind payments are excluded except:

(a) An expenditure by a business entity for shelter costs of a principal (see OAR 461-145-0088) is considered income.

(b) Child support is treated in accordance with OAR 461-145-0080.

Stat. Auth.: ORS 409.050, 411.060, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.700, 411.816, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 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

461-145-0505

Spousal Support

(1) In the ERDC program:

(a) All *spousal support* (see OAR 461-001-0000) paid directly to the financial group (see OAR 461-110-0530) is counted as unearned income.

(b) All other spousal support is excluded.

(2) In the FS program, spousal support is treated as follows:

(a) Except for spousal support payments received by clients working under a JOBS Plus agreement, spousal support payments the group receives that must be assigned to the Department to maintain TANF eligibility are excluded, even if the group fails to turn the payments over to the Department.

(b) For clients working under a JOBS Plus agreement:

(A) Spousal support is excluded in determining countable income.

(B) All spousal support received by the client is counted as unearned income when calculating the wage supplement.

(c) All other spousal support is counted as unearned income.

(d) Payments made by the separated or divorced spouse to a third party for the benefit of the financial group are excluded.

(3) In the MAA, MAF, REF, REFM, SAC, and TANF programs:

(a) In determining eligibility, except for clients working under a JOBS Plus agreement, all spousal support received by the Department or Department of Justice (DOJ), if continued receipt of the spousal support is reasonably anticipated, is counted as unearned income. These payments are excluded when determining the benefit amount.

(b) For clients working under a JOBS Plus agreement:

(A) Spousal support is excluded in determining countable income.

(B) Spousal support is excluded when calculating the TANF portion of the benefit equivalency standards.

(C) All spousal support received by the client is counted as unearned income when calculating the wage supplement.

(c) All other spousal support payments paid directly to the financial group are counted as unearned income.

(4) In the OHP program, all spousal support payments are counted as unearned income.

(5) In the OSIP, OSIPM, and QMB programs, all spousal support paid to the financial group is counted as unearned income. Spousal support paid by the financial group is not allowed as an income deduction, except as provided in OAR 461-160-0620.

Stat. Auth.: ORS 411.060, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.700, 411.816, 418.100

Hist.: AFS 8-1992, f. & cert. ef. 4-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; 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 9-1997, f. & cert. ef. 7-1-97; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07

461-145-0540

Trusts

(1) This section applies to all trust funds (see OAR 461-001-0000) in the FS, MAA, MAF, OHP, REF, SAC, and TANF programs. It also applies to GA, GAM, OSIP, OSIPM, and QMB for trust funds established before October 1, 1993:

(a) Trust funds are counted as a resource if the fund is legally available for use by a member of the financial group (see OAR 461-110-0530) for items covered by program benefits. In the OSIP, OSIPM, and QMB programs, the amount of the trust that is considered legally available is the maximum amount that could be distributed to the beneficiary under the terms of the trust, regardless of whether the trustee exercises his or her authority to actually make a distribution.

(b) Trust funds are excluded if the fund is not available for use by a member of the financial group. The financial group must try to remove legal restrictions on the trust, unless that would cause an expense to the group.

(c) The part of the fund available for use for medical expenses covered by the medical program for which the financial group is eligible is counted.

(2) In the ERDC program, all trust funds are excluded.

(3) In the OSIP, OSIPM, and QMB programs, trust funds established on or after October 1, 1993, are treated in accordance with sections (4) through (10) of this rule. In the GA and GAM programs, trust funds established on or after October 1, 1993, are treated in accordance with sections (4) through (8) of this rule.

(4) A trust is considered established if the financial group used their resources to form all or part of the trust and if any of the following established a trust, other than by a will:

(a) The client.

(b) The client's spouse.

(c) Any other person, including a court or administrative body, with legal authority to act in place of or on behalf of the client or the client's spouse.

(d) Any other person, including a court or administrative body, acting at the direction or upon the request of the client or the client's spouse.

(5) If the trust contains resources or income of another person, only the share attributable to the client is considered available.

(6) Except as provided in section (9) of this rule, the following factors are ignored when determining how to treat a trust:

(a) The purpose for which the trust was established.

(b) Whether or not the trustees have or exercise any discretion under the trust.

(c) Any restrictions on when or if distributions may be made from the trust.

(d) Any restrictions on the use of distributions from the trust.

(7) If the trust is revocable, it is treated as follows:

(a) The total value of the trust is considered a resource available to the client.

(b) A payment made from the trust to or for the benefit of the client is considered unearned income.

(c) A payment from the trust other than to or for the benefit of the client is considered a transfer of assets covered by OAR 461-140-0210 and following.

(8) If the trust is irrevocable, it is treated as follows:

(a) If, under any circumstances, the funds transferred into the trust are unavailable to the client and the trustee has no discretion to distribute the funds to or for the benefit of the client, the client is subject to a transfer-of-resources penalty as provided in OAR 461-140-0210 and following.

(b) If, under any circumstances, payments could be made to or on behalf of the client, the share of the trust from which the payment could be made is considered a resource. A payment from the trust other than one to or for the benefit of the client is considered a transfer of assets that may be covered by OAR 461-140-0210.

(c) If, under any circumstances, income is generated by the trust and could be paid to the client, the income is unearned income. Payments made for any reason other than to or for the benefit of the client are considered a transfer of assets subject to disqualification per OAR 461-140-0210.

(d) If any change in circumstance makes assets (income or resources) from the trust unavailable to the client, the change is a disqualifying transfer as of the date of the change.

(9) Notwithstanding the provisions above in this rule, the following trusts are not considered in determining eligibility for OSIPM and QMB:

(a) A trust containing the assets of a client determined to have a disability that meets the SSI criteria that was created before the client reached age 65, if the trust was established by one of the following and the state will receive all funds remaining in the trust upon the death of the client, up to the amount of medical benefits provided on behalf of the client:

(A) The client's parent.

(B) The client's grandparent.

(C) The client's legal guardian or conservator.

(D) A court.

(b) A trust established between October 1, 1993 and March 31, 1995 for the benefit of the client and containing only the current and accumulated income of the client. The accumulated amount remaining in the trust must be paid directly to the state upon the death of the client up to the amount of medical benefits provided on behalf of the client. The trust is the total income in excess of the income standard for OSIPM. The remaining income not deposited into the trust is available for the following deductions in the order they appear prior to applying the patient liability:

(A) Personal-needs allowance.

(B) Community spouse monthly maintenance needs allowance.

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- (C) Medicare and other private medical insurance premiums.
- (D) Other incurred medical.

(c) A trust established on or after April 1, 1995 for the benefit of the client and containing the current and accumulated income of the client. The accumulated amount remaining in the trust must be paid directly to the state upon the death of the client up to the amount of medical assistance provided on behalf of the client. The trust contains all of the client's income. The income deposited into the trust is distributed monthly in the following order with excess amounts treated as income to the individual subject to the rules on transfer of assets in division 140 of this chapter of rules:

(A) Personal needs allowance and applicable room and board standard.

(B) Reasonable administrative costs of the trust, not to exceed a total of \$50 per month, including the following:

- (i) Trustee fees.
- (ii) A reserve for administrative fees and costs of the trust, including bank service charges, copy charges, postage, accounting and tax preparation fees, future legal expenses, and income taxes attributable to trust income.
- (iii) Conservatorship and guardianship fees and costs.

(C) Community spouse and family monthly maintenance needs allowance.

(D) Medicare and other private medical insurance premiums.

(E) Other incurred medical costs as allowed under OAR 461-160-0030 and 461-160-0055. Contributions to reserves for personal liabilities including but not limited to child support, alimony, and property and income taxes. Contributions to reserves for the purchase of an irrevocable burial plan on a monthly basis and contributions to a reserve for home maintenance if the client's name remains on the title.

(F) Patient liability not to exceed the cost of waived services or nursing facility services.

(d) A trust containing the resources or income of a client who has a disability that meets the SSI criteria and created before the client reached age 65, meeting the following conditions:

(A) The trust is established and managed by a non-profit association.

(B) A separate account is maintained for each beneficiary of the trust, but, for purposes of investment and management of funds, the trust pools these accounts.

(C) The trust is established by the client, client's parent, grandparent, or legal guardian or a court for clients who are disabled.

(D) To the extent that amounts remaining in the beneficiary's account upon the death of the beneficiary are not retained by the trust, the trust pays to the State an amount equal to the total medical assistance paid on behalf of the beneficiary under the State plan for Medicaid.

(10) In the GA, GAM, OSIP, OSIPM, and QMB programs, the provisions of this rule may be waived for an irrevocable trust if the Department determines that denial of benefits would create an undue hardship on the client if, among other things:

(a) The absence of the services requested may result in a life-threatening situation.

(b) The client was a victim of fraud or misrepresentation.

Stat. Auth.: ORS 411.060, 411.816 & 418.100

Stats. Implemented: ORS 411.060, 411.700, 411.816, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 18-1993(Temp), f. & cert. ef. 10-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 21-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 18-2002(Temp), f. & cert. ef. 11-19-02 thru 5-18-03; SSP 11-2003, f. & cert. ef. 5-1-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07

461-145-0570

USDA Meal Reimbursement

(1) A USDA meal reimbursement (see OAR 461-001-0000) is counted as self-employment income, except for the portion excluded in accordance with section (2) of this rule.

(2) The proportionate share of a USDA meal reimbursement for a child in the filing group is excluded.

Stat. Auth.: 411.060, 411.816, 418.100

Stats. Implemented: 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; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07

461-145-0580

Veterans' Benefits

(1) Veterans' benefits, other than the aid-and-attendance, educational, and training and rehabilitation program benefits, are treated as follows:

(a) Except as specified in sections (2) and (5) of this rule, monthly payments are counted as unearned income.

(b) Other payments are counted as periodic or lump-sum income (see OAR 461-140-0110 and 461-140-0120).

(2) Veterans' benefits that include aid-and-attendance payments are treated as follows:

(a) In the FS, OHP, and QMB programs, the aid-and-attendance payments are excluded. The remaining benefits are counted unless excluded under another rule or another section of this rule.

(b) For OSIP and OSIPM clients receiving long-term care or Title XIX waived services, the payments are treated as follows:

(A) When determining eligibility, the entire veterans' benefit payment is excluded.

(B) When calculating monthly benefits or patient liability, the entire veterans' benefit payment is counted as unearned income.

(C) Payments for services not covered by the Department's programs are excluded.

(D) If the client receives a payment covering a previous period of eligibility, the client is required to turn over to the Department the full amount of the payment up to the cost of institutional and home- or community-based waived care provided to the client during the months covered by the payment. Any excess is counted as lump-sum or periodic income.

(c) In all other programs, aid-and-attendance payments are treated as follows:

(A) Payments for services not covered by the Department's programs are excluded.

(B) Reimbursements paid to the client for costs and services already paid for by the Department are third-party resources and may be recovered from the client. Any unrecovered third-party resource or payment above the actual cost is counted as lump-sum or periodic income (see OAR 461-140-0110 and 461-140-0120).

(3) Educational benefits from the United States Veterans Administration are treated in accordance with OAR 461-145-0150.

(4) A subsistence allowance from a training and rehabilitation program of the United States Veterans Administration is treated:

(a) In the Food Stamp program, as earned income (see OAR 461-145-0130).

(b) In all other programs, as unearned income.

(5) Payments under Public Law 104-204, § 421(b)(1), 110 Stat. 2923 (1996), to children of Vietnam veterans who are born with spina bifida are excluded (see 38 U.S.C. 1805(d)).

Stat. Auth.: ORS 411.060, 411.700, 411.816 & 418.100

Stats. Implemented: ORS 411.060, 411.700, 411.816 & 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 5-2002, f. & cert. ef. 4-1-02; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07

461-150-0055

Eligibility and Budgeting; OHP

In the OHP program:

(1) The budget month is:

(a) For applicants, the month of application.

(b) For clients reapplying in the last month of their OHP certification period, and for clients moving from BCCM, EXT, GAM, MAA, MAF, OSIPM, REFM, or SAC to OHP, the last month of their current eligibility period.

(c) When a person is added to the filing group, the month the person is added.

(d) For late reapplications, the month the application is received.

(e) For applicants who are not eligible using the budget month described in subsections (1)(a) to (1)(d) of this rule, any month falling within 45 days after the date of request.

(2) Countable income is determined as follows:

(a) Income is considered available during a month in accordance with OAR 461-140-0040.

(b) Income is not annualized, converted, or prorated.

(c) For self-employed clients, countable self-employment income is determined in accordance with OAR 461-145-0920 and 461-145-0930.

(3) The average countable income of the financial group (see OAR 461-110-0530) is calculated as follows:

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(a) The financial group's income from the three months preceding the budget month is added.

(b) The total is divided by three, and the result is the financial group's average countable income assigned to the budget month.

(c) The financial group's average countable income is used to determine eligibility for OHP in accordance with OAR 461-160-0700.

(4) A change in income or resources during a certification period (see OAR 461-001-0000) does not affect the eligibility of the benefit group (see OAR 461-110-0750) for that certification period.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060, 411.700

Hist.: AFS 2-1994, f. & cert. ef. 2-1-94; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 24-1998(Temp), f. 11-30-98, cert. ef. 12-1-98 thru 3-31-99; AFS 2-1999, f. 3-26-99, cert. ef. 4-1-99; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07

461-150-0070

Prospective Use of Stable Income

Stable income (see OAR 461-001-0000) is used as follows in prospective budgeting and eligibility:

(1) If a financial group (see OAR 461-110-0530) receives stable income once a month, the monthly amount is used to anticipate the group's income for each month.

(2) If a financial group receives stable income once a week, it is converted to a monthly amount by multiplying it by 4.3. The monthly amount is used to anticipate the group's income for each month.

(3) If a financial group receives stable income once every other week, that biweekly amount is converted to a monthly amount by multiplying it by 2.15. The monthly amount is used to anticipate what the group's income will be for each month.

(4) In the Food Stamp program, stable income the client expects to receive less often than monthly during a certification period (see OAR 461-001-0000) is either counted as income in the month of expected receipt or is averaged over the period it is intended to cover, at the option of the client.

Stat. Auth.: ORS 411.060, 411.816 & 418.100

Stats. Implemented: ORS 411.060, 411.816 & 411.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-89, cert. ef. 4-1-90; 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 12-2001, f. 6-29-01, cert. ef. 7-1-01; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07

461-150-0080

Prospective Use of Variable Income; Not OHP; Not MRS

(1) This rule explains how variable income (see OAR 461-001-0000) is determined for a financial group (see OAR 461-110-0530) not in the monthly reporting system (MRS). The Department uses variable income to determine eligibility and benefits prospectively in all programs except OHP, which is covered in OAR 461-135-0055.

(2) If a financial group receives earned income based on an hourly wage, with or without tips or commissions, the income for the budget month (see OAR 461-001-0000) is determined as follows. The hourly wage is multiplied by the number of hours the client is expected to work each week, and the product is added to the tips and commissions, if any, for the week. The sum is multiplied by 4.3 to arrive at the earned income for the month.

(3) If a financial group receives unearned income or earned income not based on an hourly wage, or it is not reasonable to predict the hourly wage or the number of hours the client will work, the client's prospective income is computed as follows.

(a) If the client's previous income is indicative of the income the financial group will receive during the redetermination period, the following provisions apply.

(A) If the budgeting method is changing from retrospective to prospective, the financial group's income from each representative month is added and the sum is then divided by the number of representative months. The quotient is used as the income for each month of the redetermination period.

(B) In all other cases, the financial group's income from the preceding two months is added to the income for the current month, including income already received and income expected to be received. The sum is divided by three. The quotient is used as the income for each month of the redetermination period.

(b) If the client's previous income is not indicative of the income the financial group will receive during the redetermination period, the client and Department jointly determine the anticipated income for the redetermination period.

(4) Food Stamp financial groups with variable income, who are not covered by section (2) of this rule, must choose either to have their benefit level changed from month to month in accordance with this section or to have their income determined in accordance with section (3) of this rule. Food Stamp financial groups who choose to have their benefit level changed from month to month inform the Department of their anticipated income for each month of the redetermination period, and the Department uses the reported anticipated income to calculate the monthly benefit.

(5) In the Food Stamp program, a financial group who meets the definition of "destitute household" in OAR 461-135-0575 may not use the income averaging option for the initial month (see OAR 461-001-0000) of eligibility or the first month of a new certification period (see OAR 461-001-0000). For a destitute financial group, income for the initial month of eligibility and the first month of a redetermination period is determined according to OAR 461-150-0100. Thereafter, the financial group is subject to sections (2) to (4) of this rule.

(6) In the Food Stamp program, variable income the client expects to receive during a certification period is either counted as income in the month of expected receipt or is averaged over the period it is intended to cover, at the option of the client.

Stat. Auth.: ORS 411.060, 411.816 & 418.100

Stats. Implemented: ORS 411.060, 411.816 & 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 13-1992, f. & cert. ef. 5-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; 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 9-1999, f. & cert. ef. 7-1-99; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 12-2001, f. 6-29-01, cert. ef. 7-1-01; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07

461-155-0225

Income Standard; OHP

(1) If a *financial group* (see OAR 461-110-0530) contains a person with significant authority in a business entity — a "principal" as defined in OAR 461-145-0088 — the group is ineligible for the OHP program if the gross income of the business entity exceeds \$10,000. If the need group (see OAR 461-110-0630) is not ineligible under this section, its eligibility is evaluated under section (2) of this rule.

(2) The countable income standards for OHP are as follows:

(a) The countable income standard for OHP-OPC and OHP-OPU is 100 percent of the federal poverty level, as listed in OAR 461-155-0180(2), based on the size of the need group.

(b) The countable income standard for OHP-OP6 is 133 percent of the federal poverty level, as listed in OAR 461-155-0180(3), based on the size of the need group.

(c) The countable income standard for OHP-OPP and OHP-CHP is 185 percent of the federal poverty level, as listed in OAR 461-155-0180(5), based on the size of the need group.

Stat. Auth.: ORS 409.050 & 411.060

Stats. Implemented: ORS 411.060 & 411.070

Hist.: AFS 2-1994, f. & cert. ef. 2-1-94; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 16-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 5-1997, f. 4-30-97, cert. ef. 5-1-97; AFS 4-1998, f. 2-25-98, cert. ef. 3-1-98; AFS 5-1998(Temp), f. & cert. ef. 3-11-98 thru 5-31-98; AFS 6-1998(Temp), f. 3-30-98, cert. ef. 4-1-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 3-1999, f. 3-31-99, cert. ef. 4-1-99; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 2-2003(Temp), f. & cert. ef. 2-7-03 thru 6-30-03; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 2-2004(Temp), f. & cert. ef. 2-13-04 thru 3-31-04; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 2-2005, f. & cert. ef. 2-18-05; SSP 1-2006, f. & cert. ef. 1-24-06; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07

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

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payment standard for SSI/OSIP clients living in the community is the SIP (supplemental income payment) amount. The SIP is a need amount added to any other special or service needs to determine the actual payment. In some cases, the need amount is zero.

(a) For clients whose unearned income minus any SSI or Veterans Nonservice-Connected Disability Benefits is less than \$20: [Table not included. See ED. NOTE.]

(b) For clients whose unearned income minus any SSI or Veterans Nonservice-Connected Disability Benefits is \$20 or more: [Table not included. See ED. NOTE.]

(c) The SSI/OSIP-AB standard includes a transportation allowance. The standard for two assumes one individual is blind and the other is not. If both are blind, \$20 is added to the SIP amount.

(d) For spouses who each receive SSI and live in an AFC, ALF or RCF, an amount is added to each person's SIP payment that equals the difference between the individual's income (including SSI and other income) and the OSIP standard for a one-person need group.

(e) For spouses who receive SSI as a couple and are not included in subsection (d) of this section, the two-person need group is used to determine their SIP amount. This amount is used even if one (or both) of the clients is receiving services and has a need group of one according to OAR 461-110-0630.

(5) For OSIP and OSIPM clients in long-term care, the following amounts are allowed for clothing and personal incidentals:

(a) For clients who receive a VA pension based on unreimbursed medical expenses (UME), \$90 is allowed.

(b) For all other clients, \$30 is allowed.

(6) In the OSIP-EPD and OSIPM-EPD programs, the adjusted earned income limit is 250 percent of the 2006 federal poverty level for a family of one. This 250 percent limit equals \$2,042 per month or \$24,500 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

461-155-0270

Room and Board and Personal Allowance Standards for NSLA; OSIP, OSIPM

For all OSIP and OSIPM cases in a *nonstandard living arrangement* (see OAR 461-001-0000), the OSIP/OSIPM Income Standard is allocated as follows: [Table not included. See ED. NOTE.]

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

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060 & 411.070

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; 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 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 13-2000, f. & cert. ef. 5-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07

461-155-0300

Shelter-in-Kind Standard

In the OSIP, OSIPM, and QMB programs, the Shelter-in-Kind Standard is:

(1) For a single person:

(a) Living alone, \$385 for total shelter or \$232 for housing costs only.

(b) Living with others, \$178 for total shelter or \$107 for housing costs only.

(2) For a couple:

(a) Living alone, \$475 for total shelter or \$285 for housing costs only.

(b) Living with others, \$176 for total shelter or \$104 for housing costs only.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060 & 411.070

Hist.: 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 12-1991(Temp), f. & cert. ef. 7-1-91; AFS 16-1991, f. 8-27-91, cert. ef. 9-1-91; AFS 25-1991, f. & cert. ef. 1-1-92; AFS 1-1993, f. & cert. ef. 2-1-93; AFS 17-1993(Temp), f. & cert. ef. 9-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 40-1995, 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 11-1999, f. & cert. ef. 10-1-99; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07

461-155-0660

Special Need; Accommodation Allowance

(1) OSIP and OSIPM clients living in a nursing facility are not eligible for an accommodation allowance. OSIP and OSIPM clients living in a nonstandard living arrangement (see OAR 461-001-0000) are not eligible for an accommodation allowance unless they are receiving in-home waived services. OSIP and OSIPM clients who are receiving SSI (except those in a nursing facility) or in-home waived services are allowed an accommodation allowance if the client meets the criteria in section (2) or (3) of this rule.

(2) Temporary absence of client from home.

(a) A temporary accommodation allowance may be authorized, where permitted under section (1) of this rule, if a client meets the following criteria:

(A) The client leaves his or her home or rental property and enters a hospital, state psychiatric institution, nursing facility, adult foster care facility, assisted living facility, residential care facility, group care home, or specialized living facility;

(B) The client cannot afford to keep the home without the allowance;

(C) The client will be able to return home within six months of leaving, according to a written statement from a primary practitioner, RN, or PAS (pre-admission screening) RN; and

(D) The home will accommodate the service plan of the client when the client returns.

(b) The allowance may be authorized for six months. If, after six months, the client continues to meet the criteria in subsection (a) of this section, an extension may be approved in writing by a supervisor.

(c) The accommodation allowance equals the total of the client's housing cost, including taxes and insurance, plus the limited standard utility allowance for the Food Stamp program provided in OAR 461-160-0420.

(3) Additional cost for accommodation. A client receiving SSI benefits (except those in a nursing facility) or in-home waived services may receive an accommodation allowance if the client's shelter cost exceeds the shelter standard in OAR 461-155-0250(2) and the requirements of one of the following subsections are met:

(a) The client has a documented increase in rent associated with access by a person with a disability.

(b) The client has been assessed to need a live-in provider, has accepted the services of a live-in provider, and requires an additional bedroom for the live-in provider.

(4) The accommodation allowance is determined as follows:

(a) For clients who receive an accommodation allowance based on increased costs associated with access by a person with a disability, only the additional increase in cost for the accommodation is allowed.

(b) For clients who receive an accommodation allowance based on the need for an additional bedroom for a live-in provider, the amount of the accommodation allowance is one-third of the monthly rental cost or one-third cost of the monthly payment on an original purchase money mortgage, plus the limited standard utility allowance for the Food Stamp program provided in OAR 461-160-0420. This allowance does not cover any refinancing of the debt owed on the original purchase money mortgage unless the refinancing was done only to reduce the original purchase money mortgage's interest rate and the owner realized no direct or indirect payment of the home's equity value from the refinancing.

(5) Special requirements.

(a) A client who rents and qualifies for an allowance under section (3) of this rule must take the steps necessary to obtain subsidized housing under any federal or state housing program. A client who fails, at any time, to take the steps necessary to obtain subsidized housing reasonably available is ineligible for the allowance. A client, who has been denied or revoked from participation in any rent subsidy program based on the client's own actions is ineligible for benefits under this rule.

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(b) A client who rents housing and refuses subsidized housing will no longer be eligible for an accommodation allowance, except that if the housing that is offered is not suitable, related to accommodations, and the client continues to have increased costs related to accommodations in the client's current living situation, the accommodation allowance may continue until such time as appropriate subsidized housing is found.

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 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 12-1993, f. & cert. ef. 7-1-93; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; 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 9-1999, f. & cert. ef. 7-1-99; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07

461-160-0010

Use of Resources in Determining Financial Eligibility

Countable (see OAR 461-001-0000) resources are used to determine eligibility as follows:

(1) In the EA program, the countable resources of a financial group (see OAR 461-110-0530) are used to reduce benefits.

(2) In the FS, GA, GAM, MAA, MAF, OSIP, OSIPM, QMB, REF, REFM, SAC, and TANF programs, a need group (see OAR 461-110-0630) is not eligible for benefits if the financial group has countable resources above the resource limit.

(3) In the OHP program:

(a) Need group members who are HPN (see OAR 461-001-0000) or OHP-CHP (see OAR 461-135-1100) are not eligible if the countable resources of the financial group are above the limit.

(b) If an HPN or OHP-CHP client is determined eligible, changes in resources do not affect eligibility during the certification period (see OAR 461-001-0000) or until their eligibility otherwise ends.

(4) In the OSIP-EPD and OSIPM-EPD programs:

(a) Any money in an approved account (see OAR 461-001-0035) is excluded during the determination of eligibility.

(b) Assets purchased from moneys in an approved account are excluded, provided they meet the requirements of OAR 461-145-0025.

(c) Assets purchased as employment and independence expenses (see OAR 461-001-0035) are excluded, provided they meet the requirements of OAR 461-145-0025.

Stat. Auth.: ORS 411.060 & 418.100
Stats. Implemented: ORS 411.060, 411.117 & 418.100
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1991(Temp), f. & cert. ef. 7-1-91; AFS 16-1991, f. 8-27-91, cert. ef. 9-1-91; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 17-1998, f. & cert. ef. 10-1-98; 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; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07

461-160-0015

Resource Limits

(1) In the EA program, all countable (see OAR 461-001-0000) resources must be used to meet the emergent need.

(2) In the ERDC, EXT, and REFM programs, there is no resource limit.

(3) In the FS program, the resource limit is:

(a) \$3,000 for a financial group (see OAR 461-110-0530) with at least one member who is elderly (see OAR 461-001-0015) or an individual with a disability (see OAR 461-001-0015).

(b) \$2,000 for all other financial groups.

(4) In the GA, GAM, OSIP, and OSIPM programs, the resource limit is as follows:

(a) \$2,000 for a one-person need group and \$3,000 for a two-person need group.

(b) \$1,000 for an OSIP need group eligible under OAR 461-135-0771. The total cash resources may not exceed \$500 for a one-person need group or \$1,000 for a two-person need group.

(c) \$5,000 is the limit for the OSIP-EPD and OSIPM-EPD programs (see OAR 461-001-0035 and 461-145-0025 for funds that may be excluded as approved accounts).

(5) In the MAA, MAF, REF, SAC, and TANF programs, the resource limit is:

(a) \$10,000 for a need group (see OAR 461-110-0630) with at least one JOBS participant who is progressing in a case plan.

(b) \$10,000 for a need group with at least one member who is working under a JOBS Plus agreement.

(c) \$2,500 for all other need groups, including all TANF applicants.

(6) In the OHP program:

(a) There is no resource limit for an individual whose eligibility is determined under the OHP-OPC, OHP-OP6, or OHP-OPP programs.

(b) The resource limit for an individual whose eligibility is determined under the OHP-OPU program is \$2,000.

(c) The resource limit for children whose eligibility is determined under the OHP-CHP program is \$10,000.

(7) In the QMB program, the resource limit is \$4,000 for a one-person need group and \$6,000 for a need group containing two or more individuals.

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 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 20-1991, f. & cert. ef. 10-1-91; 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 23-1994, f. 9-29-94, cert. ef. 10-1-94; 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 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; 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 10-1998, f. 6-29-98, cert. ef. 7-1-98; 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 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 17-2003, f. & cert. ef. 7-1-03; 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 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07

461-160-0055

Medical Costs That are Deductible

(1) For FS clients who are elderly (see OAR 461-001-0015) or individuals with a disability (see OAR 461-001-0015), and for clients in the GA, GAM, OSIP, and OSIPM programs, medical costs are deductible to the extent a deduction is authorized in OAR 461-160-0415 and 461-160-0430 and in this rule.

(2) Health and hospitalization insurance premiums and coinsurance are deductible. In the FS and OSIPM programs, health insurance premiums paid less frequently than monthly may be prorated over the period covered by the premium.

(3) In the FS and OSIPM programs:

(a) Long-term care insurance premiums are deductible if the insurance pays for services while an individual is:

(A) Receiving waived services;

(B) Receiving nursing facility services; or

(C) In an intermediate care facility for the mentally retarded (ICF/MR).

(b) A policy that is set up to pay a lump sum, similar to life insurance, is not deductible.

(4) The cost of a medical service is deductible if it is:

(a) Provided by, prescribed by, or used under the direction of a licensed medical practitioner; or

(b) Except in the Food Stamp program, a medical necessity approved by the Department.

(5) Medical deductions are also allowed for, among other things, the cost of:

(a) Medical and dental care, including psychotherapy, rehabilitation services, hospitalization, and outpatient treatment.

(b) Prescription drugs and over-the-counter medications prescribed by a licensed practitioner, the annual fee for a drug prescription card, medical supplies and equipment, dentures, hearing aids, prostheses, and prescribed eyeglasses.

(c) In the FS program, such items as the following:

(A) Nursing care, nursing home care, and hospitalization, including payments for an individual who was a member of the household group (see OAR 461-110-0210) immediately prior to entering a hospital or a nursing home certified by the state. Deduction of these payments is also allowed for an individual who was a member of the household group immediately prior to death if the remaining household members are legally responsible for payment of the expenses.

(B) Services of an attendant, home health aid, housekeeper, or provider of dependent care necessary due to the client's age or illness, including an amount equal to a one-person FS benefit group if the client furnishes the majority of an attendant's meals.

(C) Prescribed, companion animals, and assistance animals (such as a Seeing Eye Dog, Hearing Dog, or Housekeeper Monkey), including the cost of acquiring the animals, their training, food, and veterinarian bills.

(D) Reasonable costs for transportation and lodging needed to obtain medical treatment or services.

(E) Installment plan arrangements made before a bill becomes past due. The expense is not deducted if the client defaults and makes a second agreement.

ADMINISTRATIVE RULES

Stat. Auth.: ORS 411.060, 411.816, 418.100
Stats. Implemented: ORS 411.060, 411.816, 418.100
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 20-2004(Temp), f. & cert. ef. 9-7-04 thru 12-31-04; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 23-2004(Temp), f. & cert. ef. 10-1-04 thru 12-31-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 7-2005, f. & cert. ef. 7-1-05; 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

461-160-0090

Employment and Independence Expenses; OSIP-EPD and OSIPM-EPD

In the OSIP-EPD and OSIPM-EPD programs, an employment and independence expense (see OAR 461-001-0035) must be approved by the branch office prior to its use as a deduction from countable income (see OAR 461-140-0010).

Stat. Auth.: ORS 411.060, 411.070, 414.042
Stats. Implemented: ORS 411.060, 411.070, 414.042
Hist.: AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07

461-160-0400

Use of Income to Determine Eligibility and Benefits; FS

In the Food Stamp program, the countable income (see OAR 461-140-0010) and adjusted income (see OAR 461-001-0000) of the financial group (see OAR 461-110-0530) are used to determine eligibility for food stamps and the benefit level in three steps:

(1) Step one: The countable income of the financial group is compared to the need group's countable income limit in OAR 461-155-0190. If the income equals or exceeds the limit, the need group (see OAR 461-110-0630) is ineligible for food stamps. A financial group that is categorically eligible (see OAR 461-135-0505) for food stamps or that includes a client who is elderly (see OAR 461-001-0015) or has a disability (see OAR 461-001-0015) need not pass this step.

(2) Step two: If the need group is not ineligible under step one, the adjusted income of the financial group is compared to the need group's adjusted income limit (see OAR 461-155-0190). If the income equals or exceeds the limit, the need group — except one that is categorically eligible for food stamps — is ineligible for food stamps. If the adjusted income is less than the limit, the need group meets the income standard for the Food Stamp program.

(3) Step three: The benefit level for an eligible need group is determined as follows — adjusted income is multiplied by 30 percent, and the product is rounded to the next higher dollar. The result is subtracted from the need group's payment standard (see OAR 461-155-0190). The remainder is the benefit amount.

Stat. Auth.: ORS 411.060
Stats. Implemented: ORS 411.060
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07

461-160-0415

Medical Deduction; FS

(1) This rule explains how to calculate the deduction for medical costs in the Food Stamp program allowed under OAR 461-160-0055 when incurred by an elderly (see OAR 461-001-0015) member of a household or by a household member with a disability (see OAR 461-001-0015).

(2) For each certification period, the Department estimates the amount of the client's medical deduction and apportions the amount evenly among the months in the certification period. For medical costs payable during the month of certification, the client may choose to deduct each cost in the month of certification or to average the cost over the certification period.

(3) For medical costs that were not anticipated when the deduction was estimated but are incurred and reported to the Department during the certification period, the client may choose to deduct each cost:

- (a) In the month after the cost is reported; or
- (b) By averaging the cost over the period from the month after the cost was reported to the end of the certification period.

(4) If the client is billed in the last month of a certification period for a medical cost that is due after the certification period, and the client does not pay the bill during the certification period, the cost may be used to compute the deduction in the next certification period.

(5) A medical cost is not deductible in any of the following situations:

(a) The client reports a paid medical cost in the last month of the re-termination period, but reports this cost after their benefits for that month have already been issued.

(b) The medical cost is past due or is an amount carried forward from a previous billing period.

(c) The client and creditor have agreed on a monthly payment amount, but the client defaults on the agreement.

Stat. Auth.: ORS 411.816
Stats. Implemented: ORS 411.816
Hist.: AFS 13-1991, f. & cert. ef. 7-1-91; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 23-2000(Temp), f. 9-29-00, cert. ef. 10-1-00 thru 12-31-00; Suspended by AFS 31-2000(Temp), f. & cert. ef. 12-1-00 thru 12-31-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07

461-160-0430

Income Deductions; FS

(1) Deductions from income are subtracted from countable income (see OAR 461-140-0010) in the following order to determine adjusted income (see OAR 461-001-0000) for the Food Stamp program:

(a) An earned income deduction of 20 percent of countable earned income. The 20 percent deduction is not taken from the wages funded by grant diversions such as Work Supplementation wages.

(b) A standard deduction of \$134 per month for a benefit group (see OAR 461-110-0750) of one, two, or three persons. A standard deduction of \$139 for a benefit group of four persons. A standard deduction of \$162 for a benefit group of five persons. A standard deduction of \$186 for a benefit group of six or more persons.

(c) A dependent care deduction not to exceed \$175 each month for each dependent, or \$200 each month for each child under age 2, for dependent care costs billed to a member of the financial group (see OAR 461-110-0530) and not paid for through any other program of the Department. For the cost to be deductible under this section, the care must be necessary to enable a member of the need group (see OAR 461-110-0630) to:

- (A) Accept or continue employment;
- (B) Meet the requirements of a case plan (see OAR 461-001-0020);

or

(C) Attend vocational or educational training. A student receiving educational income is entitled to a deduction only for costs not excluded from educational income by OAR 461-145-0150.

(d) The medical deduction for elderly clients and clients who have a disability (see OAR 461-001-0015) in the need group. The deduction is calculated by determining the total of their deductible medical costs (see OAR 461-160-0415) and subtracting \$35. The remainder is the medical deduction.

(e) A deduction for child support payments a member of the household makes under a legal obligation to a child not a member of the household group (see OAR 461-110-0210), including payments for the current month and for payments on arrearages. Child support is not deductible if collected by setoff through the Oregon Department of Revenue or by interception of a federal tax refund.

(f) A shelter deduction, calculated as follows:

(A) For FS clients required to pay room and board in a nonstandard living arrangement (see OAR 461-001-0000), the shelter deduction is:

(i) The cost of room and board, minus the payment standard for the benefit group; or

(ii) The actual room cost, if the client can prove that the room cost exceeds the cost described in subparagraph (i) of this paragraph.

(B) For all other clients, the shelter deduction is calculated as follows:

(i) The standard deduction and the deductions of earned income, dependent care, court-ordered child support, and medical expenses are subtracted from countable income. Fifty percent of the remainder is subtracted from the shelter cost calculated in accordance with OAR 461-160-0420.

(ii) The rounded balance is the deduction, except the deduction is limited if the filing group has no member who has a disability or is elderly (see OAR 461-001-0015). The limit is \$417.

(2) If the client cannot verify a medical or court-ordered child-support expense or cannot verify any other expense when asked to do so, the unverified expense is not used to calculate the deduction. If the client provides verification, the deduction is applied when calculating the next month's benefits. If verification is provided within the period authorized for processing applications (see OAR 461-115-0210), the benefits for the initial month (see OAR 461-001-0000) are recalculated using the deduction.

Stat. Auth.: ORS 411.816
Stat. Implemented: ORS 411.816 & 411.825
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 20-1991, f. & cert. ef. 10-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 13-1994, f. & cert. ef. 7-1-94; 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 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 27-1995(Temp), f. 10-31-95, cert. ef. 11-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 31-1996, f. & cert. ef. 9-23-96; AFS 41-1996(Temp), f. & cert. ef. 12-31-96; AFS 3-

ADMINISTRATIVE RULES

1997, f. 3-31-97, cert. ef. 4-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; 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 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 2-1999, f. 3-26-99, cert. ef. 4-1-99; AFS 23-2000(Temp), f. 9-29-00, cert. ef. 10-1-00 thru 12-31-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 23-2000(Temp) Suspended by AFS 28-2000(Temp), f. 10-31-0, cert. ef. 11-1-00 thru 12-31-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 3-2001, f. 2-27-01, cert. ef. 3-1-01; 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 17-2004, f. & cert. ef. 7-1-04; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07

461-160-0500

Use of Income To Determine Eligibility and Benefits; GA, GAM

In the GA and GAM programs, the countable and adjusted income (see OAR 461-001-0000) of a financial group (see OAR 461-110-0530) are used to determine eligibility and benefit amount as follows:

(1) If the countable income of the financial group equals or exceeds the payment standard for the need group (see OAR 461-110-0630), the need group is ineligible for GA and GAM. If the countable income is less than the standard, the need group meets the income standard for GA and GAM.

(2) The benefit amount is determined by subtracting the adjusted income of the financial group from the sum of the payment standard for the need group and its ongoing special needs.

(3) The benefit cannot exceed the sum of the payment standard for the benefit group (see OAR 461-110-0750) plus the ongoing special needs.

Stat. Auth.: ORS 411.060 & 411.710

Stats. Implemented: ORS 411.060 & 411.710

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 17-1995, f. 7-31-94, cert. ef. 8-1-95; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 10-2002, f. & cert. ef. 7-1-02; 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 15-2006, f. 12-29-06, cert. ef. 1-1-07

461-160-0580

Excluded Resource; Community Spouse Provision (OSIP and OSIPM except OSIP-EPD and OSIPM-EPD)

(1) In the OSIP and OSIPM programs, this rule applies to an institutionalized spouse who has applied for benefits because he or she is in or will be in a continuous period of care (see OAR 461-001-0030).

(2) Whether a couple lives together or not, the determination of whether the value of the couple's resources exceed the eligibility limit for the institutionalized spouse for OSIPM program is made as follows:

(a) The first step is the determination of what the couple's combined countable resources were at the beginning of the most recent continuous period of care. (The beginning of the continuous period of care is the first month of that continuous period.)

(A) Division 461-140 and 461-145 rules applicable to OSIP describe which of the couple's resources are countable resources, and are applicable to determine whether a community spouse's resources are countable, even if the rule only applies to OSIP clients.

(B) The countable resources of both spouses are combined.

(C) At this point in the computation, the couple's combined countable resources are considered available equally to both spouses.

(b) The second step is the calculation of one half of what the couple's combined countable resources were at the beginning of the continuous period of care. The community spouse's half of the couple's combined resources is treated as a constant amount when determining eligibility.

(c) The third step is the determination of the community spouse's resource allowance. The community spouse's resource allowance is the largest of the four following amounts:

(A) The community spouse's half of what the couple's combined countable resources were at the beginning of the continuous period of care, but not more than \$101,640.

(B) \$20,328 (the state community-spouse resource allowance).

(C) A court-ordered community spouse resource allowance. In this rule (OAR 461-160-0580(2)(c)(C) and (2)(f)(C)), the term court-ordered community spouse resource allowance means a court-ordered community spouse resource allowance that, in relation to the income generated, would raise the community spouse's income to a court-approved monthly maintenance needs allowance. In cases where the client became an institutionalized spouse on or after February 8, 2006, this resource allowance must use all of the client's available income and the community spouse's income to meet the community spouse's monthly maintenance needs allowance before any resources are used to generate interest income to meet the allowance.

(D) After considering the income of the community spouse and the income available from the institutionalized spouse, an amount which, if invested, would raise the community spouse's income to the monthly main-

tenance needs allowance. The amount described in this paragraph (D) is considered only if the amount described in subparagraph (i) of this paragraph is larger than the amount described in subparagraph (ii); it is the difference between the following:

(i) The monthly income allowance computed in accordance with OAR 461-160-0620.

(ii) The difference between:

(I) The sum of gross countable income of the community spouse and the institutionalized spouse; and

(II) The applicable need standard under OAR 461-160-0620(5)(c).

(d) The fourth step is the determination of what the couple's current combined countable resources are when a resource assessment is requested or the institutionalized spouse applies for OSIPM. The procedure in subsection (2)(a) (first step) of this rule is used.

(e) The fifth step is the subtraction of the community spouse's resource allowance from the couple's current combined countable resources. The resources remaining are considered available to the institutionalized spouse.

(f) The sixth step is a comparison of the value of the remaining resources to the OSIP resource standard for one person (under OAR 461-160-0015(4)(a)). If the value of the remaining resources is at or below the standard, the institutionalized spouse meets this eligibility requirement. If the value of the remaining resources is above the standard, the institutionalized spouse cannot be eligible until the value of the couple's combined countable resources is reduced to the largest of the four following amounts:

(A) The community spouse's half of what the couple's combined countable resources were at the beginning of the continuous period of care (but not more than \$101,640) plus the OSIP resource standard for one person.

(B) \$20,328 (the state community-spouse resource allowance), plus the OSIP resource standard for one person.

(C) A court-ordered community spouse resource allowance plus the OSIP resource standard for one person. (See paragraph (2)(c)(C) of this rule for a description of the court-ordered community spouse resource allowance.)

(D) The OSIP resource standard for one person plus the amount described in the remainder of this paragraph. After considering the income of the community spouse and the income available from the institutionalized spouse, add an amount which, if invested, would raise the community spouse's income to the monthly maintenance needs allowance. Add this amount only if the amount described in subparagraph (i) of this paragraph is larger than the amount described in subparagraph (ii); it is the difference between the following:

(i) The monthly income allowance computed in accordance with OAR 461-160-0620.

(ii) The difference between:

(I) The sum of gross countable income of the community spouse and the institutionalized spouse; and

(II) The applicable need standard under OAR 461-160-0620(5)(c).

(3) Once eligibility has been established, resources equal to the community spouse's resource allowance (under subsection (2)(c) of this rule) must be transferred to the community spouse if those resources are not already in that spouse's name. The institutionalized spouse must indicate his or her intent to transfer the resources and must complete the transfer to the community spouse within 90 days. This period may be extended for good cause. These resources are excluded during this period. After this period, resources owned by the institutionalized spouse but not transferred out of that spouse's name will be countable and used to determine ongoing eligibility.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060 & 411.700

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 3-1991(Temp), f. & cert. ef. 1-17-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 5-1993, f. & cert. ef. 4-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 11-1999, f. & cert. ef. 10-1-99; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 5-2006(Temp), f. & cert. ef. 3-6-06 thru 8-31-06; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07

ADMINISTRATIVE RULES

461-160-0610

Client Liability for Clients in Long-term Care or Receiving Waivered Services; OSIP (except OSIP-EPD), OSIPM (except OSIPM-EPD)

(1) The IC service payment of clients in the OSIP-IC and OSIPM-IC programs is reduced by the amount of their liability. Other 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 as follows:

(a) Clients who do not receive SSI, but who meet the income requirements, may be eligible for OSIP and OSIPM. 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.

(b) 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.

(2) The following clients are exempt from payments required by this rule if they receive waived services (see OAR 461-001-0030):

(a) A disabled adult child under OAR 461-135-0830.

(b) A disabled widow or widower under OAR 461-135-0811.

(c) A widow or widower under OAR 461-135-0820.

(d) A Pickle amendment client under OAR 461-135-0780.

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

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 (5) of this rule as explained in subsections (5)(a) through (5)(h) of this rule.

(2) Except as provided otherwise in section (3) of this rule, the liability of the client is determined according to subsection (5)(i) of this rule.

(3) Except as provided in section (4) and paragraph (5)(i)(B) of this rule, there is no client liability for the following clients:

(a) Any client who receives SSI or is deemed to receive SSI under section 1619(b) of the Social Security Act (42 U.S.C. § 1382h(b)).

(b) The following OSIPM clients who receive waived or non-waivered services do not have a liability:

(A) A client in OSIPM-IC.

(B) An adult disabled child as described at OAR 461-135-0830.

(C) A disabled widow or widower under OAR 461-135-0811.

(D) A widow or widower under OAR 461-135-0820.

(E) A Pickle amendment client under OAR 461-135-0780.

(4) A client covered under subsection (3)(b) of this rule who is in an institutionalized setting may have a liability (see paragraph (5)(i)(B) of this rule). For purposes of this rule, an institutionalized setting means each of the following:

(a) A nursing facility.

(b) An intermediate care facility for the mentally retarded (ICF/MR).

(c) A psychiatric institution.

(d) A non-waivered Mental Health Facility.

(5) 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 unusual medical expenses. The \$90 allowance is allowed only when the VA benefit has been reduced to \$90.

(C) The OSIP maintenance standard for a client who receives waived services.

(d) A community spouse monthly income allowance is deducted from the income of the institutionalized spouse if the income is made available to (or for the benefit of) the community spouse. If neither spouse is eligible for SSI and both receive waived services through the home- and community-based services program in the same residence or facility, and if the countable income of either spouse is less than the one-person OSIPM payment standard, an allowance is calculated separately using calculation methods 1 and 2 below. The result that is better for the couple is the allowance. For all other couples, the amount calculated using method 2 is the allowance.

(A) Calculation method 1: The allowance is the difference between the one-person payment standard of the OSIPM program (see OAR 461-155-0250) and the countable income of the spouse with the lesser countable income.

(B) Calculation method 2:

(i) Step 1 — Determine the maintenance needs allowance. \$1,650 is added to the amount over \$495 that is needed to pay monthly shelter expenses for the principal residence of the couple. This sum or \$2,541, whichever is less, is the maintenance needs allowance. For the purpose of this calculation, shelter expenses are the rent or home mortgage payment (principal and interest), taxes, insurance, required maintenance charges for a condominium or cooperative, and the full standard utility allowance for the Food Stamp program (see OAR 461-160-0420).

(ii) Step 2 — Compare maintenance needs allowance with community spouse's gross income. The gross income of the community spouse is subtracted from the maintenance needs allowance determined in step 1. The difference is the income allowance unless the allowance described in step 3 is greater.

(iii) Step 3 — If a spousal support order or exceptional circumstances resulting in significant financial distress require a greater income allowance than that calculated in step 2, the greater amount is the allowance.

(e) A dependent income allowance is deducted for each eligible dependent as follows:

(A) For a case with a community spouse, a deduction is permitted only if the monthly income of the eligible dependent is below \$1,650. To determine the income allowance of the eligible dependent:

(i) The monthly income of the eligible dependent is deducted from \$1,650.

(ii) One-third of the amount remaining after the subtraction in paragraph (A) of this subsection is the income allowance of the eligible dependent.

(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 section (3) of this rule), 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.

(6) The deduction used to determine adjusted income for a GA and GAM client receiving long-term care services or waived services is as follows:

(a) One standard earned income deduction of \$65 is made from the earned income for a client who is not blind; or

(b) One standard earned income deduction of \$85 is made from the earned income for a client who is blind.

Stat. Auth.: ORS 411.060 & 411.070

Stats. Implemented: ORS 411.060 & 411.070

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 17-1992, f. & cert. ef. 7-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 5-1993, f. & cert. ef. 4-1-93; AFS 19-

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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

461-160-0780

Determining Adjusted Income; OSIP-EPD and OSIPM-EPD

Adjusted income for OSIP-EPD and OSIPM-EPD is determined as follows:

- (1) All *unearned income* is excluded.
- (2) From gross earned income, one standard income deduction of \$20 is deducted if not deducted elsewhere.
- (3) One standard earned income deduction of \$65, or \$85 for individuals whose disability is based on blindness, is deducted.
- (4) The remainder is divided by two.
- (5) Any costs allowed as employment and independence expenses, Impairment Related Work Expenses, or Blind Work Expenses as defined in OAR 461-001-0035 are deducted.
- (6) The remainder is adjusted income.
Stat. Auth.: ORS 411.060
Stats. Implemented: ORS 411.070 & 414.042
Hist.: 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 17-2000, f. 6-28-00, cert. ef. 7-1-00; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07

461-165-0180

Eligibility of Child Care Providers

To be eligible for child care payment from the Department, a provider must meet all of the requirements in sections (1) to (6) of this rule.

(1) The provider must submit a completed Department listing form to the Department. The provider and all persons identified under section (4) of this rule are considered "subject individuals" under OAR 410-007-0210(27)(a)(H) and must complete and sign the authorization for a records check and, if necessary, an authorization to release information and fingerprint cards, as necessary for the Department to complete a current records check. The provider must fully disclose all requested information as part of the records check. If information available to the Department provides no basis for denial, the Department will approve the provider to receive payment for child care from the Department unless:

- (a) The provider was previously found ineligible for payment and was not subsequently determined to be eligible; or
 - (b) The Department determines, following a preliminary or final fitness determination (see OAR 410-007-0320) and Child Protective Service (CPS) records checks, that the provider or other subject individual is not eligible for payment.
- (2) The provider must meet all of the following requirements:
- (a) Allow the Department to inspect the site of care while child care is provided.
 - (b) Keep daily attendance records that show the arrival and departure times each day for each child in care and billing records for each child receiving child care benefits from the Department. The provider must keep the records for 12 months and provide them to Department staff on request.
 - (c) Be the person who actually provides the child care. The provider must notify the Department before using someone else to supervise children on a temporary basis.
 - (d) Not be in the same filing group as the child cared for and must not be the parent (see OAR 461-001-0000) of the child.
 - (e) Provide evidence of compliance with the Department's administrative rules, upon request of Department staff.
 - (f) Not bill a Department client for an amount collected by the Department to recover an overpayment or an amount paid by the Department to a creditor of the provider because of a lien, garnishment, or other legal process.

(3) The provider must not have a history of behavior that indicates a substantial risk to the health or safety of children in the care of the provider. A single incident may be sufficient history for ineligibility. This determination is based on a review of Criminal History (CH) and CPS records, an investigation of complaints, if any, and information provided by another agency:

(a) The Department may conduct a national criminal history check through the Oregon State Police and the Federal Bureau of Investigation as specified in OAR 410-007-0290 and may withhold authorization for payment to a provider until the check is complete.

(b) If the Department obtains information of a potentially disqualifying crime, potentially disqualifying condition, or child protective services history with respect to the provider or another subject individual, as described in OAR 410-007-0280, 410-007-0290, 461-165-0410, or 461-165-0420, the Department will conduct a weighing test as described in OAR 410-007-0200 to 410-007-0380.

(c) If the Department obtains information regarding eligibility under this rule that indicates a substantial risk to the health or safety of children in the care of the provider, the Department may conduct a weighing test as described in OAR 410-007-0200 to 410-007-0380.

(4) Each provider must meet the requirements of either subsection (a) or (b) of this section:

(a) A provider subject to OAR 414-205-0000 to 414-205-0170, 414-300-0000 to 414-300-0440, or 414-350-0000 to 414-350-0250 must be currently certified or registered with the Child Care Division (CCD) of the Employment Department and be in compliance with the applicable rules.

(b) A provider exempt from the rules specified in subsection (a) of this section must meet all of the following requirements:

(A) Submit names of the following persons together with their authorizations for a record check through the CH record system maintained by the Oregon State Police and the CPS record system maintained by the Department:

(i) The provider and each person the provider uses to supervise children in his or her absence.

(ii) In the case of a provider who provides care for children in the provider's home:

(I) Each person 16 years of age or older who lives in the provider's home; and

(II) Each person who frequently visits the home of the provider during the hours care is provided and may have unsupervised access to a child there.

(iii) The site director of a child care facility exempt from the requirement to be certified by CCD, and each employee of the facility who may have unsupervised access to children in the facility.

(B) Be in such physical and mental health as will not adversely affect his or her ability to care for a child in care.

(C) Be 18 years of age or older.

(D) Report to the Department, with respect to any person covered by paragraph (A) of this subsection, any arrest and any involvement with CPS or any other agency that provides child protective services.

(E) Report to the Department within 10 days of occurrence any change to his or her name or address and the addition of any person or employee to the household or facility.

(F) Report suspected child abuse of any child in his or her care to CPS or a law enforcement agency.

(G) Supervise each child in care at all times.

(H) Prevent persons who have demonstrated behavior that may have a detrimental effect on a child from having access to the children in his or her care.

(I) Allow custodial parents of children in his or her care to have immediate access to their children at all times.

(J) Inform parents of the need to obtain immunizations for their children.

(K) Take reasonable steps to protect children in his or her care from the spread of infectious diseases.

(L) Provide, in a manner specified by the Department, information required to conduct CH and CPS records checks or determine whether the provider meets health and safety requirements.

(M) Ensure that the facility where care is provided meets all of the following standards, unless the care is provided in the home of the child, except that a provider who provides care where the child lives must meet only the requirements of subparagraph (iii) of this paragraph.

(i) The facility has safe drinking water.

(ii) The facility has a working smoke detector on each floor level and in any area where children nap.

(iii) All floor levels used by children have two usable exits to the outdoors (a sliding door or window that can be used to evacuate children is considered a usable exit), or, if a second floor is used for child care, the provider has a written plan for evacuating children in an emergency.

(iv) Fireplaces, space heaters, electrical outlets, wood stoves, stairways, pools, ponds, and other hazards have barriers to protect children.

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(v) Firearms, ammunition, and other dangerous items such as medicine, drugs, cleaning supplies, paints, plastic bags, and poisonous and toxic materials are kept in a secure place out of children's reach.

(vi) The building, grounds, toys, equipment, and furniture are maintained in a clean, sanitary, and hazard-free condition.

(vii) The facility has a telephone in operating condition.

(N) Complete and submit a new listing form every two years, or sooner at the request of the Department, in order for the Department to review eligibility.

(5) A provider is not eligible to receive a child care payment if the Department has referred an overpayment against the provider to a collection agency and the claim is unsatisfied.

(6) Ineligibility for payment may result from any of the following:

(a) A finding of "failed". The Department may determine, based on a specific eligibility requirement and the evidence, that a provider has failed to meet eligibility requirements listed in this rule. A provider with a status of "failed" may reapply at any time with documents and information to the Department for review. If documents and information show that the provider meets the eligibility requirements, the Department will approve the provider for payment if there is no other basis for ineligibility.

(b) A finding of "denied". If, after conducting a weighing test as described in section (3) of this rule, the Department finds substantial risk to the health or safety of children in the care of the provider, the provider will be denied and will be ineligible for payment. Providers who have been denied have hearing rights as described in OAR 410-007-0330.

Stat. Auth.: ORS 181.537 & 411.060

Stats. Implemented: ORS 181.537, 411.060 & 411.122

Hist.: AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 17-1994(Temp), f. & cert. ef. 8-15-94; 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 2-1997, f. 2-27-97, cert. ef. 3-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 12-1997, f. & cert. ef. 8-25-97; AFS 14-1999, f. & cert. ef. 11-1-99; 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 12-2001, f. 6-29-01, cert. ef. 7-1-01; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 13-2004, f. 4-29-04, cert. ef. 5-1-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 6-2005(Temp), f. & cert. ef. 4-25-05 thru 9-30-05; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07

461-170-0020

Changes That Must be Reported; FS, MAA, MAF, SAC, TANF

(1) Clients in the FS, MAA, MAF, SAC, and TANF programs are required to report all applicable changes described in this rule.

(2) Clients must report each of the following changes within 10 days of occurrence, unless the client is required to report the change by section (7) or (8) of this rule or is exempted from the reporting requirement by section (9) of this rule:

(a) A change in employment, including getting, changing, quitting, or losing a job.

(b) A change in source of income.

(c) A change in earned income of more than \$100 a month, except a change due to an annual adjustment in the Oregon minimum wage.

(d) A change in unearned income of more than \$50, except a change in a public assistance grant.

(3) Clients must report each of the following changes within 10 days of occurrence, unless the client is required to report the change by section (8) of this rule or is exempted from the reporting requirement by section (9) of this rule:

(a) The acquisition or change in ownership of non-excluded vehicles.

(b) The sale or receipt of resources that cause total resources to exceed program resource limits.

(4) In the MAA, MAF, SAC, and TANF programs, clients must report a member of the filing group becoming pregnant. The report must be received by the Department not later than the 10th day after the client becomes aware of the pregnancy.

(5) In the MAA, MAF, SAC, and TANF programs, clients must report each of the following changes within 10 days of occurrence:

(a) A change in the members of the household group (see OAR 461-110-0210) and any resulting change in income.

(b) A change in residence.

(c) A change in who pays the shelter costs if the costs were or will be paid by a non-custodial parent.

(6) In the FS program, clients must report each of the following changes within 10 days of occurrence, unless the client is required to report the change by section (8) of this rule or is exempted from the reporting requirement by section (9) of this rule:

(a) A change in residence and the shelter costs in the new residence.

(b) A change in members of the filing group (see OAR 461-110-0370) and any resulting change in income.

(c) A change in the legal obligation to pay child support.

(7) Clients in the monthly reporting system (MRS) must report changes in income as required by the rules applicable to the Monthly Change Report.

(8) In the FS program, clients in the simplified reporting system (SRS) must report:

(a) By the 10th day of the month following the month of occurrence, when any of the following paragraphs applies:

(A) Monthly income exceeds the countable income limit in the FS program.

(B) Monthly income exceeds 185 percent of the federal poverty level. The requirement of this paragraph only applies to households in which all members are elderly or have a disability (see OAR 461-001-0015), there is no earned income, and income at certification exceeded the countable income limit.

(C) Their mailing address changes.

(b) On the interim change report, all other changes not covered by subsection (8)(a) of this rule.

(9) In the FS program, clients participating in the transitional benefit alternative (TBA) are not required to report changes.

Stat. Auth.: ORS 411.060, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.105, 411.816, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1992, f. & cert. ef. 5-1-92; AFS 17-1992, f. & cert. ef. 7-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 19-1994, f. & cert. ef. 9-1-94; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 25-1998, f. 12-18-98, cert. ef. 1-1-99; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 11-1999, f. & cert. ef. 10-1-99; AFS 24-2002(Temp), f. 12-31-02, cert. ef. 1-1-03 thru 6-30-03; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 13-2003, f. 6-12-03, cert. ef. 6-16-03; SSP 20-2003, f. & cert. ef. 8-15-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 16-2005, f. & cert. ef. 12-1-05; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07

461-170-0101

Semiannual Reporting System (SRS); FS

(1) OAR 461-170-0101 to 461-170-0104 establish and explain the simplified reporting system (SRS) used in the Food Stamp program.

(2) Clients certified to receive food stamps for six months or longer may participate in SRS.

(3) Unless there is no earned income and all members of a filing group are *elderly* or persons with a *disability* (see OAR 461-001-0015), a filing group (see OAR 461-110-0370) may participate in SRS if the certification period (see OAR 461-001-0000) is no longer than six months and the group:

(a) Contains a migrant or seasonal farm worker (see OAR 461-001-0015); or

(b) Contains only homeless (see OAR 461-001-0015) individuals.

(4) A filing group may not participate in SRS and is removed from SRS if the group:

(a) Includes an individual who is in the monthly reporting system for another program; or

(b) Contains an individual who is receiving benefits from the ERDC program.

Stat. Auth.: ORS 411.816

Stats. Implemented: ORS 411.816

Hist.: SSP 20-2003, f. & cert. ef. 8-15-03; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 16-2005, f. & cert. ef. 12-1-05; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07

461-170-0102

Required Reports for the Semiannual Reporting System (SRS) — Interim Change Report; FS

(1) During the sixth month of a certification period (see OAR 461-001-0000), a client participating in SRS and certified for food stamps for longer than six months must submit to the Department, on a form designated by the Department, an interim change report of household circumstances, unless the household has no earned income and all members are elderly or individuals with a disability (see OAR 461-001-0015).

(2) The required interim change report is considered complete when it is received by the Department by the last day of the sixth month of the certification period and:

(a) The client completely and accurately answers all questions necessary to determine eligibility and benefit amounts;

(b) The client provides all required verification; and

(c) The form contains the signature of the primary person (see OAR 461-001-0015) or the authorized representative.

Stat. Auth.: ORS 411.816

Stats. Implemented: ORS 411.816

Hist.: SSP 20-2003, f. & cert. ef. 8-15-03; SSP 16-2005, f. & cert. ef. 12-1-05; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07

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461-170-0103

Actions Resulting From Changes in Household Circumstances; Simplified Reporting System (SRS); FS

In the Food Stamp program, benefits may be changed for a client using SRS — based on information obtained other than through the interim change report — only as follows:

(1) The benefit level will be increased if the information demonstrates the client is eligible for greater benefits.

(2) The benefits will be closed or reduced if any of the following subsections apply:

(a) The household requests a closure of benefits.

(b) The action is based on information that is verified upon receipt. Information is considered verified upon receipt if:

(A) It is not questionable and the person making the report has first-hand knowledge of the information reported; or

(B) Verification is provided with the reported change in accordance with OAR 461-115-0651.

(c) The client reports information that results in loss of eligibility for the FS program.

(d) The client reports financial group (see OAR 461-110-0530) income exceeding the countable income limit.

(e) The client reports financial group income exceeding 185 percent of the federal poverty level.

(3) The Department acts on information reported through computer matches when the interim change report is processed, when the client is recertified, or when the monthly match with the Department of Corrections indicates a member is incarcerated.

Stat. Auth.: ORS 411.816

Stats. Implemented: ORS 411.816

Hist.: SSP 20-2003, f. & cert. ef. 8-15-03; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 16-2005, f. & cert. ef. 12-1-05; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07

461-170-0130

Acting on Reported Changes; EXT, GAM, MAA, MAF, OSIPM, SAC

(1) When an EXT, GAM, MAA, MAF, OHP, OSIPM, QMB, or SAC client, who is required by this division of rules to report a change in circumstances, makes a timely report of a change that could reduce or end medical benefits, the Department must review each individual in the filing group for other medical program eligibility prior to reducing or ending medical benefits.

(2) If the Department needs additional information to act on the timely reported change, members of the benefit group (see OAR 461-110-0750) remain eligible from the date the change was reported until the Department determines their eligibility in accordance with the application processing time frames in OAR 461-115-0190.

Stat. Auth.: ORS 409.050 & 411.060

Stats. Implemented: ORS 409.050, 411.060

Hist.: SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 9-2006(Temp), f. & cert. ef. 6-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07

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)(b)(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) In the Food Stamp program:

(A) The decision notice must also state the client's right to continue benefits, under what circumstances benefits will be continued pending a hearing, and the liability the client's household will incur for any overissued benefits if the hearing decision is adverse to the client.

(B) The requirements in subsection (1)(d) of this rule are optional. A decision notice may indicate instead that clients may contact their local office or worker for additional information.

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 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

461-175-0222

Notice Situations – Expiration of Certification Period; FS

In the Food Stamp program:

(1) The Department must provide households certified for one month or certified in the second month of a two-month certification period a notice of expiration at the time of certification.

(2) All households other than those covered under section (1) of this rule must receive a notice of expiration before the first day of the last month of the certification period (established per OAR 461-115-0450), but not before the first day of the next-to-the-last month.

(3) Notice of expiration under this rule is provided to the filing group (see OAR 461-110-0370) and must contain all of the following:

(a) The date the certification period expires.

(b) The date by which a household must submit an application for recertification in order to receive uninterrupted benefits.

(c) The consequences of failure to apply for recertification in a timely manner.

(d) The right to receive an application form upon request and to have it accepted as long as it contains a signature and a legible name and address.

(e) Information on alternative submission methods available to households that cannot come into the certification office or do not have an authorized representative and how to exercise these options.

(f) The address of the office where the application must be filed.

(g) The household's right to request a contested case if the recertification is denied or if the household objects to the benefit issuance.

(h) A statement that any household consisting only of Supplemental Security Income (SSI) applicants or recipients is entitled to apply for food stamp recertification at an office of the Social Security Administration.

(i) A statement that failure to attend an interview may result in delay or denial of benefits.

(j) A statement that the household is responsible for rescheduling a missed interview and for providing required verification information.

(k) A statement that the client has no rights to continuation of benefits after the FS certification period expires; and that to receive benefits, the client must reapply and be found eligible for a new benefit amount after the end of the certification period, including a client who is receiving continuation of benefits when their FS certification period ends.

Stat. Auth.: ORS 411.816

Stats. Implemented: ORS 411.816

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 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; Renumbered from 461-115-0510, SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07

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).

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(c) OAR 461-175-0010(2) modifies content requirements for the decision notice that apply to other decision notices under OAR 461-175-0010(1)(b) and (d).

(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, 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 13-1994, 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

461-180-0085

Effective Dates; Redeterminations of EXT, GAM, MAA, MAF, OHP, OSIPM, SAC

In the EXT, GAM, MAA, MAF, OHP, OSIPM, QMB, and SAC programs, when the Department initiates a redetermination of eligibility, the Department must review each individual in the filing group for other medical program eligibility prior to reducing or ending medical benefits. If additional information is needed to redetermine eligibility, members of the benefit group (see OAR 461-110-0750) remain eligible from the date the review is initiated until the Department determines their eligibility in accordance with the application processing time frames in OAR 461-115-0190.

Stat. Auth.: ORS 409.050 & 411.060

Stats. Implemented: ORS 409.050 & 411.060

Hist.: SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 9-2006(Temp), f. & cert. ef. 6-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07

461-180-0090

Effective Dates; Initial Month Medical Benefits

The effective date for starting medical benefits for an eligible client is as follows:

(1) In the EXT program, it is the first of the month following the month that MAA or MAF program benefits end.

(2) In the GAM, MAA, MAF, OHP, OSIPM, QMB-DW, REFM, and SAC programs:

(a) Except as provided for in sub-section (b) of this section:

(A) If the client meets all eligibility requirements on the date of request (see OAR 461-115-0030), it is the date of request. An OSIPM client who is assumed eligible under OAR 461-135-0010(7) meets "all eligibility requirements" for the purposes of this section as follows:

(i) Effective the first day of the month of the initial SSI payment if the client is age 21 or older.

(ii) Effective the first day of the month prior to the month of the initial SSI payment if the client is under the age of 21.

(B) If the client does not meet all eligibility requirements on the date of request, it is the first day following the date of request that all eligibility requirements are met.

(b) If the client does not complete the application within the time period described in OAR 461-115-0190 (including the authorized extension), the determination of an effective date requires a new date of request.

(3) In the QMB-BAS program, it is the first of the month after the benefit group has been determined to meet all QMB-BAS eligibility criteria and the Department receives the required verification.

(4) In the QMB-SMB program, it is the first of the month in which the benefit group meets all QMB-SMB eligibility criteria and the Department receives the required verification.

(5) Retroactive eligibility is authorized under certain circumstances in some medical programs (see paragraph (2)(a)(A) of this rule, OAR 461-135-0875, and 461-180-0140).

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 1-1993, f. & cert. ef. 2-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 5-2000, f. 2-29-00, cert. ef. 3-1-00; SSP 5-2003, f. 2-26-03, cert. ef. 3-1-03; SSP 23-2003, f. & cert. ef. 10-1-03; 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 15-2006, f. 12-29-06, cert. ef. 1-1-07

461-185-0050

Client Pay-In System

(1) Except as provided in sections (2) and (3) of this rule, a client who receives waived in-home services and has countable income above the payment standard for the benefit group must pay to the Department the lesser of the following amounts as a condition of being eligible for waived in-home services:

(a) The difference between their adjusted income and the payment standard for the number in the benefit group.

(b) The actual cost of the waived service.

(2) The service liability of clients in the OSIP-IC and OSIPM-IC programs is calculated in accordance with section (1) of this rule. Clients in the OSIP-IC and OSIPM-IC programs do not pay the Department directly. The IC service payment of these clients will be reduced by the amount of their liability.

(3) A client exempt from payments under OAR 461-160-0610(2) is exempt from the payment required by this rule.

(4) Each month, the Department will send the client an invoice requesting payment based on the calculation in section (1) of this rule.

(5) Payments must be received by the Department in the month of service.

Stat. Auth.: ORS 411.060, 411.070, 414.042

Stats. Implemented: ORS 411.060, 411.070, 414.042

Hist.: AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 11-2001, f. 6-29-01, cert. ef. 7-1-01; SSP 8-2005(Temp), f. & cert. ef. 7-1-05 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

461-190-0197

Microenterprise Component

(1) The microenterprise component is a component in which a TANF client who is self-employed (see OAR 461-145-0910) can meet participation requirements of the JOBS program by working in a microenterprise (see OAR 461-001-0000).

(2) The Department will authorize a client to participate in the microenterprise component if the client is self-employed in a microenterprise and provides the Department with:

(a) A business plan for the microenterprise; and

(b) Approval of the business plan by an expert third party entity such as the United States Small Business Administration, a member program of the Oregon Microenterprise Network, the Service Corps of Retired Executives (SCORE), or an entity approved by the Department.

(3) The business plan required by section (2) of this rule must include provisions for review of the client's progress in the microenterprise by the approving entity.

(4) The Department may require a client to participate in other JOBS activities while participating in the microenterprise component. A client participating in the microenterprise component must:

(a) Participate in the microenterprise component for the number of hours required by the rules of the JOBS program; or

(b) Participate in the microenterprise component and other JOBS activities identified in the case plan for the number of hours required by the case plan.

(5) A client participating in the microenterprise component must provide semiannually to the Department a statement of the client's income prepared by a certified public accountant, bookkeeping firm, or other entity approved by the Department according to generally accepted accounting principles and OAR 461-145-0920.

(6) The Department will not authorize JOBS funds to be used for equipment, supplies, wages, or other business expenses that support the microenterprise.

Stat. Auth.: ORS 411.060 & 418.100

Stats. Implemented: ORS 411.060 & 418.100

Hist.: SSP 23-2003, f. & cert. ef. 10-1-03; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07

461-190-0310

Limits to OFFSET Components and Activities

In the Food Stamp OFFSET program:

(1) The case plan (see OAR 461-001-0020) may not require more than 120 hours of activities each month.

(2) The client may not be required to participate in only job search (see OAR 461-001-0020) activities for more than eight weeks a year.

Stat. Auth.: ORS 411.816

Stats. Implemented: ORS 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 18-1998, f. & cert. ef. 10-2-98; 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 13-2002, f. & cert. ef. 10-1-02; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07

461-195-0301

Definitions

For purposes of OAR 461-195-0301 to 461-195-0350, the following definitions shall apply:

(1) "Action" means an action, suit, or proceeding.

(2) "Applicant" means an applicant for assistance.

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(3) "Assistance" means moneys for a recipient's needs and for the needs of other individuals living with the recipient whom the recipient has an obligation to support which are paid by the Department or by a prepaid managed care health services organization for services provided under contract pursuant to ORS 414.725 either directly to the recipient or to others for the benefit of the recipient. Assistance includes both cash and medical assistance. The medical and cash assistance must be directly related to the personal injury. Assistance does not include Food Stamp benefits. Assistance is received by the recipient on the date of issuance of a check for cash assistance and the date of service for medical assistance, regardless of the actual payment date by the Department or the prepaid managed care health services organization.

(4) "Claim" means a legal action or a demand by, or on behalf of, a recipient for damages for or arising out of a personal injury which is against any person, public body, agency, or commission other than the State Accident Insurance Fund Corporation or Workers' Compensation Board.

(5) "Compromise" means a compromise between a recipient and any person or public body, agency or commission against whom the recipient has a claim.

(6) "Judgment" means a judgment in any action or proceeding brought by a recipient to enforce the claim of the recipient.

(7) "Net settlement" means the amount of the judgment, settlement, or compromise to which the lien attaches, as follows: the amount of the judgment, settlement, or compromise, minus the attorney fees and costs in OAR 461-195-0305(3), and minus personally incurred medical costs (in OAR 461-195-0305(4)) and personal injury protection (PIP — see ORS 742.520). Net settlement is the amount that is available for release or compromise of lien pursuant to OAR 461-195-0325.

(8) "Personal injury" means a physical or emotional injury to an individual including but not limited to assault, battery, or medical malpractice arising from such physical or emotional injury.

(9) "Prepaid managed care health services organization" means a managed health, dental or mental health care organization that contracts with the Department on a prepaid basis under the Oregon Health Plan pursuant to ORS 414.725. Prepaid managed care health organizations may be dental care organizations, fully capitated health plans, mental health organizations, physician care organizations, or chemical dependency organizations.

(10) "Recipient" means an individual who receives assistance or whose needs are included in a public assistance grant.

(11) "Settlement" means a settlement between a recipient and any person or public body, agency or commission against whom the recipient has a claim.

Stat. Auth.: ORS 409.050, 411.060 & 416.510 - 416.610
Stats. Implemented: ORS 25.020, 25.080, 409.020, 411.060, 416.510-416.610
Hist.: AFS 62-1989, f. 10-5-89, cert. ef. 10-15-89; AFS 26-1993, f. 10-29-93, cert. ef. 11-1-93; Renumbered from 461-010-0100; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07

461-195-0305

Lien of the Department

(1) Whenever a recipient has a claim for damages for a personal injury, the Department shall have a lien upon the amount of any judgment in favor of a recipient or amount payable to the recipient under a settlement or compromise as a result of that claim for all assistance received from the date of the injury to:

(a) The date of satisfaction of the judgment favorable to the recipient; or

(b) The date of the payment under the settlement or compromise.

(2) The person or public body, agency or commission bound by the judgment, settlement, or compromise shall be responsible for immediately informing the Department's Personal Injury Liens Unit when a judgment has been issued or a settlement or compromise has been reached so that the exact amount of the Department's lien may be determined. For the purposes of this rule, immediately means within ten calendar days. If the Department is not timely notified, the 180 day limitation in ORS 416.580(1) does not begin to run until the Department's Personal Injury Liens Unit has actual notice of a settlement, compromise, or judgment.

(3) The lien will not attach to the amount of any judgment, settlement, or compromise to the extent of the attorney fees, costs and expenses which the Recipient incurred in order to obtain that judgment, settlement, or compromise.

(4) The lien will not attach to the amount of any judgment, settlement, or compromise to the extent of medical, surgical and hospital expenses personally incurred by such recipient on account of the personal injury giving rise to the claim, for which assistance was not provided or paid. For purposes of OAR 461-195-0301 to 461-195-0350, personally incurred expenses

are limited to those expenses not covered by the Department, and for which the client is personally liable at the time of judgment, settlement, or compromise.

(5) The Department's lien must be satisfied or specific approval must be given by the Department's Personal Injury Liens Unit's staff before any portion of the claim judgment, settlement, or compromise is released to the recipient. There is a rebuttable presumption that the entire proceeds from any judgment, settlement, or compromise, are, unless otherwise identified, in payment for medical services. The Department shall have a cause of action against any person, public body, agency, or commission bound by the judgment, settlement, or compromise who releases any portion of the claim judgment, settlement, or compromise to the recipient before meeting this obligation.

Stat. Auth.: ORS 409.050, 411.060 & 416.510 - 416.610
Stats. Implemented: ORS 25.020, 25.080, 409.020, 411.060, 416.510-416.610
Hist.: AFS 62-1989, f. 10-5-89, cert. ef. 10-15-89; AFS 26-1993, f. 10-29-93, cert. ef. 11-1-93; Renumbered from 461-010-0105; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07

461-195-0310

Notice of Claim or Action by Applicant or Recipient

(1) An applicant for or recipient of assistance who has a claim for a personal injury or begins an action to enforce such claim, or the attorney or authorized representative (see OAR 461-115-0090) for the applicant or recipient, is required to notify the Department and the prepaid managed care health services organization of the recipient, if the recipient is receiving services from the organization, within ten days of initiating that claim or action, unless the action was initiated prior to the application for assistance.

(a) If the action was initiated prior to the application for public assistance, the applicant must notify the Department at the time of application.

(b) The notification must include:

(A) The names and addresses of all parties against whom the action is brought or claim is made;

(B) A copy of each claim demand; and

(C) If an action is brought, identification of the case number and the county where the action is filed.

(c) A parent, guardian, foster parent or caretaker relative must make the notification on behalf of an injured minor or incompetent adult.

(2) The reporting requirements in section (1) of this rule are mandatory reporting requirements.

(3) Notification by an attorney or authorized representative for an applicant or recipient or other person required to provide notification must be sent to the Personal Injury Liens Unit, Office of Payment Accuracy and Recovery, Department of Human Services, either by mail or fax.

(4) The mailing address for the Personal Injury Liens Unit is: Personal Injury Liens Unit, PO Box 14512, Salem OR 97309-0416.

(5) The Personal Injury Liens Unit's fax number is (503) 378-2577 and telephone number is (503) 378-4514.

(6) If an applicant for or recipient of assistance fails to give the notification as required by this rule, the Department or the prepaid managed care health services organization of the recipient, if the recipient is receiving services from the organization, will have a cause of action under ORS 416.610 against the recipient for amounts received by the recipient pursuant to a judgment, settlement, or compromise to the extent that the Department or the prepaid managed care health services organization could have had a lien against such amounts had such notice been given. At least 30 days prior to commencing an action under ORS 416.610, the Personal Injury Liens Unit and the prepaid managed care health services organization, if any, must consult with each other.

Stat. Auth.: ORS 411.060
Stats. Implemented: ORS 411.620, 416.510-416.610
Hist.: AFS 62-1989, f. 10-5-89, cert. ef. 10-15-89; AFS 26-1993, f. 10-29-93, cert. ef. 11-1-93; Renumbered from 461-010-0110; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07

461-195-0325

Release or Compromise of Lien

(1) If the Department has not assigned a lien to a prepaid managed care health services organization (organization) or if the organization failed to perfect its assigned lien, the Department may release or compromise its lien — for the amount of the settlement, compromise, or judgment that is subject to the lien — and distribute collections under its lien as follows:

(a) To the Department, an amount equal to the State share of Department's assistance expenditures for the amount of the settlement, compromise, or judgment that is subject to the lien.

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(b) To the federal government, the federal share of the Department's assistance expenditures for the amount of the settlement, compromise, or judgment that is subject to the lien, pursuant to applicable law.

(c) To the recipient, any remaining amount after distributions provided for in subsections (a) and (b) of this section. The amount distributed to the recipient must be treated as income or resources consistent with applicable law.

(2) If the Department has assigned a lien to a prepaid managed care health services organization (organization) and the organization properly perfected its lien, the Department and the organization may release or compromise and distribute collections under the liens for the amount of the settlement, compromise, or judgment that is subject to the lien, consistent with OAR 461-195-0305(5), as follows:

(a) To the Department, an amount equal to the State share of assistance and the federal share of medical assistance expenditures for the amount of the settlement, compromise, or judgment that is subject to the lien.

(b) The Department will reimburse to the federal government, the federal share of the State assistance expenditures for the amount of the settlement, compromise, or judgment that is subject to the lien for which federal match was claimed by the Department.

(c) To the organization, the assistance expenditures subject to the lien by the organization except as otherwise provided in subsections (a) and (b) of this section.

(d) To the recipient, the amount remaining after the distributions provided for in subsections (a), (b), and (c) of this section. The amount distributed to the recipient must be treated as income or resources consistent with applicable law.

(e) As between the Department and the organization after the distributions provided for in subsections (a), (b), (c) and (d) of this rule, ORS 416.540(6) requires that the Department's lien must be satisfied first.

Stat. Auth.: ORS 409.050, 411.060 & 416.510 - 416.610

Stats. Implemented: ORS 25.020, 25.080, 409.020, 411.060, 416.510-416.610

Hist.: AFS 18-1991, f. 9-30-91, cert. ef. 10-1-91; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07

461-195-0511

Child Care Overpayments

This rule defines overpayments in the Department's child care programs and explains when clients and providers are liable for an overpayment.

(1) A child care overpayment is a payment for child care made by the Department to or on behalf of a client that is paid to an ineligible provider or exceeds the amount authorized by law for the care provided, except that it is not a child care overpayment if any of the following subsections apply:

(a) A client fails to make a required report of a change in income during a reporting period, other than the changes covered in OAR 461-170-0015.

(b) The total due and paid to two or more providers exceeds the monthly limit the Department may pay on behalf of the client. The exception provided by this subsection does not apply if:

(A) Two or more providers are paid at the full-time rate; or

(B) One of the providers provides child care under a contract with the Department.

(c) A client unintentionally provides an inaccurate estimate of prospective income or other information.

(d) A client would otherwise be eligible for a payment and provides inaccurate information due to an aspect of a documented disability of the client.

(2) A child care payment is a client overpayment if made for care provided when a client was not:

(a) Engaged in an activity that made the client eligible for child care, such as an activity of the JOBS program (see OAR 461-001-0025 as well as 461-190-0151 and following); or

(b) Eligible for child care benefits.

(3) A child care overpayment occurring after November 30, 1999, not caused by the client or the provider is collectible as follows:

(a) The provider is liable for a provider overpayment made on behalf of a client eligible for child care payments.

(b) The client is liable for an overpayment if the client was not eligible for the payment.

(4) A client is liable for a client overpayment, and a provider is liable for an overpayment caused by the provider. The client and provider are jointly and severally liable for an overpayment caused by both. In the case of an alleged provider overpayment, a provider's failure to provide con-

temporaneous records of care provided creates a rebuttable presumption that the care was not provided.

(5) The Department may recover a child care overpayment for which a provider is liable by reducing up to 100 percent any future child care payments for which the provider bills the Department.

(6) An adult who cosigned an application with a minor provider applicant is responsible to repay an overpayment incurred by the minor provider.

Stat. Auth.: ORS 411.060 & 418.100

Stats. Implemented: ORS 411.060, 411.122 & 418.100

Hist.: AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; 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 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 19-2001, f. 8-31-01, cert. ef. 9-1-01; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07

461-195-0541

Liability for Overpayments and Trafficking

(1) For all programs except BCCM, EXT, FS, GAM, MAA, MAF, OHP, OSIPM, QMB, REFM, and SAC, the following individuals are liable for repayment of an overpayment:

(a) Each individual included in the benefit group (see OAR 461-110-0750) when the overpayment was incurred, except for individuals who did not reside with, and did not know they were included in, the benefit group.

(b) A caretaker relative (see OAR 461-001-0000) and his or her spouse (see OAR 461-001-0000) who were not part of, but resided with, the filing group when the overpayment was incurred.

(c) If an individual currently in a benefit group is liable for an overpayment, the entire benefit group is liable for the overpayment. In this case, the Department will not collect from the benefit group until it has unsuccessfully attempted to collect the overpayment from all other liable individuals.

(2) In the Food Stamp program, the following individuals are liable for repayment of an overpayment or a claim that results from trafficking (see OAR 461-195-0501(3)):

(a) The primary person (see OAR 461-001-0015) of any age, an ineligible student in the household, and all adults who were members of the filing group (see OAR 461-110-0370) when excess benefits were issued, except no member of a financial group (see OAR 461-110-0530) is liable for an overpayment caused by a change the group was not required to report.

(b) A sponsor of a non-citizen household member if the sponsor is at fault.

(c) A drug or alcohol treatment center or residential care facility that acted as the authorized representative of the client if this authorized representative gave incorrect or incomplete information or withheld information resulting in the overpayment.

(3) In the BCCM, EXT, GAM, MAA, MAF, OHP, OSIPM, QMB, REFM, and SAC programs, the following individuals are liable for repayment of an overpayment:

(a) The primary person, if that person is an adult, and all other adults in the filing group except the following:

(A) An adult not in the benefit group, except a parent (see OAR 461-001-0000) of a child (see OAR 461-001-0000) in the benefit group.

(B) An adult who was in the benefit group when the overpayment occurred but who did not live with the benefit group and was unknowingly in the benefit group.

(b) If an individual currently in a benefit group is liable for an overpayment, the entire benefit group is liable for the overpayment. In this case, the Department will not collect from the benefit group until it has unsuccessfully attempted to collect the overpayment from all other liable persons.

(4) In all programs, both the non-citizen and the sponsor of a non-citizen are liable for an overpayment incurred if the overpayment results from the failure of the sponsor to provide correct information (see OAR 461-145-0820 to 461-145-0840). If the sponsor had good cause for withholding the information, the non-citizen alone is liable for the overpayment.

Stat. Auth.: ORS 411.060, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.630, 411.635, 411.640, 411.650, 411.690, 411.816, 418.100

Hist.: AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07

461-195-0611

Intentional Program Violations; Establishment and Appeal

(1) In the ERDC, Food Stamp, and TANF programs, an IPV is established by a state or federal court, by an administrative agency in a contested case, or by a person signing the designated form acknowledging the IPV

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and waiving the right to an administrative hearing. If the IPV will be established in a contested case, the Department initiates the IPV hearing.

(2) Except as provided in section (3) of this rule, there is no administrative appeal after a person waives the right to an IPV hearing and the penalty may not be changed by subsequent administrative action.

(3) A person who waives the right to an IPV hearing may seek relief in court or request a contested case hearing on the sole issue of whether the waiver was signed under duress (see OAR 461-025-0310). If there is a determination that the waiver was signed under duress, the initial IPV penalty is void, and:

(a) If a court determines that a waiver was signed under duress, the court may determine whether an IPV occurred and the amount of the penalty.

(b) If an administrative law judge determines that a waiver was signed under duress, the Department may initiate an IPV hearing to determine whether an IPV occurred and the amount of the penalty.

Stat. Auth.: ORS 411.060, 411.095, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.095, 411.816, 418.100

Hist.: AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07

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

Adm. Order No.: SSP 16-2006(Temp)

Filed with Sec. of State: 12-29-2006

Certified to be Effective: 1-1-07 thru 3-31-07

Notice Publication Date:

Rules Amended: 461-140-0242, 461-145-0540, 461-180-0044

Subject: 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 restore language to the rule that was inadvertently dropped in the July 1, 2006 amendment. The language that is being restored applies to transfers after July 1, 2006 and requires that in order for a transfer of assets from a client to a spouse or child with a disability to not be considered a disqualifying transfer, the transfer must be made for the sole benefit of that child or spouse. In addition, this rule is being amended to add language to specify that a transfer of assets to a trust under OAR 461-145-0540(10) is not disqualifying only if the trust is established for the sole benefit of an individual with a disability who is under the age of 65.

OAR 461-145-0540 about the treatment of trusts in the eligibility process for medical assistance, public assistance, and food stamps is being amended to state that clients in the OSIPM (Oregon Supplemental Income Program Medical, providing medical coverage to the elderly and people with disabilities) and QMB (Qualified Medicare Beneficiary) programs who obtain pooled trusts meeting the criteria of the rule will not have the trust counted as a resource in the Medicaid eligibility decision and that a client who obtains a pooled trust, signed on or after July 1, 2006, when he or she is age 65 or older may have a disqualifying transfer of assets penalty to serve.

OAR 461-180-0044 concerning the Oregon Supplemental Income Program-Medical (OSIPM— providing medical coverage to the elderly and individuals with disabilities) is being amended to correct a cross reference to another rule.

Rules Coordinator: Annette Tesch—(503) 945-6067

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).

(d) The transfer was made to a trust described in OAR 461-145-0540(10) established solely for the benefit of an individual under 65 years of age who has a disability that meets the criteria of the Social Security Administration. This subsection applies to all transfers made on or after July 1, 2006.

(e) The transfer is a transfer described in OAR 461-160-0580(2).

(f) The resource is transferred by the community spouse after the Department has determined the community spouse's resource allowance in accordance with OAR 461-160-0580 and the resource has not been attributed to the institutionalized spouse. Notwithstanding this subsection, a transfer of a resource by a community spouse who is receiving or applying for benefits remains subject to all rules regarding the transfer of an asset by a client.

(2) A transfer of a home by a client or the spouse of the client is a disqualifying transfer unless the title was transferred to the client's:

(a) Child under age 21;

(b) Sibling who has equity interest in the home and was residing in the home for at least one year immediately before the client's admission to long-term care; or

(c) Son or daughter who resided with the client for at least two years immediately prior to the client's admission to long-term care and provided care that permitted the client to reside at home rather than in an institution or long-term care facility. A son or daughter provides the care required by this subsection by doing at least five of the following for the client on a regular basis, without receiving payment from the Department:

(A) Prepares meals.

(B) Shops for food and clothing.

(C) Helps maintain the home.

(D) Assists with financial affairs.

(E) Runs errands.

(F) Provides transportation.

(G) Provides personal services.

(H) Arranges for medical appointments.

(I) Assists with medication.

(3) If a transfer described in subsection (1)(a) of this rule is made for less than fair market value, there is a rebuttable presumption that the asset was transferred for the purpose of establishing or maintaining eligibility.

(4) To rebut the presumption in section (3) 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.

(5) The fact that a recipient was already eligible for benefits is not sufficient to rebut the presumption in section (3) 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

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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

461-145-0540

Trusts

(1) This section applies to all trust funds (see OAR 461-001-0000) in the FS, MAA, MAF, OHP, REF, SAC, and TANF programs. It also applies to GA, GAM, OSIP, OSIPM, and QMB for trust funds established before October 1, 1993:

(a) Trust funds are counted as a resource if the fund is legally available for use by a member of the financial group (see OAR 461-110-0530) for items covered by program benefits. In the OSIP, OSIPM, and QMB programs, the amount of the trust that is considered legally available is the maximum amount that could be distributed to the beneficiary under the terms of the trust, regardless of whether the trustee exercises his or her authority to actually make a distribution.

(b) Trust funds are excluded if the fund is not available for use by a member of the financial group. The financial group must try to remove legal restrictions on the trust, unless that would cause an expense to the group.

(c) The part of the fund available for use for medical expenses covered by the medical program for which the financial group is eligible is counted.

(2) In the ERDC program, all trust funds are excluded.

(3) In the OSIP, OSIPM, and QMB programs, trust funds established on or after October 1, 1993, are treated in accordance with sections (4) through (10) of this rule. In the GA and GAM programs, trust funds established on or after October 1, 1993, are treated in accordance with sections (4) through (8) of this rule.

(4) A trust is considered established if the financial group used their resources to form all or part of the trust and if any of the following established a trust, other than by a will:

(a) The client.

(b) The client's spouse.

(c) Any other person, including a court or administrative body, with legal authority to act in place of or on behalf of the client or the client's spouse.

(d) Any other person, including a court or administrative body, acting at the direction or upon the request of the client or the client's spouse.

(5) If the trust contains resources or income of another person, only the share attributable to the client is considered available.

(6) Except as provided in section (9) of this rule, the following factors are ignored when determining how to treat a trust:

(a) The purpose for which the trust was established.

(b) Whether or not the trustees have or exercise any discretion under the trust.

(c) Any restrictions on when or if distributions may be made from the trust.

(d) Any restrictions on the use of distributions from the trust.

(7) If the trust is revocable, it is treated as follows:

(a) The total value of the trust is considered a resource available to the client.

(b) A payment made from the trust to or for the benefit of the client is considered unearned income.

(c) A payment from the trust other than to or for the benefit of the client is considered a transfer of assets covered by OAR 461-140-0210 and following.

(8) If the trust is irrevocable, it is treated as follows:

(a) If, under any circumstances, the funds transferred into the trust are unavailable to the client and the trustee has no discretion to distribute the funds to or for the benefit of the client, the client is subject to a transfer-of-resources penalty as provided in OAR 461-140-0210 and following.

(b) If, under any circumstances, payments could be made to or on behalf of the client, the share of the trust from which the payment could be made is considered a resource. A payment from the trust other than one to or for the benefit of the client is considered a transfer of assets that may be covered by OAR 461-140-0210.

(c) If, under any circumstances, income is generated by the trust and could be paid to the client, the income is unearned income. Payments made for any reason other than to or for the benefit of the client are considered a transfer of assets subject to disqualification per OAR 461-140-0210.

(d) If any change in circumstance makes assets (income or resources) from the trust unavailable to the client, the change is a disqualifying transfer as of the date of the change.

(9) Notwithstanding the provisions above in this rule, the following trusts are not considered in determining eligibility for OSIPM and QMB:

(a) A trust containing the assets of a client determined to have a disability that meets the SSI criteria that was created before the client reached age 65, if the trust was established by one of the following and the state will receive all funds remaining in the trust upon the death of the client, up to the amount of medical benefits provided on behalf of the client:

(A) The client's parent.

(B) The client's grandparent.

(C) The client's legal guardian or conservator.

(D) A court.

(b) A trust established between October 1, 1993 and March 31, 1995 for the benefit of the client and containing only the current and accumulated income of the client. The accumulated amount remaining in the trust must be paid directly to the state upon the death of the client up to the amount of medical benefits provided on behalf of the client. The trust is the total income in excess of the income standard for OSIPM. The remaining income not deposited into the trust is available for the following deductions in the order they appear prior to applying the patient liability:

(A) Personal-needs allowance.

(B) Community spouse monthly maintenance needs allowance.

(C) Medicare and other private medical insurance premiums.

(D) Other incurred medical.

(c) A trust established on or after April 1, 1995 for the benefit of the client and containing the current and accumulated income of the client. The accumulated amount remaining in the trust must be paid directly to the state upon the death of the client up to the amount of medical assistance provided on behalf of the client. The trust contains all of the client's income. The income deposited into the trust is distributed monthly in the following order with excess amounts treated as income to the individual subject to the rules on transfer of assets in division 140 of this chapter of rules:

(A) Personal needs allowance and applicable room and board standard.

(B) Reasonable administrative costs of the trust, not to exceed a total of \$50 per month, including the following:

(i) Trustee fees.

(ii) A reserve for administrative fees and costs of the trust, including bank service charges, copy charges, postage, accounting and tax preparation fees, future legal expenses, and income taxes attributable to trust income.

(iii) Conservatorship and guardianship fees and costs.

(C) Community spouse and family monthly maintenance needs allowance.

(D) Medicare and other private medical insurance premiums.

(E) Other incurred medical costs as allowed under OAR 461-160-0030 and 461-160-0055. Contributions to reserves for personal liabilities including but not limited to child support, alimony, and property and income taxes. Contributions to reserves for the purchase of an irrevocable burial plan on a monthly basis and contributions to a reserve for home maintenance if the client's name remains on the title.

(F) Patient liability not to exceed the cost of waived services or nursing facility services.

(10) This section of the rule applies to a trust signed on or after July 1, 2006.

(a) Notwithstanding the provisions of sections (1) through (8) of this rule, a trust that meets the requirements of subsection (b) of this section is not considered in determining eligibility for OSIPM and QMB, except that if the client is age 65 or older when the trust is funded or a transfer is made to the trust, the transfer may constitute a disqualifying transfer of assets under OAR 461-140-0210 and following.

(b) This section of the rule applies to a trust that meets all of the following conditions:

(A) The trust is established and managed by a non-profit association.

(B) A separate account is maintained for each beneficiary of the trust, but, for purposes of investment and management of funds, the trust pools these accounts.

(C) The trust is established by the client, client's parent, grandparent, or legal guardian or a court for clients who have disabilities.

(D) To the extent that amounts remaining in the beneficiary's account upon the death of the beneficiary are not retained by the trust, the trust pays to the State an amount equal to the total medical assistance paid on behalf of the beneficiary under the State plan for Medicaid.

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(E) The trust contains the resources or income of a client who has a disability that meets the SSI criteria.

(1) In the GA, GAM, OSIP, OSIPM, and QMB programs, the provisions of this rule may be waived for an irrevocable trust if the Department determines that denial of benefits would create an undue hardship on the client if, among other things:

(a) The absence of the services requested may result in a life-threatening situation.

(b) The client was a victim of fraud or misrepresentation.

Stat. Auth.: ORS 411.060, 411.816 & 418.100

Stats. Implemented: ORS 411.060, 411.700, 411.816, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 18-1993(Temp), f. & cert. ef. 10-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 21-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 18-2002(Temp), f. & cert. ef. 11-19-02 thru 5-18-03; SSP 11-2003, f. & cert. ef. 5-1-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 16-2006(Temp), f. 12-29-06, cert. ef. 1-1-07 thru 3-31-07

461-180-0044

Effective Dates; Income Cap Trust

The effective date for an income cap trust that makes a client income-eligible for long term care or waived services under OAR 461-135-0750 and 461-145-0540(9)(c) is the first day of the month in which the trust document is signed.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 16-2006(Temp), f. 12-29-06, cert. ef. 1-1-07 thru 3-31-07

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

Rule Caption: Incorporate statute, housekeeping to clarify intent, update terminology and reorganize rules to assist user.

Adm. Order No.: SPD 31-2006

Filed with Sec. of State: 12-27-2006

Certified to be Effective: 1-1-07

Notice Publication Date: 12-1-06

Rules Adopted: 411-050-0444, 411-050-0491

Rules Amended: 411-050-0400, 411-050-0401, 411-050-0405, 411-050-0408, 411-050-0410, 411-050-0412, 411-050-0415, 411-050-0420, 411-050-0430, 411-050-0435, 411-050-0440, 411-050-0443, 411-050-0445, 411-050-0447, 411-050-0450, 411-050-0455, 411-050-0460, 411-050-0465, 411-050-0480, 411-050-0481, 411-050-0483, 411-050-0485, 411-050-0487

Rules Repealed: 411-050-0437, 411-050-0441, 411-050-0442

Subject: Increased the continuing education requirement from 10 to 12 hours annually, 4 of which may be related to the adult foster home business operation; Updated terminology including references to OAR chapter 410, division 007, Criminal History Check Rules, adapted 3/29/05; Reorganized to assist user in locating specific rules; modified language for consistency with other long-term care facilities and for clarification to help reader understand the intent.

Rules Coordinator: Lisa Richards—(503) 945-6398

411-050-0400

Definitions

For the purpose of these rules, authorized under ORS 443.705 to 443.825, the following definitions apply:

(1) "AAA" means an Area Agency on Aging (AAA) which is an established public agency within a planning and service area designated under Section 305 of the Older Americans Act which has responsibility for local administration of programs within the State of Oregon's Department of Human Services, Seniors and People with Disabilities. For the purpose of this rule, Type B AAAs contract with the Division to perform specific activities in relation to licensing adult foster homes including processing applications, conducting inspections and investigations, issuing licenses, and making recommendations to the Division regarding adult foster home license denial, revocation, suspension, non-renewal and civil penalties.

(2) "Abuse" means any of the following:

(a) Any physical injury to a resident that has been caused by other than accidental means. This includes injuries that a reasonable and prudent person would have been able to prevent, such as those resulting from hitting, pinching, striking, rough handling or corporal punishment. These instances of abuse are presumed to cause physical harm, including pain, to all residents, including those in a coma or otherwise incapable of expressing harm.

(b) Failure to provide basic care or services to a resident, which failure results in physical harm, unreasonable discomfort or serious loss of human dignity. Abuse under this definition includes abandonment, improper use of restraints and the deprivation by an individual, including a caregiver, of goods or services that are necessary to attain or maintain physical, mental and psychosocial well-being.

(c) Sexual contact with a resident, including fondling, by an employee or agent of a long-term care facility by: use of physical force, physical or verbal threat of harm, or deprivation to the resident or others; use of position, authority or misinformation to compel the resident to do what that resident would not otherwise do; or where the resident has no reasonable ability to consent. For the purpose of this rule, consent means a voluntary agreement or concurrence of wills and may be demonstrated by resident behavior as well as by verbal acknowledgment. Mere failure of the resident to object does not, in and of itself, constitute an expression of consent.

(d) Theft or diversion of a resident's property, including money, personal property and medications; illegal or improper use of a resident's resources for the personal profit or gain of another person; borrowing resident funds; spending resident funds without the resident's consent; if the resident is not capable of consenting, spending resident funds for items or services from which the resident cannot benefit or appreciate; spending resident funds to acquire items for use in common areas when such purchase is not initiated by the resident; or acting as a resident's guardian, conservator, trustee or attorney in fact unless related by birth, marriage or adoption, to the resident as follows: parent, child, brother, sister, grandparent, grandchild, aunt, uncle, niece or nephew. Nothing in this rule shall be construed to prevent an owner, administrator or employee from acting as a representative payee for the resident.

(e) Verbal or mental abuse, as prohibited by federal law, which includes in extreme forms: the use of oral, written or gestured communication that willfully includes disparaging and derogatory terms to the resident, or within their hearing distance, regardless of their age, ability to comprehend or disability; humiliation; intimidation; harassment; threats of punishment or deprivation directed toward the resident; and unwanted or inappropriate crude or sexual language, questions, comments or other communication. Examples of verbal and mental abuse include, but are not limited to: threats of harm; saying things to frighten a resident, such as telling a resident that he or she will never be able to see his or her family again; and making unwanted sexual comments about a resident's body. Verbal or mental abuse is distinguished from a resident rights violation by the extreme or offensive nature of the communication.

(f) Involuntary seclusion for convenience or discipline. Involuntary seclusion is defined as the separation of a resident from other residents or from his or her room, or confinement to his or her room (with or without roommates) against the resident's will or the will of the resident's legal representative. Emergency or short-term, monitored separation from other residents will not be considered involuntary seclusion and may be permitted if used: for a limited period of time as a therapeutic intervention to reduce agitation until professional staff can develop a plan of care to meet the resident's needs; or as part of an inter-disciplinary care plan after other interventions have been attempted.

(3) "Activities of Daily Living (ADL)" means those personal functional activities required by an individual for health and safety. For the purpose of these rules, ADLs consist of eating, dressing and grooming, bathing and personal hygiene, mobility (ambulation and transfer), elimination (toileting, bowel and bladder management), and cognition and behavior management.

(a) "Independent" means the resident can perform an ADL without help.

(b) "Assist" means the resident is unable to accomplish with all tasks of an ADL, even with assistive devices, without the assistance of another person.

(c) "Full Assist" means the resident is unable to do any part of an ADL task, even with assistive devices, without the assistance of another person. This means the resident requires the hands-on assistance of another person through all phases of the activity, every time the activity is attempted.

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(4) "Adult Foster Home (AFH)" means any family home or other facility in which residential care is provided in a home-like environment for compensation to five or fewer adults who are elderly or physically disabled and are not related to the licensee or resident manager by blood, marriage or adoption. For the purpose of this rule, adult foster home does not include any house, institution, hotel or other similar living situation that supplies room or board only, if no resident thereof requires any element of care.

(5) "Advance Directive for Health Care" means the legal document signed by the resident giving health care instructions if he or she should no longer be able to give directions regarding his or her wishes. The directive gives the resident the means to continue to control her/his own health care in any circumstance.

(6) "Applicant" means any person who completes an application for a license who will also be an owner of the business.

(7) "Approved" (pertaining to the criminal history check process) means that a subject individual has completed that process and has been found to have no potentially disqualifying criminal history; or following an evaluation of factors identified in OAR chapter 410, division 007, the Authorized Designee determined the subject individual's history does not indicate a likelihood of behavior that could endanger the welfare of persons receiving care.

(8) "Authorized Designee (AD)" means an employee of the Department of Human Services, Seniors and People with Disabilities or an Area Agency on Aging who is qualified to have access to the Law Enforcement Data System (LEDS) information.

(9) "Behavioral Interventions" means those interventions that will modify the resident's behavior or the resident's environment.

(10) "Board of Nursing Rules" means the standards for Registered Nurse Teaching and Delegation to Unlicensed Persons according to the Statutes and rules of the Oregon State Board of Nursing, ORS 678.010 to 678.445 and OAR chapter 851, division 047.

(11) "Care" means the provision of room, board, services and assistance with activities of daily living, such as assistance with bathing, dressing, grooming, eating, money management, recreation or medication management, except that assistance with self-medication is not included as part of care for purposes of these rules. Care also means assistance to promote maximum independence and enhance the quality of life for residents.

(12) "Caregiver" means any person responsible for providing care and services to residents, including the licensee; the resident manager; shift caregiver; and any temporary, substitute or supplemental staff or other person designated to provide care and services to residents.

(13) "Care Plan" means the licensee's written description of a resident's needs, preferences, and capabilities, including by whom, when, and how often care and services will be provided.

(14) "Classification" means a designation of license assigned to a licensee based on the qualifications of the licensee, resident manager, and shift caregiver's qualifications, as applicable.

(15) "Client" means a resident in an adult foster home for whom the Division pays for care and for whom case management services are provided. "Client" also means a Medicaid recipient.

(16) "Compensation" means monetary or in-kind payments by or on behalf of a resident to a licensee in exchange for room, board, care and services. Compensation does not include the voluntary sharing of expenses between or among roommates.

(17) "Complaint" means an allegation that a licensee or caregiver has violated the adult foster home rules or an expression of dissatisfaction relating to the resident(s) or the condition of the adult foster home.

(18) "Condition" means a provision attached to a new or existing license that limits or restricts the scope of the license or imposes additional requirements on the licensee.

(19) "Criminal History Check Rules" refers to OAR chapter 410, division 007.

(20) "Day Care" means care, assistance, and supervision of a person who does not stay overnight.

(21) "Delegation" means the process by which a registered nurse teaches and supervises a skilled nursing task.

(22) "Denied" (pertaining to the criminal history check process) means that a subject individual, following a final fitness determination, has been determined to pose a risk to the physical, emotional or financial well-being of the elderly or persons with disabilities according to OAR chapter 410, division 007.

(23) "Department" means the State of Oregon Department of Human Services.

(24) "Director" means the Director of the Department of Human Services or that person's designee.

(25) "Disabled" means a person with a physical, cognitive, or emotional impairment which, for the individual, constitutes or results in a functional limitation in one or more activities of daily living.

(26) "Division" means the Seniors and People with Disabilities (SPD) of the Department of Human Services. Division also includes the local Division units and the AAAs who have contracted to perform specific functions of the licensing process.

(27) "Elderly" or "Aged," for the purposes of these rules, means any person age 65 or older.

(28) "Exception" means a variance from a regulation or provision of these rules, granted in writing by the Division, upon written application by the licensee.

(29) "Exempt Area" means a county where there is a county agency that provides similar programs for licensing and inspection of adult foster homes which the Director finds are equal to or superior to the requirements of ORS 443.705 to 443.825 and which the Director has exempted from the license, inspection, and fee provisions of ORS 443.705 to 443.825. Exempt area county licensing rules must be submitted to the Director for review and approval prior to implementation.

(30) "Family Member," for the purpose of these rules, means husband or wife, natural parent, child, sibling, adopted child, adoptive parent, step-parent, stepchild, stepbrother, stepsister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandparent, grandchild, aunt, uncle, niece, nephew, or first cousin.

(31) "Fitness Determination" means an evaluation by an Authorized Designee (AD) of the subject individual's criminal history and any mitigating information that is provided by that subject individual.

(32) "Home" means the physical structure in which residents live. Home is synonymous with adult foster home.

(33) "Home-like" means an environment that promotes the dignity, security and comfort of residents through the provision of personalized care and services and encourages independence, choice, and decision-making by the residents.

(34) "House Policies" mean written and posted statements addressing house activities in an adult foster home.

(35) "Legal Representative" means a person who has the legal authority to act for the resident. For health care decisions, this is a court-appointed guardian, a health care representative under an Advance Directive for Health Care, or Power of Attorney for Health Care. For financial decisions, this is a legal conservator, an agent under a power of attorney, or a representative payee.

(36) "License" means a certificate issued by the Division to applicants who are in compliance with the requirements of these rules.

(37) "Licensed Health Care Professional" means an individual who possesses a professional medical license that is valid in the State of Oregon. Examples include, but are not limited to, a registered nurse (RN), nurse practitioner (NP), licensed practical nurse (LPN), medical doctor (MD), osteopathic physician (DO), respiratory therapist (RT), physical therapist (PT) or occupational therapist (OT).

(38) "Licensee" means the person(s) who applied for, was issued a license, and whose name(s) is on the license and who is responsible for the operation of the home(s). The licensee of the adult foster home does not include the owner or lessor of the building in which the adult foster home is situated unless he or she is also the operator. "Licensee" is synonymous with "licensed provider".

(39) "Limited License" means a license is issued to a licensee who intends to provide care for compensation to a specific individual who is unrelated to the licensee but with whom there is an established relationship.

(40) "Liquid Resource" means cash or those assets that can readily be converted to cash such as a life insurance policy that has a cash value or stock certificates, or a guaranteed line of credit from a financial institution.

(41) "National Criminal History Check" means a review by the Department of a subject individual's criminal history outside of the State of Oregon obtained from the Federal Bureau of Investigation (FBI) through the submission of fingerprint cards.

(42) "Neglect" (whether intentional, careless, or due to inadequate experience, training, or skill) means failure to seek appropriate medical care or failure to provide care necessary to ensure the health, safety, and well-being of a resident; failure to follow the care plan; failure to make a reasonable effort to discover what care is necessary for the well-being of a resident; improper administration of medication; or failure to provide a safe and sanitary environment.

(43) "Nursing Care" means the practice of nursing by a licensed nurse, including tasks and functions relating to the provision of nursing care that are taught or delegated under specified conditions by a registered nurse

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to persons other than licensed nursing personnel, as governed by ORS chapter 678 and rules adopted by the Oregon State Board of Nursing in OAR chapter 851.

(44) "Occupant" means anyone residing in or using the facilities of the adult foster home including residents, licensees, resident managers, friends or family members, day care persons, and boarders.

(45) "Ombudsman" means the State of Oregon Long-Term Care Ombudsman or an individual designee appointed by the Long-Term Care Ombudsman to serve as a representative of the Ombudsman Program in order to investigate and resolve complaints on behalf of the adult foster home residents.

(46) "Physical Restraint" means any manual method or physical or mechanical device, material, or equipment attached to, or adjacent to, the resident's body which the resident cannot easily remove and restricts freedom of movement or normal access to his or her body. Physical restraints include, but are not limited to, wrist or leg restraints, soft ties or vests, hand mitts, wheelchair safety bars, lap trays, and any chair that prevents rising (such as a Geri-chair). Side rails (bed rails) are considered restraints when they are used to prevent a resident from getting out of a bed. The side rail is not considered a restraint when a resident requests a side rail for the purpose of assistance with turning.

(47) "P.R.N. (pro re nata) Medications and Treatments" means those medications and treatments that have been ordered by a qualified practitioner to be administered as needed.

(48) "Provider" means any person operating an adult foster home (i.e., licensee, resident manager or shift caregiver). "Provider" does not include the owner or lessor of the building in which the adult foster home is situated unless the owner or lessor is also the operator of the adult foster home.

(49) "Potentially Disqualified" means the Division has determined a subject individual has a conviction for a potentially disqualifying crime or there is a discrepancy between the history disclosed by the subject individual and the information obtained through the criminal history check. The Authorized Designee must then make a fitness determination.

(50) "Provisional License" means a 60-day license issued to a qualified person in an emergency situation when the licensed provider is no longer overseeing the operation of the adult foster home. The qualified person must meet the standards of OAR 411-050-0440 and 411-050-0443 except for completing the training and testing requirements. (See OAR 411-050-0415(9).)

(51) "Psychoactive Medications" means various medications used to alter mood, anxiety, behavior or cognitive processes. For the purpose of these rules, they include, but are not limited to, antipsychotics, sedatives, hypnotics, and anti-anxiety medications.

(52) "Relative" means those persons identified as family members in section (30) of this rule.

(53) "Relative Adult Foster Home" means a home in which care and services are provided only to adult family members of the licensed provider who are 18 years or older and are elderly or physically disabled. The adult family member receiving care must be eligible for Medicaid assistance from the Department. A spouse is not eligible for compensation as a relative adult foster care licensee.

(54) "Reside" means for a person to make an adult foster home his or her residence on a frequent or continuous basis.

(55) "Resident" means any person who is receiving room, board, care, and services for compensation in an adult foster home on a 24-hour day basis.

(56) "Residential Care" means the provision of care on a 24-hour day basis.

(57) "Resident Manager" means an employee of the licensee who lives in the home and is directly responsible for the care of residents on a 24-hour day basis for five consecutive days.

(58) "Resident Rights" or "Rights" means civil, legal or human rights, including but not limited to those rights listed in the Adult Foster Home Residents' Bill of Rights. (See ORS 443.739)

(59) "Respite Resident" means a person who receives care for a period of 14 days or less or who only stays overnight.

(60) "Room and Board" means receiving compensation for the provision of meals, a place to sleep, laundry and housekeeping to adults who are elderly or physically disabled and do not need assistance with their activities of daily living. Room and board facilities for two or more persons must register with the Division under OAR chapter 411, division 068.

(61) "Self-Administration of Medication" means the act of a resident placing a medication in or on his or her own body. The resident identifies

the medication, the time and manner of administration, and places the medication internally or externally on his or her own body without assistance.

(62) "Self-Preservation" in relation to fire and life safety means the ability of residents to respond to an alarm without additional cues and reach a point of safety without assistance.

(63) "Services" means activities that help the residents develop skills to increase or maintain their level of functioning or which assist them to perform personal care or activities of daily living or individual social activities.

(64) "Shift Caregivers" means caregivers who, by written exception of the Division, are responsible for providing care for regularly scheduled periods of time, such as 8 or 12 hours per day, in homes where there is no licensee or resident manager living in the home.

(65) "SPD" means Seniors and People with Disabilities of the State of Oregon, Department of Human Services.

(66) "Subject Individual" means any person, 16 years of age or older who has regular contact with residents, resides, receives training, works in an adult foster home or is the recipient of a Medicaid service payment in a relative adult foster home. A resident and his or her visitors are not "subject individuals".

(67) "Substitute Caregiver" means any person other than the licensee, resident manager, or shift caregiver who provides care and services in an adult foster home under the jurisdiction of Seniors and People with Disabilities.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 443.705

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; SDSL 4-2001, f. & cert. ef. 3-1-01; SPD 31-2006, f. 12-27-06, cert. ef. 1-1-07

411-050-0401

Purpose

The purpose of these rules is to establish standards and procedures for adult foster homes that provide care for adults who are elderly or physically disabled in a home-like environment that is safe and secure. The goal of adult foster care is to provide necessary care while emphasizing the resident's independence. This goal is reached through a cooperative relationship between the care providers and the resident (or court-appointed guardian) in a setting that protects and encourages resident dignity, choice, and decision-making. Residents' needs are to be addressed in a manner that supports and enables residents to maximize their ability to function at the highest level of independence possible.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 443.720

Hist.: SSD 3-1996, f. 3-29-96, cert. ef. 4-1-96; SDSL 4-2001, f. & cert. ef. 3-1-01; SPD 31-2006, f. 12-27-06, cert. ef. 1-1-07

411-050-0405

License Required

(1) Any facility, which meets the definition of an adult foster home as defined in OAR 411-050-0400, must apply for and obtain a license from the Division or an exempt area county.

(2) A person or entity must not represent themselves as operating an adult foster home or accept placement of a person without being licensed.

(3) Relative Adult Foster Home. Any home, which meets the definition of a Relative Adult Foster Home, must have a license from the Division if receiving compensation from the Division. To qualify for this license and for compensation from the Division, the applicant or licensee must submit a completed application and Department's Health History and Physician or Nurse Practitioner's Statement, obtain a criminal history approval from the Department, demonstrate a clear understanding of the resident's care needs, meet minimal fire safety standards including the installation of smoke detectors and fire extinguishers, and obtain any training deemed necessary by the Division to provide adequate care for the resident. A spouse is not eligible for compensation as a relative adult foster care licensee. A relative adult foster home license is not required if services are provided to a relative without compensation to the license from the Division.

(4) Limited Foster Home. If a home meets the definition of a limited license it must be licensed by the Division if the caregiver receives compensation privately or from the Division. The person requesting a limited license must meet the standards of a relative adult foster home and acquire any additional training deemed necessary by the Division to provide adequate care for the resident. The person receiving care will be named on the license. The license will be limited to the care of the named person only.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 443.725

Hist.: SSD 14-1985, f. 12-31-85, ef. 1-1-1986; 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-

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1996, f. 3-29-96, cert. ef. 4-1-96; SDDS 4-2001, f. & cert. ef. 3-1-01; SPD 31-2006, f. 12-27-06, cert. ef. 1-1-07

411-050-0408

Capacity

(1) Residents must be limited to five persons who are unrelated to the licensee and resident manager by blood or marriage and require care.

(2) Respite residents are included in the license capacity of the home.

(3) The number of residents permitted to reside in an adult foster home will be determined by the ability of the staff to meet the care needs of the residents, the fire safety standards for evacuation, and compliance with the facility standards of these rules.

(4) Determination of maximum capacity must include consideration of total household composition including children and relatives requiring care and supervision. In determining maximum capacity, consideration must be given to whether children over the age of five have a bedroom separate from their parents.

(5) When there are family members requiring care in a home in which the licensee is the primary, live-in caregiver, the allowable number of unrelated residents will be a maximum capacity of five if the following criteria are met:

(a) The licensee can demonstrate the ability to evacuate all occupants from the adult foster home within three minutes or less;

(b) The licensee has adequate staff and has demonstrated the ability to provide appropriate care for all residents (See OAR 411-050-0445(1)(e));

(c) There is an additional 40 square feet of common living space for each person above the five residents;

(d) Bedrooms and bathrooms meet the requirements of OAR 411-050-0445(3) and (4);

(e) The care needs of day care and respite person(s) are within the classification of the license and any conditions imposed on the license;

(f) The well-being of the household including any children or other family members will not be jeopardized; and

(g) If there are day care persons in the home licensees must have arrangements for day care persons to sleep in areas other than a resident's bed, a resident's private room, or space designated as common use, in accordance with OAR 411-050-0445(4)(c).

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 443.705 & 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; SDDS 4-2001, f. & cert. ef. 3-1-01; SPD 31-2006, f. 12-27-06, cert. ef. 1-1-07

411-050-0410

License Application and Fees

(1) The Division's application form SDS 448 must be completed and submitted with the non-refundable fee by the licensee applicant. The application is not complete until all of the required application information is submitted to the Division. Incomplete applications are void after 60 days from the date the licensing office receives the application form and non-refundable fee. Failure to provide accurate information may result in the denial of the application.

(2) A separate application is required for each location where an adult foster home is to be operated.

(3) An application for a home that has a resident manager must include a completed application for the resident manager on Division form SDS 448B.

(4) The license application must include:

(a) Verification of attendance at a local office Orientation and successful completion of the Division's Basic Training examination. (See OAR 411-050-0440(1)(g)(A) and (B))

(b) The maximum resident capacity requested, relatives needing care, room and board occupants, and day care persons. The application must also include the name(s) of any other occupants in the home;

(c) The classification being requested with information and supporting documentation regarding qualifications, relevant work experience, and training of staff as required by the Division;

(d) A Health History and Physician or Nurse Practitioner's Statement (form SDS 903) regarding the individual's ability to provide care;

(e) A completed Financial Information sheet (SDS 448A); a budget for operating the home that includes payroll expenses; and proof of at least two months' liquid resources;

(f) The applicant must provide the Division with a list of all unsatisfied judgments, liens and pending lawsuits in which a claim for money or property is made against the applicant; all bankruptcy filings by the applicant; and all unpaid taxes due from the applicant. The Division will require the applicant provide proof of having the amount of resources necessary to

pay those claims. The Division may require or permit the applicant to provide a current credit report to satisfy this financial requirement;

(g) If the home is leased or rented, the applicant must submit a copy of the lease or rental agreement. The agreement will be a standard lease or rental agreement for residential use and include the following:

(A) The owner and landlord's name;

(B) Verification that the rent is a flat rate; and

(C) Signatures and date by the landlord and applicant;

(h) If the applicant is purchasing or owns the home, verification of purchase or ownership must be submitted with the application. The financial information will not be included in the public file;

(i) A signed Criminal History Request form provided by the Department for each person who will have regular contact with the residents, including the licensee(s), the resident manager, shift caregivers, substitute caregivers and any occupants 16 years of age and older, excluding residents;

(j) The applicant must submit 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;

(k) If requesting a license to operate more than one home, a plan covering administrative responsibilities, staffing qualifications, and additional evidence of financial responsibility;

(l) A \$20 per bed non-refundable fee for each non-relative resident;

(m) Three personal references who are not family members of the applicant. (See OAR 411-050-0400(30)) Current or potential licensees and co-workers of current or potential licensees are not eligible as personal references;

(n) If the applicant or licensee intends to use a resident manager or shift caregiver, a supplemental application (SDS 448B) completed by the resident manager or shift caregiver must be submitted; and

(o) Written information describing the operation plan for the adult foster home, including the use of substitute caregivers, other staff, a backup licensed provider or approved resident manager, and a plan on coverage for resident manager or shift caregiver absences, if applicable.

(5) Shift Caregivers. Shift caregivers may be used in lieu of a resident manager if granted a written exception by the Division. Use of shift caregivers detracts from the intent of a home-like environment, but will be allowed for specific resident populations. The type of residents served must be a specialized population with intense care needs such as those with Alzheimer's Disease, AIDS, or head injuries. If shift caregivers are used, they must meet or exceed the experience and training qualifications for the license classification requested.

(6) After receipt of the completed application materials, including the non-refundable fee the Division must investigate the information submitted including pertinent information received from outside sources, inspect the home, and conduct a personal interview with the applicant.

(7) If cited violations from the home inspection are not corrected within the time frames specified by the Division, the issuance of the license must be denied.

(8) The applicant may withdraw his or her application at any time during the application process by written notification to the Division.

(9) An applicant whose license has been revoked, voluntarily surrendered during a revocation or non-renewal process, or whose application for licensure has been denied shall not be permitted to make a new application for one year from the date the revocation, surrender, or denial was final, or for a longer period if specified in the order revoking or denying the license.

[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; SDDS 4-2001, f. & cert. ef. 3-1-01; SPD 31-2006, f. 12-27-06, cert. ef. 1-1-07

411-050-0412

Criminal History Clearance

(1) No person may be a licensee, resident manager, shift caregiver, substitute caregiver, or otherwise be in training, employed by a licensee or reside in or on the property of an adult foster home who has not been approved by the Department to work with adults who are elderly or physi-

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cally disabled in accordance with OAR chapter 410, division 007, Criminal History Check Rules. The approval must be maintained as required.

(2) Section (1) of this rule does not apply to:

(a) Residents of the adult foster home;

(b) Anyone under the age of 16 years old; or

(c) Persons who live or work on the property who do not access the home for meals, or use the appliances or facilities, and do not have unsupervised access to residents or their personal property.

(3) In a relative adult foster home, the person receiving payment for providing services to the client is the only person who must be approved by the Department, in accordance with OAR chapter 410, division 007, Criminal History Check Rules.

(4) The Department will conduct criminal history checks and obtain information from the Law Enforcement Data System (LEDS) and if necessary, the Federal Bureau of Investigation (FBI), other law enforcement agencies or the courts.

(5) A national criminal history check is required for any subject individual who has lived outside the State of Oregon for sixty (60) or more consecutive days during the previous three years or for the reasons described in OAR chapter 411, division 009, Criminal History Check Rules. Resident managers, shift caregivers and substitute caregivers may work in the home pending the outcome of the national criminal history check if the Oregon criminal history check does not reveal any potentially disqualifying crimes and no out-of-state convictions were self-disclosed on the Department's Criminal History Request form. The Department may determine a national criminal history check is not required if the subject individual, according to the Department's Criminal Record Clearance Registry, passed a national check within the previous three years and has not lived outside of Oregon during those three years.

(6) An Authorized Designee (AD) will make the fitness determination on all licensee applicants, all licensed providers and all subject individuals.

(7) A subject individual must NOT work, receive training or reside in an adult foster home if the subject individual refuses to cooperate with the criminal history check process (e.g., refuses to be fingerprinted when requested, refuses to complete the Department's Criminal History Request form).

(8) The licensee must have written verification from the Department that the required criminal history checks have been completed for all employees, trainees and occupants of the home other than residents. (See OAR 411-050-0444(6)(a)(A))

(9) The Department must provide for the expedited completion of a criminal history check for the State of Oregon when requested by a licensed provider because of an immediate staffing need.

Stat. Auth.: ORS 181, 410.070 & 443

Stats. Implemented: ORS 181.537 & 443.735

Hist.: SDSL 4-2001, f. & cert. ef. 3-1-01; SPD 31-2006, f. 12-27-06, cert. ef. 1-1-07

411-050-0415

Issuance

(1) The Division will issue a license within 60 days after the completed application materials have been received if the home and applicant are in compliance with these rules. The license will state the name of the resident manager, or shift caregivers as applicable, the name(s) of the licensee(s) who have met the requirements to operate the adult foster home, the address of the premises to which the license applies, the license classification, the maximum number of residents and the expiration date. The license must be posted in a prominent place in the home and be available for inspection at all times.

(2) The licensee will be given a copy of the Division inspection report forms SDS 517A and 517B, identifying any areas of non-compliance and specifying a time frame for correction, not exceeding 30 days from date of inspection. The licensee must post the most recent inspection reports in the entry or equally prominent place and must, upon request, provide a copy of the reports to each resident, person applying for admission to the home, or the legal representative, guardian or conservator of a resident.

(3) The Division may attach conditions to the license that limit, restrict or specify other criteria for operation of the home. The conditions must be posted with the license (See OAR 411-050-0483).

(4) A limited license may be issued to a licensee for the care of a specific person(s). A licensee with this limitation will make no other admissions and at a minimum, must meet the requirements of licensure for a relative adult foster home. A licensee with a limited license may be subject to the requirements specified in the Standards and Practices for Care and Services. (See OAR 411-050-0447)

(5) The Division will not issue an initial license unless:

(a) The applicant and adult foster home are in compliance with ORS 443.705 to 443.825, and OAR chapter 411, division 050, Adult Foster Homes;

(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;

(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; and

(e) The applicant has demonstrated to the Division the financial ability and resources necessary to operate the adult foster home.

(6) A license is valid for one year unless revoked or suspended by the Division.

(7) In seeking an initial license, the burden of proof will be upon the applicant of the adult foster home to establish compliance with ORS 443.705 to 443.825, and OAR chapter 411, division 050, Adult Foster Homes.

(8) The Division will not issue a license to operate an additional adult foster home to a licensee who has failed to achieve and maintain substantial compliance with the rules and regulations while operating his or her existing home or homes.

(9) Notwithstanding any other provision of this rule or ORS 443.725 or 443.738, the Division may issue a 60-day provisional license to a qualified person if the Division determines that an emergency situation exists after being notified that the licensed provider is no longer overseeing the operation of the adult foster home for purposes of this rule. A person will be considered qualified if they are 21 years of age and meet the requirements of a substitute caregiver.

[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; SDSL 4-2001, f. & cert. ef. 3-1-01; SPD 31-2006, f. 12-27-06, cert. ef. 1-1-07

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 license renewal application form (SDS 448C);

(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.

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(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 Division 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.

(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; SDSL 4-2001, f. & cert. ef. 3-1-01; SPD 31-2006, f. 12-27-06, cert. ef. 1-1-07

411-050-0430

Exceptions

(1) An applicant or licensee may request an exception to the provisions of these rules. The request must be in writing and must include clear and convincing evidence that such an exception:

(a) Will not jeopardize the care, health, welfare or safety of the residents and all of the residents' needs will be met; and

(b) Will assure that all residents, in addition to other occupants in the home, can be evacuated in three minutes or less.

(2) Exceptions NOT allowed. Notwithstanding section (1) of this rule, no exception will be granted from a regulation or provision of these rules pertaining to:

(a) Resident Capacity (See OAR 411-050-0408);

(b) Standards and Practices for Care and Services (See OAR 411-050-0447); or

(c) Inspections of the facility (See OAR 411-050-0450).

(3) Exceptions may not be granted to any rule that is inconsistent with Oregon Revised Statutes.

(4) Exception requests related to fire and life safety will not be granted by the Division without prior consultation with the State Fire Marshal or its designee.

(5) In making its determination to grant an exception, the Division will consider the licensee's history of compliance with rules governing adult foster homes or other long-term care facilities for the elderly or physically disabled in this state or any other jurisdiction, if appropriate. The Division must determine that the exception is consistent with the intent and purpose of these rules prior to granting an exception. (See OAR 411-050-0401)

(6) An exception is not effective until granted in writing by the Division. Exceptions will be reviewed pursuant to the criteria in OAR 411-050-0430. If applicable, the licensee must reapply for an exception at the time of license renewal or more often if determined necessary by the Division.

(7) At all times the burden of proof will be on the applicant or licensee to prove that the requirements of OAR 411-050-0430 have been met.

(8) If an exception to any provision of these rules is denied, the applicant or licensee may request a meeting with the local Division.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 443.775

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; SDSL 4-2001, f. & cert. ef. 3-1-01; SPD 31-2006, f. 12-27-06, cert. ef. 1-1-07

411-050-0435

Contracts and Refunds

(1) Medicaid Contractual Agreement:

(a) Applicants or licensees who intend to care for Medicaid eligible clients must enter into a contractual agreement with the Division, sign a

completed Provider Enrollment form and follow Division rules and contract terms.

(b) A valid contractual agreement is not a guarantee that Medicaid eligible individuals will be placed in an adult foster home.

(c) No Medicaid eligible clients will be admitted into an adult foster home unless and until:

(A) The Division has approved a Provider Enrollment agreement. The Division cannot issue a Medicaid payment to a licensee without a current Provider Enrollment agreement in place;

(B) The client has been screened according to OAR 411-050-0447; and

(C) The Division has authorized the placement. The authorization must be clearly documented in the resident's record with other required admission materials. (See OAR 411-050-0447(2))

(d) The rate of compensation established by the Division is considered payment in full and licensees must not accept additional funds or in-kind payment;

(e) The Division will not make payment for the date of discharge or for any time period thereafter; and

(f) A licensee who elects to provide care for a Medicaid recipient is not required to admit more than one Medicaid recipient. However, if the licensee has a valid Medicaid contract for that home, private-pay residents who become eligible for Medicaid assistance cannot be asked to leave solely on the basis of Medicaid eligibility.

(g) Either party may terminate a Medicaid contract according to the terms of the contract.

(h) Death of Medicaid Resident with No Surviving Spouse. The licensee must forward all personal incidental funds (PIF) to the Estate Administration Unit, P. O. Box 14021, Salem, Oregon 97309-5024, within 10 business days of the death of a Medicaid resident with no surviving spouse. (See Limits on Estate Claims, OAR 461-135-0835)

(2) Private Contract: Licensees who care for private-pay residents must enter into a written contract, which is an admission agreement with the resident or person paying for care. A copy of the contract is subject to review by the Division prior to licensure. The contract must include, but not be limited to:

(a) Services to be provided and the rate to be charged. A payment range may not be used unless the contract plainly states when an increase in rate can be expected based on increased care or service needs.

(b) Conditions under which the rates can be changed;

(c) The home's refund policy in instances of a resident's hospitalization, death, discharge, transfer to a nursing facility or other care facility, or voluntary move. The refund policy must be in compliance with OAR 411-050-0435(3);

(d) The home's policies on voluntary moves and whether or not the licensee requires written notification of a resident's intent not to return;

(e) Charges for storage of belongings that remain in the adult foster home for more than 15 days after the resident has left the home, if any; and

(f) A statement indicating that residents are not liable for damages considered normal wear and tear on the adult foster home and its' contents.

(g) The licensee must not charge or ask for application fees or non-refundable deposits. Fees to hold a bed are permissible.

(h) The licensee must give a copy of the signed contract to the resident or his or her representative, which will be documented in the resident's record.

(i) The licensee must not include any illegal or unenforceable provision in a contract with a resident and must not ask or require a resident to waive any of the resident's rights or licensee's liability for negligence.

(j) Thirty days prior to any general rate increases, additions, or other modifications of the rates, the licensee must give written notice of the proposed changes to private-pay residents and their family or other representatives, unless the change is due to the resident's increased care or service needs, and the agreed upon rate schedule in the resident's contract has specified charges for those changes .

(3) Refunds:

(a) If a resident dies, the licensee must not retain nor require payment for more than 15 days after the date of the resident's death, or the time specified in the licensee's contract, whichever is less.

(b) If a resident leaves an adult foster home for medical reasons and the resident or the resident's representative indicates the intent to not return, the licensee must not charge the resident for more than 15 days or the time specified in the licensee contract, whichever is less, after the date the licensee receives notification from the resident or the resident's representative.

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(c) The licensee has an obligation to act in good faith to reduce the charge to the resident who has left the home, by seeking a new resident to fill the vacancy.

(d) The licensee must refund any unused advance payments to the resident, or the resident's representative as appropriate, within 30 days after the resident dies or leaves the home.

(e) If the adult foster home closes or the licensee gives written notice for the resident to leave, the licensee waives the right to collect any fees beyond the date of closure or the resident's departure, whichever is sooner.

(f) If a resident dies or leaves an adult foster home due to neglect or abuse at the adult foster home that is substantiated by a Department investigator, or due to conditions of imminent danger of life, health or safety, the licensee must not charge the resident beyond the resident's last day in the home.

(g) Refund policies must also apply to the sections in these rules on moves, transfers and discharges. (See OAR 411-050-0444(9)(10)(11))

[ED. NOTE: Forms 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; 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; SDDS 4-2001, f. & cert. ef. 3-1-01; SPD 31-2006, f. 12-27-06, cert. ef. 1-1-07

411-050-0440

Qualification and Training Requirements for Licensees, Resident Managers and Other Caregivers

(1) Licensee Requirements — Adult foster home licensees must meet and maintain the requirements specified in this section. Adult foster home applicants and licensees must:

(a) Live in the home that is to be licensed unless there is an approved resident manager, or an exception for shift caregivers has been granted according to OAR 411-050-0440(4);

(b) Be at least 21 years of age;

(c) Possess physical health, mental health, good judgment and good personal character, including truthfulness, determined necessary by the Division to provide 24-hour care for adults who are physically disabled or elderly. Applicants must have a statement from a physician or other qualified practitioner indicating they are physically, cognitively, and emotionally capable of providing care to residents. Applicants with documented history or substantiated complaints of substance abuse or mental illness must provide evidence satisfactory to the Division of successful treatment, rehabilitation or references regarding current condition;

(d) Be approved annually to have contact with adults who are elderly or physically disabled in accordance with OAR chapter 410, division 007, Criminal History Check Rules and maintain that approval as required;

(e) Be literate in the English language and demonstrate the ability to communicate in English verbally and in writing with residents and their family members or representatives, emergency personnel (e.g., emergency operator, paramedics and fire fighters), physicians, nurses, case managers, Division staff and other professionals involved in the care of residents

(f) Be able to respond appropriately to emergency situations at all times; and

(g) Training Requirements — Applicants and licensees must have the education, experience, and training to meet the requirements of their requested classification. (See OAR 411-050-0443) The following training requirements must be completed prior to obtaining a license:

(A) Potential applicants must attend a Division-approved orientation program offered by the local licensing authority.

(B) Potential applicants must pass the Division's Basic Training Course examination to meet application requirements for licensure. Potential applicants who fail the first examination may take the examination a second time, however successful completion of the examination must take place within 90 days of the end of the Basic Training Course. Potential applicants who fail a second test must retake the Division's Basic Training Course prior to repeating the examination.

(2) Financial Requirements. Applicants and licensees must have the financial ability and maintain sufficient liquid resources to pay the operating costs of the adult foster home for at least two months without solely relying on potential resident income. If an applicant is unable to demonstrate the financial ability and resources required by this section, the Division may require the applicant to furnish a financial guarantee such as a line of credit or guaranteed loan as a condition of initial licensure.

(3) Resident Manager Requirements. Applicants for resident manager must meet and maintain the qualification and training requirements specified in OAR 411-050-0440(1)(a) through (1)(g)(C). An applicant will not

be approved as a resident manager until the Department has verified that all the requirements have been satisfied.

(4) Shift Caregiver Requirements. Applicants for shift caregiver must meet and maintain the qualifications outlined in OAR 411-050-0440(1)(b) through (1)(g)(C). An applicant will not be approved as a shift caregiver until the Department has verified that all the requirements have been satisfied. (See OAR 411-050-0410(4)(n))

(5) Training Within First Year of Licensing: Licensees, resident managers and shift caregivers must complete within the first year of obtaining an initial license a Basic First Aid course, a cardiopulmonary resuscitation (CPR) course, and attend Fire and Life Safety training as available. The Division and the Office of the State Fire Marshal or the local fire prevention authority may coordinate the Fire and Life Safety training program.

(6) Annual Training Requirements for Licensees, Resident Managers and Shift Caregivers for License Renewal:

(a) Each year after the first year of licensure, licensees, resident managers and shift caregivers are required to complete at least 12 hours of Division-approved training related to the care of adults who are elderly or physically disabled. Up to four of those hours may be related to the business operation of an adult foster home.

(b) Licensees, resident managers and shift caregivers, as applicable, must maintain their CPR certification.

(c) Registered nurse delegation or consultation, CPR certification and First Aid training or consultation with an accountant do not count toward the 12 hours of the annual training requirement.

(7) Substitute Caregiver Requirements. Substitute Caregivers, or any other person left in charge of residents for any period of time must not be a resident, and must at a minimum, meet the following qualifications:

(a) Be at least 18 years of age;

(b) Be approved annually to work with adults who are elderly or have physical disabilities in accordance with OAR chapter 410, division 007, Criminal History Check Rules and maintain that approval as required.

(c) Be literate in the English language and demonstrate the ability to communicate in English verbally and in writing with residents, residents' representatives and family members, emergency personnel (e.g., emergency operator, paramedics and fire fighters), physicians, case managers, Division staff, and other professionals involved in the care of residents;

(d) Be able to respond appropriately to emergency situations at all times;

(e) Have a clear understanding of their job responsibilities, have knowledge of the residents' care plans and be able to provide the care specified for each resident including appropriate delegation or consultation by a registered nurse;

(f) Possess physical health, mental health, good judgment, and good personal character, including truthfulness, determined necessary by the Division to provide care for adults who are elderly or physically disabled, as determined by reference checks and other sources of information; and

(g) Training Requirements for Substitute Caregivers:

(A) Substitute caregivers must be oriented to the home and to the residents by the licensee or resident manager including the location of any fire extinguishers; demonstration of evacuation procedures; location of residents' records; location of telephone numbers for the residents' physicians, the licensee and other emergency contacts; location of medications and key for medication cabinet; introduction to residents; instructions for caring for each resident; and delegation by a registered nurse for nursing tasks if applicable.

(B) A substitute caregiver must complete the Division's Caregiver Preparatory Training Study Guide (SDS 9030) and Workbook (SDS 9031), and must receive instruction in specific care responsibilities from the licensee or resident manager. The Workbook must be completed by the substitute caregiver without the help of any other person and be considered part of the required orientation to the home and residents.

(C) Substitute caregivers left in charge of an adult foster home for any period that exceeds 48 continuous hours, may be required to meet the education, experience and training requirements of a resident manager if the licensing authority determines that such qualifications are necessary based on the resident impairment levels in the home.

(D) The Division may grant an exception to the Caregiver Preparatory Training Study Guide and Workbook requirement in paragraph (7)(g)(B) of this rule for a substitute caregiver who holds a current Oregon license as a health care professional such as a physician, registered nurse, or licensed practical nurse who demonstrates the ability to provide adequate care to residents based on similar training or at least one year of experience providing direct care to adults who are elderly or physically disabled. A certified nursing assistant (CNA) must complete the Caregiver Preparatory

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Training Workbook and have a certificate of completion signed by the licensee.

(8) If a licensee is not in compliance with one or more of these rules or the classification for which he or she is licensed, the Division may require, by condition, additional training in the deficient area(s).

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

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 443.735 & 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; SSD 3-1992, f. 5-26-92, cert. ef. 6-1-92; SSD 3-1995, f. & cert. ef. 3-15-95; 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

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 dependent 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)(c) 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 are dependent in no more than three activities of daily living.

(c) A licensee with a Class 3 license may provide care for residents who are dependent in four or more activities of daily living.

(4) A licensee may request in writing an exception to care 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 totally dependent or bedcare resident in the home.

(5) The Division may grant an exception which allows the resident to be admitted or remain in the adult foster home. The Department 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

411-050-0444

Operational Standards

(1) General Practices.

(a) Licensees must own, rent or lease the home to be licensed, however the local licensing authority may grant exception to churches, hospitals, non-profit associations or similar organizations. If a licensee rents or leases the premises where the adult foster home is located, the licensee must not enter into a contract that requires anything other than a flat rate for the lease or rental. A licensed provider of a building in which an adult foster home is located must not allow the owner to interfere with the admission, discharge or transfer of any resident in the adult foster home unless the owner is a licensee or co-licensee named on the license.

(b) The licensee must cooperate with Department personnel in inspections, complaint investigations, planning for resident care, application procedures and other necessary activities. Department personnel have access to all resident and facility records and may conduct private interviews with residents. The State Long-Term Care Ombudsman has access to all resident and facility records. Certified Ombudsman volunteers may have access to resident records with written permission from the resident and facility records relevant to caregiving.

(c) Information related to resident(s) must be kept confidential, except as may be necessary in the planning or provision of care or medical treatment, or related to an investigation or sanction action under these rules.

(d) Licensees must be able to arrange or provide for appropriate transportation for residents when needed.

(e) Staffing Standards. A licensee may not employ a resident manager or shift caregiver who does not meet or exceed the experience and training classification standard for the adult foster home.

(f) If a resident manager, or shift caregiver, changes during the period the license covers, the licensee must notify the Department immediately and identify who will be providing care. This includes circumstances when the licensee assumes the role as the primary caregiver or shift caregiver when there has been a change in staff, in which case the licensee must submit an updated plan of 24-hour coverage to the Department. Otherwise:

(A) The licensee must submit a request for a change of resident manager, or shift caregiver as applicable, to the Department along with a completed resident manager application form SDS 448B, a completed Health History and Physician or Nurse Practitioner's Statement (form SDS 903), the Department's Criminal History Request form and a \$10 non-refundable fee.

(B) Upon a determination by the Department that the applicant meets the requirements of a resident manager, and the applicant has obtained the required training and passed the test, a revised license will be issued with the name of the new resident manager or shift caregiver(s). The classification of the home will be reevaluated based on the qualifications of the new resident manager or shift caregivers, and changed accordingly.

(g) Unexpected and Urgent Staffing Need. If the Department determines an unexpected and urgent staffing need exists, the Department may authorize a person who has not completed the Basic Training or passed the test to act as a resident manager or shift caregiver until training and testing are completed, or for 60 days, whichever period is shorter. The licensee must notify the Department of the situation in writing, satisfactorily demonstrate his or her inability to find a qualified resident manager, or shift caregiver as applicable, that the person is 21 years of age and meets the requirements of a substitute caregiver for the adult foster home.

(h) A licensee is responsible for the supervision, training and overall conduct of resident managers, other caregivers, family members and friends when acting within the scope of their employment, duties, or when present in the home.

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(i) Sexual relations between residents and any employee of the adult foster home, licensee or any member of the licensee's household is prohibited unless a pre-existing relationship existed.

(j) A licensee must notify the Department in writing prior to any change of his or her residence or mailing address.

(2) Sale or Lease of Existing Adult Foster Homes and Transfer of Licenses:

(a) A license is not transferable and does not apply to any location or person(s) other than the location and the person(s) indicated on the license obtained from the Department.

(b) The licensee must inform real estate agents, prospective buyers, lessees, and transferees in all written communication including advertising and disclosure statements that the license to operate an adult foster home is not transferable and must refer them to the Department for information about licensing.

(c) When a home is to be sold or otherwise transferred or conveyed to another person who intends to operate the home as an adult foster home, that person must apply for and obtain a license from the Department prior to the transfer of operation of the home.

(d) The licensed provider must promptly notify the local Division's licensing program in writing about the licensee's intent to close or intent to convey the adult foster home to another individual. The licensee must provide written notice to the residents, their representatives and case managers as applicable, according to OAR 411-050-0444(12)(c).

(e) The licensed provider must inform an individual intending to assume operation of an existing adult foster home that residents currently residing in the home must be given at least 30 days' written notice of the licensee's intent to close the adult foster home for the purpose of conveying the home to another person.

(f) The licensee must remain licensed and responsible for the operation of the home and care of the residents in accordance with these rules until the home is closed and the residents have been relocated, or the home is conveyed to a new licensee who is licensed by the Department at a level appropriate to the care needs of the residents in the home.

(3) Sanitation and Safety Precautions in the Adult Foster Home:

(a) Commodes and Incontinence Garments — If used, commodes must be emptied frequently and cleaned daily, or more frequently if necessary. Incontinence garments must be disposed of in closed containers.

(b) Laundry — Soiled linens and clothing must be stored in closed containers prior to laundering in an area that is separate from food storage, kitchen and dining areas. Pre-wash attention must be given to soiled and wet bed linens. Sheets and pillowcases must be laundered at least weekly and more often if soiled.

(c) Pets or Other Animals — Sanitation for household pets and other domestic animals on the premises must be adequate to prevent health hazards. Proof of rabies vaccinations and any other vaccinations that are required for the pet by a licensed veterinarian must be maintained on the premises. Pets not confined in enclosures must be under control and must not present a danger to residents or guests.

(d) Infection Control — Standard precautions for infection control must be followed in resident care. Hands and other skin surfaces must be washed immediately and thoroughly if contaminated with blood or other body fluids.

(e) Disposal of Sharps — Precautions must be taken to prevent injuries caused by needles, scalpels, and other sharp instruments or devices during procedures. After they are used, disposable syringes and needles, scalpel blades, and other sharp items must be placed in a puncture-resistant, red container for disposal. The puncture-resistant container must be located as close as practical to the use area. Disposal must be according to local regulations and resources (ORS 459.386 through 459.405).

(f) Water Temperature — Residents who are unable to safely regulate the water temperature must be supervised.

(g) Resident access to or use of swimming or other pools, hot tubs, saunas, or spas on the premises must be supervised. (See also General Conditions, 411-050-0445(1)(h).)

(h) There must be current, basic first-aid supplies and a first-aid manual readily available in the home.

(4) Meals:

(a) Three nutritious meals will be served daily at times consistent with those in the community. Each daily menu will include food from the basic food groups according to the United States Department of Agriculture (USDA's) food pyramid and include fresh fruit and vegetables when in season. Consideration must be given to residents' cultural and ethnic background in food preparation.

(b) A schedule of meal times and menus for the coming week must be prepared and posted weekly in a location accessible to residents and families. Meal substitutions in compliance with subsection (4)(a) of this rule and with resident approval are acceptable.

(c) There must be no more than a 14-hour span between the evening and morning meals. (Snacks do not substitute for a meal determining the 14-hour span.) Nutritious snacks and liquids must be offered to fulfill each resident's nutritional requirements.

(d) Food must not be used as an inducement to control the behavior of a resident.

(e) Home-canned foods must be processed according to the current guidelines of the Oregon State University Extension Service. Freezing is the most acceptable method of food preservation; milk must be pasteurized.

(f) Special consideration must be given to residents with chewing difficulties and other eating limitations. Special diets are to be followed as prescribed in writing by the resident's physician or nurse practitioner.

(g) Adequate storage must be available to maintain food at a proper temperature, including a properly working refrigerator.

(h) The household utensils, dishes, glassware and household food must not be stored in resident bedrooms, bathrooms, or living areas.

(i) Meals must be prepared and served in the home where residents live. Payment for meals eaten away from home for the convenience of the licensee (e.g., restaurants, senior meal sites) is the responsibility of the licensee. Meals and snacks, as part of an individual recreational outing by choice, are the responsibility of the resident.

(j) Utensils, dishes and glassware must be washed in hot soapy water, rinsed, and stored to prevent contamination. A dishwasher with a sani-cycle is recommended.

(k) Food preparation areas and equipment, including utensils and appliances, must be clean, free of offensive odors and in good repair.

(l) Reasonable precautions must be taken to prevent pests (e.g., ants, cockroaches, other insects and rodents).

(5) Telephone:

(a) The home must have a working, landline telephone with a listed number that is separate from any other number the home has, such as but not limited to, Internet or fax lines, unless the system includes features that notify the caregiver of an incoming call, or automatically switches to the appropriate mode. If the licensee has a caller identification service on the home number, the blocking feature must be disabled to allow incoming calls to be received unhindered. A licensee may have only one phone line as long as it complies with the requirements of these rules.

(b) The licensee must notify the Department, residents, the residents' families, legal representatives and case managers, as applicable, of any change in the adult foster home's telephone number within 24 hours of the change.

(c) Restrictions on the use of the telephone by residents are to be specified in the written house policies and must not violate residents' rights. Individual restrictions must be well documented in the care plan.

(d) The licensee must make available and accessible for residents' use a telephone that is in good working order with reasonable accommodation for privacy during telephone conversations. Residents with hearing impairments, to the extent that they cannot hear normal telephone conversation, must be provided with a telephone that is amplified with a volume control or is hearing aid compatible.

(6) Facility Records:

(a) Facility records must be maintained in the adult foster home and be available for inspection. Facility records include, but are not limited to:

(A) Proof that the licensee has the Department's approval as a result of a criminal history check, for each subject individual, who is 16 years of age and older, to have contact with adults who are elderly or physically disabled as a result of a criminal history check.

(B) Proof that the licensee and all other caregivers have met and maintained the minimum qualifications as required by OAR 411-050-0440. The following documentation must be available for review upon request:

(i) Proof of required continuing education according to OAR 411-050-0440. Documentation must include the date of each training, subject matter, name of agency or organization providing the training and number of classroom hours.

(ii) Completed certificates to document caregivers' completion of the Department's Caregiver Preparatory Training Study Guide and Workbook.

(iii) Documentation of all substitute caregivers' orientation to the adult foster home as required by OAR 411-050-0440(8).

(iv) The names, addresses, and telephone numbers of the substitute caregivers employed or used by the licensee.

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(b) Copies of notices to the Department pertaining to changes in the resident manager, shift caregiver(s) or other primary caregiver.

(c) Proof of required vaccinations for animals on the premises.

(d) Well water tests, if required, according to OAR 411-050-0445(2)(a). Test records must be retained for a minimum of three years.

(e) Contracts with the Department including a copy of the adult foster home's private-pay contract.

(f) Records of evacuation drills according to OAR 411-050-0445(5)(o), including the date, time for evacuation of all occupants, names of all residents and which residents required assistance. The records must be kept at least three years.

(g) Required Posted Items — The licensee must post the following items in the entryway or other equally prominent place where residents, visitors and others can easily read them:

(A) The adult foster home license;

(B) Conditions, if any are attached to the license;

(C) A copy of a current floor plan meeting the requirements of OAR 411-050-0445(5)(p);

(D) The Residents' Bill of Rights;

(E) The home's current house policies, which have been reviewed and approved by the Division;

(F) The Division's procedure for making complaints;

(G) The Long-Term Care Ombudsman poster;

(H) The Division's most recent inspection form; and

(I) The Division's notice pertaining to the use of any intercoms, monitoring devices and video cameras that may be used in the adult foster home; and

(J) A weekly menu according to section (4) of this rule.

(h) Post by Phone — Emergency telephone numbers including the contact number for at least one licensed provider or approved resident manager who has agreed to respond in person in the event of an emergency and an emergency contact number for the licensee(s), if the licensee(s) does not live in the home. The list must be readily visible and posted by a central telephone in the adult foster home.

(7) Resident Records:

(a) An individual resident record must be developed, kept current, and readily accessible on the premises for each person admitted to the adult foster home. The record must be legible and kept in an organized manner so as to be utilized by staff. The record must contain the following information:

(A) An initial screening assessment;

(B) General information according to OAR 411-050-0447(2)(a); and

(C) Documentation on Form SDS 913 that the licensee has informed private-pay residents of the availability of a long-term care assessment;

(D) Financial Information:

(i) Detailed records and receipts if the licensee manages or handles a resident's money. Resident account record form SDS 713 or other expenditure forms may be used if the licensee manages or handles a resident's money. The record must show amounts and sources of funds received and issued to, or on behalf of, the resident and be initialed by the person making the entry. Receipts must document all deposits and purchases of \$5 or more made on behalf of a resident.

(ii) Contracts signed by residents or their representatives who are paying privately may be kept in a separate file but must be made available for inspection by the Department.

(E) Medical and legal information including, but not limited to:

(i) Medical history, if available.

(ii) Current physician or nurse practitioner's orders.

(iii) Nursing instructions, delegations and assessments as applicable.

(iv) Completed medication administration records retained for at least the last six months or from the date of admission, whichever is less (Older records may be stored separately.).

(v) Copies of Guardianship, Conservatorship, Advance Directive for Health Care, Health Care Power of Attorney, and Physician's Order for Life Sustaining Treatment (POLST) documents, as applicable;

(F) A complete and current care plan;

(G) Copies of the current house policies and the current Residents' Bill of Rights, signed and dated by the resident or his or her representative;

(H) Significant Events — A written report (using form SDS 344 or its equivalent) of all significant incidents relating to the health or safety of the resident including how and when the incident occurred, who was involved, what action was taken by the licensee and staff, as applicable, and the outcome to the resident;

(I) Narrative of Resident's Progress — Narrative entries describing each resident's progress must be documented at least weekly and main-

tained in each resident's individual record. They must be signed and dated by the person writing them; and

(J) Non-confidential information or correspondence pertaining to the care needs of the resident.

(b) Access to Resident Records:

(A) Resident records must be readily available at the adult foster home to all caregivers working in the home and to representatives of the Department conducting inspections or investigations, as well as to residents, their authorized representatives or other legally authorized persons.

(B) The State Long-Term Care Ombudsman has access to all resident and facility records. Certified Ombudsman volunteers have access to facility records relevant to caregiving and resident records with written permission from the resident or the resident's legal representative. (See OAR 114-005-0030)

(c) Record Retention — Records, including any financial records for residents must be kept for a period of three years.

(d) In all other matters pertaining to confidential records and release of information, licensees must be guided by the principles and definitions described in OAR chapter 410, division 005, Privacy of Protected Information. A copy of these rules will be made available by the Department upon request.

(8) House Policies — House policies must be in writing and a copy given to the resident and the resident's family or representative, at the time of admission. House policies established by the licensee must:

(a) Include any restrictions the adult foster home may have on the use of alcohol, tobacco, pets, visiting hours, dietary restrictions or religious preferences.

(b) Indicate the home's policy regarding the presence and use of legal marijuana on the premises.

(c) Not be in conflict with the Residents' Bill of Rights, the family atmosphere of the home or any of these administrative rules.

(d) Be reviewed and approved by the Department prior to the issuance of a license and prior to implementing any changes.

(e) Be posted where they can easily be seen and read by residents and visitors.

(9) Resident Moves, Transfers and Discharges — The Department encourages licensees to support a resident's choice to remain in his or her living environment while recognizing that some residents may no longer be appropriate for the adult foster care setting due to safety and medical limitations.

(a) If a resident moves out of an adult foster home for any reason, licensee at the time of move-out must submit copies of pertinent information from the resident's record to the resident's new place of residence. Pertinent information must include at a minimum:

(A) Copies of current medication sheets and an updated care plan.

(B) Documentation of actions taken by the adult foster home staff, resident or the resident's representative pertaining to the move, transfer or discharge.

(C) A copy of the Department's current Notice of Resident Move, Transfer or Discharge form (SDS 901) must be maintained at least three years for all involuntary moves.

(b) Licensees must immediately document in the resident's record voluntary and involuntary moves, transfers and discharges from the adult foster home, as events take place. (See OAR 411-050-0444(10) and 411-050-0444(11))

(10) Voluntary Moves, Transfers and Discharges

(a) If a Department client or a client's representative gives notice of the client's intent to leave the adult foster home, or the client leaves the home abruptly, the licensee will promptly notify the client's case manager.

(b) The licensee must obtain prior authorization from the resident, the resident's legal representative, and case manager, as applicable, prior to:

(A) Moving voluntarily from one bedroom to another in an adult foster home.

(B) Transferring voluntarily from one adult foster home to another that has a license issued to the same person.

(C) Moving voluntarily to any other location.

(c) Notifications and authorizations must be documented and available in the resident's record.

(11) Involuntary Moves, Transfers and Discharges

(a) Mandatory Written Notice — A resident may not be moved involuntarily from the adult foster home, or to another room within the adult foster home, or transferred to another adult foster home for a temporary stay without a minimum of 30 days' written notice to the resident and the resident's legal representative, guardian, conservator and case manager, as applicable. The written notice must be on the Department's Notice of

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Resident Move, Transfer or Discharge form (SDS 901), be completed by the licensee and contain the specific reasons the facility is unable to meet the resident's needs, as determined by the facility's evaluation.

(b) Residents may only be moved, transferred or discharged for the following reasons:

(A) Medical Reasons — The resident has a medical or nursing condition that is complex, unstable or unpredictable and exceeds the level of health services the facility provides as specified in the facility's disclosure information.

(B) The adult foster home is unable to accomplish evacuation of the adult foster home in accordance with OAR 411-050-0445(5)(o).

(C) Welfare of the Resident or Other Residents

(i) The resident exhibits behavior that poses an imminent danger to self or others including acts that result in the resident's arrest or detention.

(ii) The resident engages in behavior or actions that repeatedly and substantially interferes with the rights, health, or safety of residents or others.

(iii) The resident engages in illegal drug use, or commits a criminal act that causes potential harm to the resident or others.

(D) Failure to make payment for care.

(E) The adult foster home has had its license revoked, not renewed, or it was voluntarily surrendered by the licensee.

(F) The resident engages in the use of medical marijuana in violation of the homes written policies or contrary to Oregon Law under the Oregon Medical Marijuana Act, ORS 475.300 to 475.346.

(c) Less Than 30 Days' Written Notice — A licensee may give less than 30 days' written notice in specific circumstances as identified in paragraphs (A) or (B) below, but must do so as soon as possible using the Department's Notice of Resident Move, Transfer or Discharge form (SDS 901). This notice must be given to the resident, the resident's representative, guardian, conservator and case manager, as applicable. A licensee may give less than 30 days' notice ONLY if:

(A) Undue delay in moving the resident would jeopardize the health, safety or well-being of the resident.

(i) The resident has a medical emergency that requires the immediate care of a level or type that the adult foster home is unable to provide.

(ii) The resident exhibits behavior that poses an immediate danger to self or others.

(B) The resident is hospitalized or is temporarily out of the home, and the licensee determines that he or she is no longer able to meet the needs of the resident.

(d) Written Notice of Involuntary Moves — The licensee will complete the Department's Notice of Resident Move, Transfer or Discharge form (SDS 901). The written notice must include the following information:

(A) The resident's name;

(B) The reason for the proposed move, transfer or discharge;

(C) The date of the proposed change;

(D) The location to which the resident is going, if known;

(E) A notice of the right to hold an informal conference and hearing;

(F) The name, address and telephone number of the person giving the notice; and

(G) The date the notice is issued.

(e) Involuntary Moves and Resident Rights — A person who is to be involuntarily moved or refused the right of return or readmission, is entitled to an informal conference and hearing prior to an involuntary move, transfer or discharge as follows:

(A) Informal Conference — The Department will hold an informal conference as promptly as possible after the request is received. The Department will send written notice of the time and place of the conference to the licensee and all persons entitled to the notice. Participants may include the resident, and at the resident's request, a family member, case manager, Ombudsman, legal representative of the resident; the licensee; and a representative from an adult foster home association if the licensee requests it. The purpose of the informal conference is to resolve the matter without an administrative hearing. If a resolution is reached at the informal conference, the Department will document the outcome in writing and no administrative hearing will be held.

(B) Administrative Hearing — If a resolution is not reached as a result of the informal conference, the resident or resident's representative may request an administrative hearing. If the resident is being moved, transferred or discharged with less than 30 days' notice according to subsection (11)(c) of this rule, the hearing must be held within seven days of the transfer or discharge. The licensee must hold a space available for the resident pending receipt of an administrative order. These administrative rules and

ORS 441.605(4) governing transfer notices and hearings for residents of long-term care facilities apply to adult foster homes.

(12) Closure of Adult Foster Homes

(a) Licensees must notify the Department prior to the voluntary closure of a home, proposed sale, or transfer of ownership, and give residents, their families, representatives, and case managers for Department clients, as appropriate, a minimum of 30 days' written notice on the Department's form (SDS 901) according to section (11) of this rule, Involuntary Moves, Transfers and Discharges.

(b) In circumstances where undue delay might jeopardize the health, safety or well-being of residents, licensees or staff, written notice, according to section (11) of this rule, Involuntary Moves, Transfers and Discharges, must be given as soon as possible.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 443.738

Hist.: SPD 31-2006, f. 12-27-06, cert. ef. 1-1-07

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 exitway; incandescent light bulbs and florescent 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 licensor, 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.

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(b) Septic tanks or other non-municipal sewage disposal system must be in good working order.

(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 evidence 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.

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(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 Department 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 comply with building and housing codes and fire and safety regulations applicable to a single-family residence. The licensee must forward to the Department 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 vibrating 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. 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. Records of drills must be maintained according to OAR 411-050-0444(6)(f).

(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; SDDS 2-1998(Temp), f. & cert. ef. 2-6-98 thru 8-1-98; SDDS 6-1998, f. 7-31-98, cert. ef. 8-1-98; SDDS 4-2001, f. & cert. ef. 3-1-01; SPD 31-2006, f. 12-27-06, cert. ef. 1-1-07

411-050-0447

Standards and Practices for Care and Services

(1) Screening and Assessment:

(a) Prior to admission of a resident, the licensee must conduct and document a screening to determine that the prospective resident's care needs do not exceed the license classification. The screening must evaluate the ability of the prospective resident to evacuate the home within three minutes along with all occupants of the home. The screening must also determine if the licensee and caregivers can meet the prospective resident's needs in addition to meeting the needs of the other residents of the home. The screening must include medical diagnoses, medications, personal care needs, nursing care needs, cognitive needs, communication needs, night care needs, nutritional needs, activities, lifestyle preferences, and other information as needed to assure the person's care needs can be met.

(b) The screening interview process must include interviews with the prospective resident, the resident's family, prior care providers, and case manager as appropriate. The interview should also include as necessary, any physician, nurse practitioner, registered nurse, pharmacist, therapist or mental health or other health care professional involved in the care of the resident. A copy of the screening document must be given to the prospective resident or the resident's representative. If the prospective resident become a resident in the home, a copy of the screening document must be placed in the resident's record.

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(c) The licensee is required to disclose to a prospective resident any house policies that will limit the resident's activities or preferences while living in the adult foster home. Examples include, but are not limited to: the use of tobacco or alcohol, pets, religious practices, dietary restrictions, and the use of intercoms. Licensed providers must disclose the home's policy regarding the legal presence and use of medical marijuana. (See OAR 411-050-0444(8)(b))

(2) Prior to Admission:

(a) General Information. The licensee must obtain and document general information regarding the resident prior to the resident's admission. The information must include names, addresses, and telephone numbers of relatives, significant persons, case managers, and medical, or mental health providers. The record must also include the date of admission and, if available, the resident's Social Security and medical insurance numbers, birth date, prior living facility and mortuary;

(b) The licensee must have made every effort to obtain physician or nurse practitioner's written orders for medications, treatments, therapies and special diets, as applicable, prior to the admission of the resident. Any telephone orders must be followed with written orders. A physician, nurse practitioner, or pharmacist review of the resident's preferences for over-the-counter medications and home remedies must also be obtained at that time. The licensee must also obtain and place in the record any medical information available including history of accidents, illnesses, impairments or mental status that may be pertinent to the resident's care;

(c) The licensee must ask for copies of the following documents, if the resident has them: Advance Directive for Health Care, Physician's Order for Life Sustaining Treatment (POLST), proof of court-appointed guardianship and proof of conservatorship, whichever may be applicable. Copies of these documents must be placed in a prominent place in the resident's record and sent with the resident if he or she is transferred for medical care;

(d) Prior to admission, the licensee must inform the resident or the resident's representative if the home serves Medicaid clients;

(e) The licensee must inform private-pay residents, or their representatives if appropriate, of the availability of long-term care assessment services provided through the Department or a certified assessment program. The licensee must document on the Department's form (SDS 913) that the individual has been advised of their right to receive a long-term care assessment. The facility must maintain a copy of the form in the resident's record and make a copy available to the Department upon request; and

(f) The licensee must discuss the Residents' Bill of Rights, and the home's current house policies with the resident and his or her representative as appropriate. The discussion must be documented by having the resident sign and date a copy of the house policies, which have been approved by the Department, and the Residents' Bill of Rights, form SDS 305A. Copies of the signed house policies and Residents' Bill of Rights must be maintained in the resident's record.

(3) Care Plan:

(a) During the initial 14 days following the resident's admission to the home, the licensee must continue the assessment process which includes documenting the resident's preferences and care needs. The assessment and care plan must be completed by the licensee and documented within the initial 14-day period. The care plan must describe the resident's needs and preferences, the resident's capabilities and what assistance the resident requires for various tasks. The care plan must also include by whom, when and how often care and services will be provided. Specific information must include:

(A) The resident's ability to perform activities of daily living (ADLs);

(B) Special equipment used by the resident;

(C) Communication needs: (Examples may include, but are not limited to, hearing or vision, such as eraser boards or flash cards, or language barriers such as sign language or non-English speaking;

(D) Night needs;

(E) Medical or physical health problems, including physical disabilities, relevant to care and services;

(F) Cognitive, emotional, or impairments relevant to care and services;

(G) Treatments, procedures or therapies;

(H) Registered nurse consultation, teaching, delegation or assessment;

(I) Behavioral interventions;

(J) Social, spiritual, and emotional needs including lifestyle preferences, activities, and significant others involved;

(K) Emergency exiting ability including assistance and equipment needed;

(L) Any use of physical restraints or psychoactive medications; and

(M) Dietary needs and preferences;

(b) The care plan must be reviewed and updated every six months and as the resident's condition changes. A review note with the date and licensee's signature must be documented in the record at the time of the review. If the care plan contains many changes and becomes less legible, a new care plan must be written.

(4) Registered Nurse Consultation

(a) RN Consultation and Assessment — The licensee must obtain a medical professional consultation and assessment to meet the care needs of the resident as required in these rules. A registered nurse consultation must be obtained when a skilled nursing care task, as defined by the Oregon State Board of Nursing, has been ordered by a physician or other qualified practitioner.

(b) The licensee must also request a registered nurse consultation under the following conditions:

(A) When the resident has a health concern or behavioral symptoms that may benefit from a nursing assessment and provider education.

(B) When written parameters are needed to clarify the physician or nurse practitioner's p.r.n. order for medication and treatment. (See subsection (5)(g) of this rule)

(C) Prior to the use of physical restraints when not assessed, taught and reassessed, according to subsection (5)(m) of this rule, by the physician, nurse practitioner, Christian Science practitioner, mental health clinician, physical therapist or occupational therapist.

(D) Prior to the use of new psychoactive medications when not assessed, taught and reassessed according to subsection (5)(h) of this rule, by the physician, nurse practitioner or mental health practitioner, and prior to requesting psychoactive medications to treat behavioral symptoms.

(E) When care procedures have been ordered, which are new for a specific resident, the licensee, or other caregivers.

(c) RN Delegation — The registered nurse may determine that a nursing care task is to be taught utilizing the delegation process. Delegations are not transferable to other residents or caregivers. (Refer to OAR chapter 85, division 047)

(d) Documentation of nurse consultations, delegations, assessments and reassessments must be maintained in the resident's record and made available to the Department upon request.

(5) Standards for Medications, Treatments and Therapies:

(a) The licensee and caregivers must demonstrate an understanding of each resident's medication administration regimen. The reason the medication is used, medication actions, any specific instructions and common side effects must be referenced by medication resource material readily available at the facility;

(b) Written Orders. The licensee must obtain and place a signed order in the resident's record for any medications, dietary supplements, treatments, or therapies which have been prescribed by the physician or nurse practitioner. Orders must be carried out as prescribed unless the resident or the resident's legal representative refuses to consent;

(A) Changed Orders. Changes may not be made without a physician or nurse practitioner's order and the physician or nurse practitioner must be notified if a resident refuses to consent to an order. Order changes obtained by telephone must be followed-up with signed orders. Changes in the dosage or frequency of an existing medication require a new pharmacy label. If a new pharmacy label cannot be obtained, the change must be written on the existing pharmacy label and match the new medication order. (See paragraph (5)(e)(D) of this rule)

(B) Documentation. Attempts to obtain the written changes must be documented and readily available for review in the resident's record. Over-the-counter medications or home remedies requested by the resident must be reviewed by the resident's physician, nurse practitioner or pharmacist as part of developing the initial care plan and at time of care plan review.

(c) Health Care Professional Orders (Implemented by AFH Staff). The licensee who implements a hospice, home health or other physician-generated order must:

(A) Have a copy of the hospice or home health document that communicates the written order;

(B) Transcribe the order onto the medication administration record (MAR);

(C) Implement the order as written; and

(D) Include the order on subsequent medical visit report(s) for the physician or nurse practitioner to review.

(d) Hospice and Home Health Orders (Implemented by Non AFH Staff). The licensee who provides adult foster home services to a recipient of hospice or home health services, but who does not implement a hospice or home health generated order must:

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(A) Have a copy of the hospice or home health document that communicates the order; and

(B) Include the order on subsequent medical visit report(s) for the physician or nurse practitioner to review.

(e) Medication Administration Record (MAR). A current, written medication administration record must be kept for each resident and must:

(A) List the name of all medications administered by the caregiver, including over-the-counter medications and prescribed dietary supplements. The record must identify the dosage, route (if other than oral) and the date and time each medication or supplement is to be given;

(B) Identify any treatments and therapies given by the caregiver. The record must indicate the type of treatment or therapy and the time the procedure is to be performed;

(C) Be immediately initialed by the person administering the medication, treatment or therapy as it is completed. Each medication administration record must contain a legible signature that identifies each set of initials;

(D) Document changed and discontinued orders on the medication administration record immediately showing the date of the change or discontinued order. Changed orders must be written on a new line with a line drawn to the start date and time; and

(E) Document missed or refused medications, treatments or therapies. If a medication, treatment, or therapy is missed or refused by the resident, the initials of the person administering the medication must be circled, and a brief but complete explanation must be recorded on the back of the medication record.

(f) Disposal of Medication. Licensees must dispose of all unused, discontinued, outdated, recalled and contaminated medications according to the requirements of the adult foster home's local DEQ waste management company. A record of the disposal must be readily available in the resident's record. Documentation regarding the disposal must include:

(A) The date of disposal;

(B) Description of medication, (i.e., name, dosage, and amount being disposed);

(C) Name of resident for whom the medication was prescribed;

(D) Reason for disposal;

(E) Method of disposal;

(F) Signature of person disposing of the medication; and

(G) For Controlled Medications. Signature of witness to the disposal according to paragraph (5)(i)(E) of this rule.

(g) P.R.N. Medications. Prescription medications ordered to be given "as needed" or "p.r.n." must have specific parameters indicating what the medication is for and specifically when, how much and how often the medication may be administered. Any additional instructions must be available for the caregiver to review before the medication is administered to the resident.

(A) P.R.N. Documentation. As needed (p.r.n) medication must be documented on the resident's medication administration record with the time, dose, the reason the medication was given, and the outcome.

(B) P.R.N. Advance Set-Up. As needed (p.r.n.) medications must not be included in any advance set-up of medication.

(h) Psychoactive Medications:

(A) A licensee may use psychoactive medications to treat a resident's behavioral symptoms only after a consultation with the physician, nurse practitioner, registered nurse or mental health professional has been obtained. The consultation must identify a probable cause of the behavior and include behavioral and environmental interventions to be used instead of or in addition to medication. It is expected that the alternative interventions will be tried and the resident's response to them will be documented prior to the use of medication. (B) Prescriptions or orders for psychoactive medication must specify the dose, frequency of administration and the circumstance for use, (i.e., specific symptoms). The licensee and all caregivers must be aware of these parameters. (C) The licensee and all caregivers must know the intended effect of a medication for a particular resident, the common side effects as well as the circumstances for reporting to the physician or nurse practitioner.

(D) The care plan must identify and describe the behavioral symptoms for which psychoactive medications are being used and list all interventions, including behavioral, environmental and medication.

(E) A plan for reassessment of psychoactive medication usage must be individually determined for each resident. The reassessment will be completed by the physician or nurse practitioner.

(F) Psychoactive medications must never be given to discipline a resident or for the convenience of the caregivers.

(i) Medication Containers, Storage and Disposal:

(A) Each of the resident's medication containers, including bubble packs, must be clearly labeled by the pharmacy. Over-the-counter medication purchased for a specific resident's use must be in the original labeled container and marked with the resident's name.

(B) Over-the-counter medications in stock bottles (with original labels) may be used for multiple residents in the home.

(C) All medications must be kept in a locked, central location, separate from medications of the caregiver or caregiver's family.

(D) Residents must not have access to medications of the licensee, caregivers or other household members.

(E) Unused, outdated or discontinued medications must not be kept in the home and must be disposed of. Licensees should contact the local DEQ waste management company in their area for instructions on proper disposal of unused or expired medications. Disposal of all medications may be documented on the medication administration record but must be readily available in the resident's record. Disposal of all controlled substances must be documented and witnessed by at least one other individual who is 18 years of age or older.

(j) Advanced Set-Up. The licensee may set up each resident's medications for up to seven days in advance (excluding P.R.N. medications) by using a closed container manufactured for that purpose. If used, each resident must have his or her own container with divisions for the days and times of the day the medications are to be given. The container must be clearly labeled with the resident's name, name of each medication, time to be given, dosage, amount, route (if other than oral) and description of the medications. The container must be stored in the locked area with the medications;

(k) Self-Administration of Medication. Residents must have a physician or nurse practitioner's written order of approval to self-medicate. Residents able to handle their own medical regimen may keep medications in their own room in a small storage area that can be locked. The licensee must notify the physician or nurse practitioner if the resident show signs of no longer being able to self-medicate safely;

(l) Injections. Subcutaneous, intramuscular, and intravenous injections may be self-administered by the resident or administered by a relative of the resident, or an Oregon licensed Registered Nurse (RN). A, Oregon Licensed Practical Nurse (LPN) can also give subcutaneous and intramuscular injections. A caregiver who has been delegated and trained by a registered nurse under provision of the Oregon State Board of Nursing (Standards for Registered Nurse Delegation of Nursing Tasks to Unlicensed Persons) may give subcutaneous injections. Intramuscular and intravenous injections cannot be delegated;

(m) Physical Restraints (See Definitions, OAR 411-050-0400(46)) Physical restraints may only be used when required to treat a resident's medical symptoms, or to maximize a resident's physical functioning. Licensees and caregivers may use physical restraints in adult foster homes only in compliance with these rules, including the Residents' Bill of Rights. (See section (7) of this rule) Prior to the use of any type of physical restraint, the following must be completed::

(A) Assessment. A physician, nurse practitioner, registered nurse, Christian Science practitioner, mental health clinician, physical therapist or occupational therapist will complete an assessment, which includes consideration of all other alternatives. If, following the assessment and trial of other measures, it is determined that a restraint is necessary, the least restrictive restraint must be used and as infrequently as possible and the licensee must obtain a written order from the resident's physician, nurse practitioner or Christian Science practitioner;

(B) Consent. Physical restraints may not be used without first obtaining written consent of the resident or the resident's legal representative;

(C) Reassessment. The frequency for reassessment of the physical restraint's use must be determined based on the recommendations made in the initial assessment. A physician, nurse practitioner, registered nurse, Christian Science practitioner, mental health clinician, physical therapist or occupational therapist may perform the reassessment;

(D) Documentation. The following must be kept in the resident's record pertaining to physical restraints:

(i) The assessment completed by a medical professional according to paragraph (5)(m)(A) above. The assessment must include documentation of all other alternatives and less restrictive measures which were considered; identify alternative, less restrictive measures that must be used in place of the restraint whenever possible; a written procedural guidance for correct use of the restraint; the frequency and procedures for nighttime use (if applicable); and dangers and precautions related to the use of the restraint;

(ii) A written order authorizing the use of the physical restraint from the resident's physician, nurse practitioner or Christian Science practition-

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er. The order must include specific parameters including type, circumstances and duration of the use of the restraint. (P.R.N. orders for restraints are not allowed.);

(iii) Written consent of the resident or the resident's legal representative to use the specific type of physical restraint;

(iv) The use of any type of physical restraint must be recorded on the resident's care plan showing why and when the restraint is to be used, along with instructions for periodic release. Any less restrictive, alternative measures planned during the assessment and cautions for maintaining safety while restrained must also be recorded on the care plan; and

(v) The reassessments completed by a medical professional according to paragraph (5)(m)(C) above.

(E) Daytime Use. Residents physically restrained during waking hours must have the restraints released at least every two hours for a minimum of 10 minutes and be repositioned, offered toileting, exercised or provided range-of-motion exercises during this period;

(F) Nighttime Use. The use of physical restraints at night is discouraged and must be limited to unusual circumstances. If used, the restraint shall be of the design to allow freedom of movement with safety. The frequency of night monitoring to address resident safety and care needs must be determined in the assessment. Tie restraints of any kind must not be used to keep a resident in bed;

(G) If any physical restraints are used in an adult foster home, they must allow for quick release at all times. Use of restraints must not impede the three-minute evacuation of all household members; and

(H) Physical restraints may not be used for the discipline of a resident or for the convenience of the adult foster home.

(6) Resident Care:

(a) Care and supervision of residents must be in a home-like atmosphere and must be appropriate to the needs, preferences, age and condition of the individual resident. The training of the licensee and staff will be appropriate to the age, care needs and condition of the residents. (See OAR 411-050-0440(1)(g)) Additional staff may be required if day care or respite residents are in the home;

(b) If a resident has a medical regimen or personal care plan prescribed by a licensed health care professional, the provider must cooperate with the plan and ensure that it is implemented as instructed;

(c) Notification. The licensee must notify emergency personnel, the resident's physician, registered nurse, family representative, and case manager, as applicable, under the following circumstances:

(A) Emergencies (Medical, Fire, Police). In the event of an emergency, the licensee or other caregiver with the resident at the time of the event, must first call 911 or the appropriate emergency number for their community. This does not apply to residents with medical emergencies who practice Christian Science. Caregivers must follow written instructions from the hospice nurse, if applicable. If the resident has a completed Physician's Orders for Life Sustaining Treatment (POLST) form, or other legal documents such as an Advance Directive for Health Care and Do Not Resuscitate (DNR) orders, copies must be available to the emergency personnel when they arrive;

(B) Hospitalization. In the event the resident is hospitalized.

(C) Health Status Change. When the resident's health status or physical condition changes.

(D) Death. Upon the death of the resident.

(d) Licensees must not inflict, or tolerate to be inflicted, abuse or punishment; financial exploitation; or neglect of resident(s);

(e) Licensees must exercise reasonable precautions against any conditions that could threaten the health, safety or welfare of residents;

(f) A qualified caregiver must always be present and available at the home when residents are in the home. A resident must not be left in charge in lieu of a caregiver;

(g) Activities. Licensees must make available at least six hours of activities per week which are of interest to the residents, not including television and movies. (Information regarding activity resources is available from the Division). Activities must be oriented to individual preferences as indicated in the resident's care plan (See paragraph (3)(a)(J) of this rule). Documentation of each resident's activity participation must be recorded in the resident's records;

(h) Direct Involvement of Caregivers. Licensees or caregivers must be directly involved with residents on a daily basis. If the physical characteristics of the adult foster home do not encourage contact between caregivers and residents and among residents, the licensee must demonstrate how regular positive contact will occur;

(i) Resident Money. If the licensee manages or handles a resident's money, a separate account record must be maintained in the resident's

name. The licensee must not under any circumstances commingle, borrow from, or pledge any funds of a resident.

(A) Personal Incidentals Funds (PIF) for Department clients are to be used at the discretion of the client for such things as clothing, tobacco and snacks (not part of daily diet).

(B) Licensees and other caregivers must not accept gifts from residents through undue influence or accept gifts of substantial value. Caregivers and family members of caregivers must not accept gifts of substantial value or loans from the resident or the resident's family. Licensees or other caregivers must not influence, solicit from, or suggest to any of the residents or their representatives that the residents or their representatives give the caregiver or the caregiver's family money or property for any purpose.

(C) The licensee must not subject the resident or the resident's representative to unreasonable rate increases.

(j) Licensees and other caregivers must not loan money to residents.

(7) Residents' Bill of Rights: Licensees, their families and employees of the home must guarantee not to violate these rights and to help the residents exercise them. The Residents' Bill of Rights provided by the Division must be explained and a copy given to residents at admission. The Resident's Bill of Rights states each resident has the right to:

(a) Be treated as an adult with respect and dignity;

(b) Be informed of all resident rights and all house policies;

(c) Be encouraged and assisted to exercise constitutional and legal rights including the right to vote;

(d) Be informed of their medical condition and the right to consent to or refuse treatment;

(e) Receive appropriate care and services and prompt medical care as needed;

(f) Be free from mental and physical abuse;

(g) Complete privacy when receiving treatment or personal care;

(h) Associate and communicate privately with any person of choice and send and receive personal mail unopened;

(i) Have access to and participate in activities of social, religious, and community groups;

(j) Have medical and personal information kept confidential;

(k) Keep and use a reasonable amount of personal clothing and belongings, and to have a reasonable amount of private, secure storage space;

(l) Be free from chemical and physical restraints except as ordered by a physician or other qualified practitioner. Restraints are used only for medical reasons, to maximize a resident's physical functioning, and after other alternatives have been tried. Restraints are not used for discipline or convenience;

(m) Manage their own financial affairs unless legally restricted;

(n) Be free from financial exploitation. The licensee must not charge or ask for application fees or non-refundable deposits or solicit, accept or receive money or property from a resident other than the amount agreed to for services;

(o) A written agreement regarding services to be provided and the rates to be charged. The licensee must give 30 days' written notice before any change in the rates or the ownership of the home;

(p) Not be transferred or moved out of the adult foster home without 30 days' written notice and an opportunity for a hearing. A licensee may transfer a resident only for medical reasons or for the welfare of the resident or other residents, or for nonpayment;

(q) A safe and secure environment;

(r) Be free of discrimination in regard to race, color, national origin, sex, or religion; and

(s) Make suggestions or complaints without fear of retaliation.

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

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 443.738, 443.739 & 443.775

Hist.: SSD 14-1985, f. 12-31-85, ef. 1-1-86; SSD 11-1988, f. 10-18-88, cert. ef. 11-1-88, Renumbered from 411-050-0445(8) thru (10); 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; SDDS 4-2001, f. & cert. ef. 3-1-01; SPD 31-2006, f. 12-27-06, cert. ef. 1-1-07

411-050-0450

Inspections

(1) The Division must conduct an inspection of an adult foster home:

(a) Prior to issuance of a license;

(b) Prior to the annual renewal of a license. The Division will conduct this inspection unannounced;

(c) Upon receipt of an oral or written complaint of violations that threaten the health, safety, or welfare of residents; or

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(d) Anytime the Division has probable cause to believe a home has violated a regulation or provision of these Administrative Rules or is operating without a license.

(2) The Division may conduct inspections:

(a) Any time such inspections are authorized by these Administrative Rules and any other time the Division considers it necessary to determine if a home is in compliance with these Administrative Rules or with conditions placed upon the license;

(b) To determine if cited violations have been corrected; and

(c) For the purpose of routine monitoring of the residents' care.

(3) State or local fire inspectors must be permitted access to enter and inspect adult foster homes regarding fire safety upon the Division's request.

(4) The Division staff must have full access and authority to examine and copy facility and resident records, including but not limited to, admission agreements, private pay resident contracts, and resident account records, as applicable.

(5) Private Interview. Division staff has authority to interview the licensee, resident manager, other caregivers and residents. Interviews must be confidential and conducted privately.

(6) Licensees must authorize resident managers and other caregivers to permit entrance and access to resident and facility records by Division staff for the purpose of inspection, investigation, and other duties within the scope of Division authority.

(7) The Division has authority to conduct inspections with or without advance notice to the licensee, staff, or a resident of the home. The Division will not give advance notice of any inspection if the Division believes that notice might obstruct or seriously diminish the effectiveness of the inspection or enforcement of these Administrative Rules.

(8) If Division staff are not permitted access or inspection, a search warrant may be obtained.

(9) The inspector will respect the private possessions of residents, licensees and staff while conducting an inspection.

(10) Public File. The Division will maintain current information on all licensed adult foster homes and must make all non-confidential information available to prospective residents and other interested members of the public at local Division offices or Area Agencies on Aging licensing offices throughout the state as authorized by law. The information includes:

(a) The location of the adult foster home and the name and mailing address of the licensee if different;

(b) A brief description of the physical characteristics of the home;

(c) A copy of the current license which indicates the current classification of the home;

(d) The date the licensee was first licensed to operate that home;

(e) The date of the last licensing inspection including any fire inspection, the name and telephone number of the office that performed the inspection and a summary of the findings;

(f) Copies of all non-confidential portions of complaint investigations involving the home, together with the findings, actions taken by the Division and responses from the licensee and complainant, as appropriate. All complaint terminology must be clearly defined and the final disposition clearly designated;

(g) Any license conditions, suspensions, denials, revocations, civil penalties, exceptions or other actions taken by the Division involving the home; and

(h) Whether care is provided primarily by the licensed provider, a resident manager or shift caregivers.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 443.740 & 443.755

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

411-050-0455

Complaints

(1) The Division will furnish each adult foster home with a Complaint Notice which states the telephone number of the Division, the Long-Term Care Ombudsman and the procedure for making complaints.

(2) Any person who believes these Administrative Rules have been violated may file a complaint with the Division.

(3) The Division will investigate complaints as quickly as possible. The primary purpose of the prompt response is to protect the residents and correct the situation. Investigations of complaints alleging injury, abuse or neglect must be completed as soon as possible and all investigations will be completed within 60 days unless there is a concurrent criminal investigation that requires additional time.

(4) The adult foster home licensee must not retaliate against any resident after the resident or someone acting on the resident's behalf has filed a complaint in any manner, including but not limited to, increasing charges; decreasing services; rights or privileges; threatening to increase charges or; threatening to deny or decrease services, rights or privileges; taking or threatening to take any action to coerce or compel the resident to leave the facility or by abusing or threatening to harass or abuse a resident in any manner (See OAR 411-050-0400(2));

(5) Licensees must ensure that any complainant, witness or employee of a facility must not be subject to retaliation by any adult foster home caregiver, (including their family and friends who may live in or frequent the adult foster home) for making a report, being interviewed about a complaint or being a witness, including but not limited to, restriction of access to the home or a resident or, if an employee, dismissal or harassment.

(6) As approved by law, the complainant will have immunity from any civil or criminal liability with respect to the making or content of a complaint made in good faith. Immunity under this subsection does not protect self-reporting licensees from liability for the underlying conduct that is alleged in the complaint.

(7) Standards will be followed for investigations related to abuse, neglect, or injury.

(a) The Division will cause an investigation within two hours if a complaint alleges that a resident has been injured, abused or neglected and that any resident's health or safety is in imminent danger or that the resident has died or been hospitalized due to abuse or neglect;

(b) The Division will cause an investigation to begin by the end of the next working day if circumstances exist which could result in the injury, abuse, or neglect and that the circumstances could place the resident's health or safety in imminent danger;

(c) An unannounced on-site visit will be conducted;

(d) The investigator will interview the licensee and will advise the licensee of the nature of the complaint; the licensee will have an opportunity to submit relevant information to the investigator. All available witnesses identified by any sources as having personal knowledge relevant to the complaint will be interviewed. Interviews are confidential and conducted in private;

(e) All evidence and physical circumstances that are relevant and material to the complaint will be considered;

(f) Immediate protection must be provided for the residents by the Division, as necessary. The licensee must correct any substantiated problem immediately;

(g) A report will be written within 60 days of receipt of a complaint which includes the investigator's personal observations, a review of documents and records, a summary of all witness statements, and a conclusion; and

(h) Reports indicating the need for a sanction by either the local licensing authority or the Division will be referred to the appropriate office for corrective action immediately upon completion of the investigation.

(8) The Division, through its local offices, will mail a copy of the investigation report to the following people within seven days of the completion of the investigation:

(a) The complainant (unless the complainant requests anonymity);

(b) The resident(s) involved and any persons designated by the resident(s) to receive the information;

(c) The licensee; and

(d) The Long-Term Care Ombudsman;

(e) The report must protect as confidential the identity of the resident, the complainant, and any witnesses; and

(f) The report must be accompanied by a notice informing such persons of the right to give additional information about the content of the report to the Division's local office within seven days of receipt.

(9) The Division's local office must review the responses and reopen the investigation if additional evidence of a violation is received. A copy of the entire report must be sent to the Division upon completion of the investigation report, whether or not the investigation report concludes the complaint is substantiated.

(10) The Division must take appropriate corrective action within 60 days from completion of the investigation report.

(11) Licensees who acquire substantiated complaints pertaining to the health, safety or welfare of residents may be assessed civil penalties, may have conditions placed on their licenses, or may have their licenses suspended, revoked or not renewed.

(12) Complaint Reports. Copies of all completed complaint reports must be maintained and available to the public at the local Department.

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Individuals may purchase a photocopy upon requesting an appointment to do so. Completed reports placed in the public file must:

- (a) Protect the privacy of the complainant and the resident;
- (b) Treat the names of the witnesses as confidential information;
- (c) Clearly designate the final disposition of the complaint.

(A) Pending Complaint Reports. Any information regarding the investigation of the complaint will not be filed in the public file until the investigation has been completed.

(B) Complaint Reports and Responses. The investigation reports, including copies of the responses, with confidential information deleted, must be available to the public at the local Department office along with other public information regarding the adult foster home.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 443.765

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; SDSD 11-2001, f. 12-21-01, cert. ef. 1-1-02; SPD 31-2006, f. 12-27-06, cert. ef. 1-1-07

411-050-0460

Procedures for Correction of Violations

(1) If, as a result of an inspection or investigation, the Division determines that abuse has occurred, the licensee will be notified verbally to immediately cease the abusive act. The Division will follow-up with a written confirmation of the warning to cease the abusive act and will include notification that further sanctioning may be imposed.

(2) If an inspection or investigation indicates a violation(s) of these rules other than abuse, the Division will notify the licensee of the violation(s) in writing .

(3) The notice of violation must state the following:

- (a) A description of each condition that constitutes a violation;
- (b) Each rule that has been violated;

(c) A specific time frame for correction, not to exceed 30 days after receipt of the notice, except in cases of imminent danger;

(d) The Division may approve a reasonable time in excess of 30 days if correction of the violation(s) within 30 days is determined to be impossible.

(e) Sanctions that may be imposed against the home for failure to correct the violation(s);

(f) The right of the licensee to contest the violation(s) if an administrative sanction is imposed; and

(g) The right of the licensee to request an exception as provided in OAR 411-050-0430.

(4) At any time after receipt of a notice of violation or an inspection report, the applicant, the licensee or the Division may request a meeting. The meeting will be scheduled within ten (10) days of a request by either party.

(a) The purpose of the meeting is to discuss the violation(s) stated in the notice of violation, provide information and to assist the applicant or licensee in achieving compliance with the requirements of these Administrative Rules.

(b) The request for a meeting by an applicant or licensee or the Division will not extend any previously established time frame for correction.

(5) The applicant or licensee must notify the Division of correction of the violation(s) no later than the date specified in the notice of violation.

(6) The Division may conduct a reinspection of the home after the date the Division receives the report of compliance, or after the date by which the violation(s) must be corrected as specified in the notice of violation.

(7) For violation(s) that present an imminent danger to the health, safety or welfare of residents, the licensee must correct the violation(s) and abate the conditions no later than 24 hours after receipt of the notice of violation. The Division may inspect the home after the 24-hour period to determine if the violation(s) has been corrected as specified in the notice of violation.

(8) If residents are in immediate danger, the license may be immediately suspended and arrangements made to move the residents.

(9) If, after inspection of a home, the violations have not been corrected by the date specified in the notice of violation or if the Division has not received a report of compliance, the Division may institute one or more administrative sanctions.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 443.765

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

411-050-0465

Administrative Sanctions

(1) An administrative sanction may be imposed for non-compliance with these rules. An administrative sanction includes one or more of the following actions:

- (a) Attachment of conditions to a license;
- (b) Civil penalties;
- (c) Denial, suspension, revocation, or non-renewal of license; and/or
- (d) Reclassification of a license.

(2) If the Division imposes an administrative sanction, it will serve a notice of administrative sanction upon the licensee personally, by certified mail, or by registered mail.

(3) The notice of administrative sanction will state:

(a) Each sanction imposed;

(b) A short and plain statement of each condition or act that constitutes a violation;

(c) Each statute or rule allegedly violated;

(d) A statement of the licensee's right to a contested case hearing;

(e) A statement of the authority and jurisdiction under which the hearing is to be held;

(f) A statement that the Division's files on the subject of the contested case automatically become part of the contested case record upon default for the purpose of proving a prima facie case; and

(g) A statement that the Division will issue a final order of default if the licensee fails to request a hearing within the specified time.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 443.765

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

411-050-0480

Denial, Revocation or Non-Renewal of License

(1) The Division may deny, revoke, or refuse to renew a license where it finds:

(a) There has been substantial non-compliance with these rules or where there is substantial non-compliance with local codes and ordinances or any other state or federal law or rule applicable to the health and safety of caring for residents in an adult foster home;

(b) The Division has conducted a criminal history check and determined the applicant or licensee is not approved in accordance with OAR chapter 410, division 007, Criminal History Check Rules.

(c) The licensee allows a caregiver, or any other person, excluding the residents, to reside or work in the adult foster home, who has been convicted of potentially disqualifying crimes, and has been denied, or refused to cooperate with the Division in accordance with OAR chapter 410, division 007, Criminal History Check Rules.

(d) The applicant or licensee falsely represents that he or she has not been convicted of a crime.

(2) The Division may deny, revoke, or refuse to renew an adult foster home license if the applicant or licensee:

(a) Submits incomplete or untrue information to the Division;

(b) Has a history of, or demonstrates financial insolvency, such as foreclosure, eviction due to failure to pay rent, termination of utility services due to failure to pay bill(s);

(c) Has a prior denial, suspension, revocation or refusal to renew a certificate or license to operate a foster home or residential care facility in this or any other state or county;

(d) Is associated with a person whose license for a foster home or residential care facility was denied, suspended, revoked or refused to be renewed due to abuse or neglect of the residents, or creating a threat to the residents or failure to possess physical health, mental health or good personal character within three years preceding the present action, unless the applicant or licensee can demonstrate to the Division by clear and convincing evidence that the person does not pose a threat to the residents. For purposes of this subsection, an applicant or licensee is "associated with" a person if the applicant or licensee:

(A) Resides with the person;

(B) Employs the person in the foster home;

(C) Receives financial backing from the person for the benefit of the foster home;

(D) Receives managerial assistance from the person for the benefit of the foster home;

(E) Allows the person to have access to the foster home; or

(F) Rents or leases the adult foster home from the person;

(e) Has threatened the health, safety, or welfare of any resident;

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- (f) Has abused, neglected, or exploited any resident;
- (g) Has a medical or psychiatric problem that interferes with the ability to provide foster care;
- (h) Has previously been cited for the operation of an unlicensed adult foster home;
 - (i) Does not possess the good judgment or character deemed necessary by the Division;
 - (j) Fails to correct a violation within the specified time frame allowed;
 - (k) Refuses to allow access and inspection;
 - (l) Fails to comply with a final order of the Division to correct a violation of the Administrative Rules for which an administrative sanction has been imposed such as a License Condition;
 - (m) Fails to comply with a final order of the Division imposing an administrative sanction, including the imposition of a civil penalty;
 - (n) Fails to take or pass the Basic Training Course examination; or
 - (o) Has failed to submit a current, completed Criminal History Request form to the Division on more than one occasion before allowing persons 16 years or older to live, receive training or work in the adult foster home, or have unsupervised access to residents or their personal property.
- (p) Has previously surrendered a license while under investigation or administrative sanction during the last three years.

(3) If the license is revoked for the reason of abuse, neglect or exploitation of a resident, the licensee may request a review in writing within 10 days after receipt of the notice of the revocation. If a request is made, the Division administrator or designee will review all material relating to the allegation of abuse, neglect or exploitation and the revocation within 10 days. The administrator or designee will determine, based on a review of the material, whether to sustain the decision. If the administrator or designee does not sustain the decision, the license will be restored immediately. The decision of the administrator or designee is subject to a contested case hearing under ORS 183.310 to 183.550.

(4) If a license is revoked or not renewed, the licensee must be entitled to a contested case hearing preceding the effective date of the revocation or non-renewal if the licensee requests a hearing in writing within 21 days after receipt of the notice. If no written request for a timely hearing is received, the Division will issue the final order by default. The Division may designate its file as the record for purposes of default.

(5) A license subject to revocation will remain valid during an administrative hearings process even if the hearing and final order are not issued until after the expiration date of the license.

(6) If an initial license is denied for any reason other than the results of a test or inspection, the applicant is entitled to a hearing if the applicant requests a hearing in writing within 60 days after receipt of the denial notice. If no written request for a hearing is timely received, the Division will issue a final order by default. The Division may designate its file as the record for purposes of default.

(7) If a license is revoked or not renewed, the Division may arrange for residents to move for their protection.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 443.745

Hist.: SSD 14-1985, f. 12-31-85, ef. 1-1-86; SSD 2-1987(Temp), f. & ef. 5-5-87; SSD 10-1987, f. 10-29-87, ef. 11-1-87; 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; SDDS 4-2001, f. & cert. ef. 3-1-01; SPD 31-2006, f. 12-27-06, cert. ef. 1-1-07

411-050-0481

Suspension of License

(1) The Division may immediately suspend a license for reason of abuse, neglect, or exploitation of a resident if the Division finds that the abuse, neglect or exploitation causes an immediate threat to any of the residents.

(2) The licensee may request a review of the decision to immediately suspend a license by submitting a request, in writing, within 10 days after receipt of the notice and order of suspension. Within 10 days after receipt of the licensee's request for a review, the Division administrator or designee will review all material relating to the allegation of abuse, neglect, or exploitation and to the suspension, including any written documentation submitted by the licensee within that time frame. The administrator or designee will determine, based on a review of the material, whether to sustain the decision. If the administrator or designee does not sustain the decision, the suspension will be rescinded immediately. The decision of the administrator or designee is subject to a contested case hearing under ORS 183.310 to 183.550 if requested within 90 days.

(3) If a license is suspended, the Division may arrange for residents to move for their protection.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 443.745

Hist.: SSD 3-1996, f. 3-29-96, cert. ef. 4-1-96; SDDS 4-2001, f. & cert. ef. 3-1-01; SPD 31-2006, f. 12-27-06, cert. ef. 1-1-07

411-050-0483

Conditions

(1) Conditions may be attached to a license and take effect immediately upon notification by the Division or the delivery date of the notice, whichever is sooner. The type of condition attached to a license must directly relate to a risk of harm or potential risk of harm to residents. Conditions may be attached upon a finding that:

(a) Information on the application or initial inspection requires a condition to protect the health, safety or welfare of residents;

(b) There exists a threat to the health, safety, or welfare of a resident;

(c) There is reliable evidence of abuse, neglect, or exploitation; or

(d) The home is not being operated in compliance with these rules.

(2) Examples of conditions that may be imposed on a licensee include, but are not limited to:

(a) Restricting the total number of residents based upon the ability of the licensee to meet the health and safety needs of the residents;

(b) Restricting the number of residents a provider may admit or retain within a specific classification level based upon the ability of the licensee and staff to meet the health and safety needs of all the residents;

(c) Changing the classification of the license based on the licensee's ability to meet the specific care needs of the residents;

(d) Requiring additional staff to meet the resident's care needs;

(e) Requiring additional qualifications or training of licensee and staff to meet specific resident care needs;

(f) Restricting admissions when there is a threat to the current residents of the home and admitting new residents would compound that threat; and

(g) Restricting a licensee from allowing persons on the premises who may be a threat to resident's health, safety or welfare.

(3) In accordance with OAR 411-050-0465, the licensee will be notified in writing of any conditions imposed, the reason for the conditions, and be given an opportunity to request a hearing under ORS 183.310 to 183.550. A licensee must request a hearing in writing within 21 days after the receipt of the notice. Conditions will take effect immediately and are a final order of the Division unless later rescinded through the hearings process.

(4) In addition to, or in-lieu of, a contested case hearing, a licensee may request an informal conference with the Division of conditions imposed. The informal conference does not diminish the licensee's right to a hearing.

(5) Conditions may be imposed for the extent of the licensure period (one year) or limited to some other shorter period of time. If the condition corresponds to the licensing period, the reasons for the condition will be considered at the time of renewal to determine if the conditions are still appropriate. The effective date and expiration date of the condition must be indicated on the attachment to the license. If the licensee believes the situation that warranted the condition has been remedied, the licensee may request in writing that the condition be removed.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 443.745

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; SDDS 4-2001, f. & cert. ef. 3-1-01; SPD 31-2006, f. 12-27-06, cert. ef. 1-1-07

411-050-0485

Criminal Penalties

(1) Operating an adult foster home without a license is punishable as a Class C misdemeanor ORS 443.991(3).

(2) Refusing to allow access and inspection of a home by Division staff or state or local fire inspection is a Class B misdemeanor ORS 443.991(2).

(3) The Division may commence an action to enjoin operation of an adult foster home:

(a) When an adult foster home is operated without a valid license; or

(b) After a notice of revocation or suspension has been given and a reasonable time for placement of individuals in other facilities has been allowed.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 443.991

Hist.: SSD 14-1985, f. 12-31-85, ef. 1-1-86; SSD 2-1987(Temp), f. & ef. 5-5-87; 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; SDDS 4-2001, f. & cert. ef. 3-1-01; SPD 31-2006, f. 12-27-06, cert. ef. 1-1-07

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411-050-0487

Civil Penalties

(1) Civil penalties, not to exceed \$100 per violation to a maximum of \$250 may be assessed for a general violation of these rules.

(2) Mandatory penalties up to \$500 will be assessed for falsifying resident or facility records or causing another to do so.

(3) A mandatory penalty of \$250 will be imposed for failure to have either the licensee, qualified resident manager, qualified shift caregiver, or qualified substitute caregiver on duty 24 hours per day in the adult foster home.

(4) A mandatory penalty of \$250 will be imposed for dismantling or removing the battery from any required smoke alarm or failing to install any required smoke alarm.

(5) The Division will impose a civil penalty of not less than \$250 nor more than \$500 on a licensee who admits a resident knowing that the resident's care needs exceed the license classification of the licensee if the admission places the resident or other residents at risk of harm.

(6) Civil penalties up to a maximum of \$1,000 per occurrence may be assessed for substantiated abuse.

(7) In addition to any other liability or penalty provided by law, the Division may impose a penalty for any of the following:

(a) Operating the home without a license;

(b) The number of residents exceeds the licensed capacity;

(c) The licensee fails to achieve satisfactory compliance with the requirements of these Administrative Rules within the time specified, or fails to maintain such compliance;

(d) The home is unable to provide adequate level of care to residents;

(e) There is retaliation or discrimination against a resident, family, employee, or any other person for making a complaint against the home;

(f) The licensee fails to cooperate with the Division, physician, registered nurse, or other health care professional in carrying out a resident's care plan; or

(g) The licensee fails to obtain an approved criminal history check from the Division prior to employing that individual as a caregiver in the home.

(8) A civil penalty may be imposed for violations other than those involving health, safety, or welfare of a resident if the licensee fails to correct the violation as stated in subsections (8)(a) and (8)(b) of this rule; and

(a) A reasonable time frame for correction was given, not exceeding 30 days after the first notice of violation was received.

(b) Where more than 30 days are required to correct the violation, such time is specified in a plan of correction and found acceptable by the Division;

(c) The following rules relate to the health, safety or welfare of residents and protection from retaliation for making a complaint: 411-050-0440(1)(d) and (e); 411-050-0440(7)(b) and (c); 411-050-0443(3) and (4); 411-050-xxxx (1)(e); 411-050-0445; and 411-050-0447.

(9) Any civil penalty imposed under this section becomes due and payable ten days after the order imposing the civil penalty becomes final by operation of law or on appeal. The notice must be delivered in person, or sent by registered or certified mail and must include:

(a) A reference to the particular sections of the statute, rule, standard, or order involved;

(b) A short and plain statement of the matters asserted or charged;

(c) A statement of the amount of the penalty or penalties imposed; and

(d) A statement of the right to request a hearing.

(10) The person to whom the notice is addressed will have 10 days after receipt of the notice in which to make written application for a hearing. If a written request for a hearing is not timely received, the Division will issue a final order by default.

(11) All hearings will be conducted according to the applicable provisions of ORS 183.310 to 183.550.

(12) When imposing a civil penalty the Division will consider the following factors:

(a) The past history of the person incurring the penalty in taking all feasible steps or procedures to correct the violation;

(b) Any prior violations of statutes, rules or orders pertaining to the facility;

(c) The economic and financial conditions of the person incurring the penalty;

(d) The immediacy and extent to which the violation threatens or threatened the health, safety, or welfare of one or more residents; and

(e) The degree of harm to resident(s).

(13) If the person notified fails to request a hearing within the time specified, or if after a hearing the person is found to be in violation of a license, rule, or order, an order may be entered assessing a civil penalty.

(14) Unless the penalty is paid within 10 days after the order becomes final, the order constitutes a judgment and may be recorded by the County Clerk which becomes a lien upon the title to any interest in real property owned by that person. The Division may also initiate a Notice of Revocation for failure to comply with a final order.

(15) Civil penalties are subject to judicial review under ORS 183.480, except that the court may, at its discretion, reduce the amount of the penalty.

(16) All penalties recovered under ORS 443.790 to 443.815 will be paid into the State Treasury and credited to the General Fund.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 443.775, 443.790 & 443.795

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 3-1996, 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

411-050-0491

Adult Foster Homes for Ventilator Dependent Residents

(1) Qualifications: Licensees must meet and maintain compliance with OAR 411-050-0440, Qualifications. In addition:

(a) The applicant or licensee, as applicable, has demonstrated competence in providing care for ventilator-dependent residents.

(b) The applicant or licensee, as applicable, has operated his or her class 3 home in substantial compliance with the administrative rules for at least one year.

(c) The applicant or licensee, as applicable, has completed department-approved training pertaining to ventilator-dependent residents and other training as may be required.

(2) Operational Standards: Licensees must meet and maintain compliance with OAR 411-050-0444, Operational Standards. In addition:

(a) Qualified staff must be awake and available to meet the routine and emergency care and service needs of residents 24 hours a day.

(b) All caregivers have demonstrated competency in providing care for a ventilator-dependent population.

(c) All caregivers are able to evacuate the residents and any other occupants of the home within three minutes or less.

(d) The applicant and licensee must have a satisfactory system in place to ensure caregivers are alert to the 24-hour needs of residents who may be unable to independently call for assistance.

(e) All caregivers must know how to operate the generator without assistance and be able to demonstrate its operation upon request by the Department.

(3) Facility Standards: Licensees must meet and maintain compliance with OAR 411-050-0445. In addition:

(a) The residents' bedrooms must be a minimum of 100 square feet, or larger if necessary, to accommodate the standard requirements of OAR 411-050-0445(4) in addition to equipment and supplies necessary for the care and services needed by individuals with ventilator equipment.

(b) Homes with ventilator-dependent residents must have a functional, emergency back-up generator that is installed by a licensed electrician. The generator must be adequate to maintain electrical service for resident needs until regular service is restored.

(c) The home must have a functional, interconnected smoke alarm system with back-up batteries.

(d) The home must have a functional sprinkler system, and maintenance must be completed as recommended by the manufacturer.

(e) Each resident's bedroom must have a mechanism in place that will enable residents to summon a caregiver's assistance when needed. The summons must be audible in all areas of the adult foster home.

(4) Standards and Practices for Care and Services: Licensees must meet and maintain compliance with OAR 411-050-0447. In addition:

(a) The licensee must conduct and document a thorough screening on the Department's form.

(b) Prior to admitting a ventilator-dependent resident to his or her adult foster home, the licensee must obtain preauthorization from the Department's Salem Central Office.

(c) The licensee must have a primary care physician identified for each resident being considered for admission.

(d) The licensee must retain the services of registered nurses to work in the home who are trained in the care of ventilator-dependent persons. RN services include, but are not limited to, the provision of medical consultation for and supervision of resident care, skilled nursing care as needed and delegation of nursing care to caregivers. When the licensed provider is an

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RN, a back-up RN must be identified and available to provide nursing services in the absence of the licensee.

(e) The licensee must develop individual care plans with RN consultants that address the expected frequency of nursing supervision, consultation and direct service intervention.

(f) The licensee will have physician, and RN and respiratory therapist consultation services available on a 24-hour basis and for in-home visits as appropriate. The licensee must call the appropriate medical professional to attend emergent care needs of the resident.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

Hist.: SPD 31-2006, f. 12-27-06, cert. ef. 1-1-07

Rule Caption: Amending Proctor Care Rules to include adults.

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Subject: Seniors and People with Disabilities is amending OAR chapter 411, division 335 rules to include proctor services for adults.

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411-335-0010

Statement of Purpose

PURPOSE. These rules prescribe administrative, policy, procedure, documentation, and personnel requirements for Proctor agencies providing intensive, person focused services to individuals with developmental disabilities experiencing significant emotional, medical, or behavioral difficulties. Proctor providers are specially trained and supported by the proctor agency. Proctor providers assist the individual in a home environment, to make positive changes in his or her adaptive skills that will enable him or her to move to a less restrictive setting. These rules also prescribe standards and procedures by which the Department of Human Services certifies programs to safely operate and oversee Proctor care homes, and provide training and support to children with developmental disabilities.

Stat. Auth.: ORS 409.050, 410.070, 427.005 - 427.007 & 430.215

Stats. Implemented: ORS 430.021(4) & 430.610 - 430.670

Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 32-2006, f. 12-27-06, cert. ef. 1-1-07

411-335-0020

Definitions

(1) "Abuse" means those situations or actions that are defined in OAR 411-320-0020(2)(a)(A-G) Abuse of a Child; and 411-320-0020(2)(b)(A-E) Abuse of an Adult and 411-320-0020(c)(A-H) Abuse in Other Circumstances.

(2) "Abuse Investigation and Protective Services" means reporting and investigation activities as required by OAR 410-009-0060 through 0160 and any subsequent services or supports necessary to prevent further abuse.

(3) "Administration of Medication" means the act of placing a medication in or on an individual's body by a person who is responsible for the individual's care.

(4) "Administrator" means the Assistant Director, Department of Human Services and Administrator of Seniors and People with Disabilities Division or that person's designee.

(5) "Adult" means an individual 18 years or older with developmental disabilities.

(6) "Advocate" means a person other than paid staff who has been selected by the individual or by the individual's guardian 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.

(7) "Agency Staff" means a person responsible for providing services directly or indirectly to children in proctor care, and whose wages or fees are paid in part or in full with funds sub-contracted with the CDDP or contracted directly through the Department.

(8) "Aid to Physical Functioning" means any special equipment prescribed for an individual by a physician, therapist, or dietician which maintains or enhances the individual's physical functioning.

(9) "Appeal" is the process by which a licensed or certified provider may petition the suspension, denial or revocation of their license or certificate or application under Chapter 183, Oregon Revised Statutes, by making a written request to the Department.

(10) "Applicant(s)" means a person, agency, corporation or governmental unit, who applies for a certificate to operate a proctor agency providing 24-hour intensive individually focused contracted services to children or adults with developmental disabilities experiencing emotional, medical, or behavioral difficulties.

(11) "Baseline Level of Behavior" means the frequency, duration or intensity of a behavior, objectively measured, described and documented prior to the implementation of an initial or revised behavior support plan. This baseline measure serves as the reference point by which the ongoing efficacy of the support plan is to be assessed. A baseline level of behavior should be reviewed and reestablished at minimum yearly, at the time of the individual's support plan team meeting.

(12) "Behavior Data Collection System" is the methodology specified within the individual's behavior support plan that directs the process for recording observation, intervention and other support provision information critical to the analysis of the efficacy of the Behavior Support Plan.

(13) "Behavior Data Summary" is a document composed by the provider agency to summarize episodes of physical intervention. This document serves as a substitution for the requirement of individual incident reports for each episode of physical intervention, only in circumstances when the physical intervention implemented is:

(a) The Oregon Intervention System (OIS) defined technique of evasion; or

(b) For episodes of physical positioning, as defined in 411-325-0020(50).

(14) "Behavior Support Plan (BSP)" means a written strategy based on person-centered planning and a functional assessment that outlines specific instructions for service providers to follow, to cause an individual's challenging behaviors to become unnecessary, and to change the provider's own behavior, adjust environment and teach new skills.

(15) "Board of Directors" means a group of persons formed to set policy and give directions to a program designed to provide residential services to individuals with developmental disabilities. This includes local advisory boards used by multi-state organizations.

(16) "Care" means supportive services, including but not limited to, provision of room and board; supervision; protection; and assistance in bathing, dressing, grooming, eating, management of money, transportation or recreation. Care also includes being aware of the individual's general whereabouts at all times, and monitoring the activities of the individual while at the proctor home to assure their health, safety and welfare.

(17) "Chemical Restraint" means the use of a psychotropic drug or other drugs for punishment, or to modify behavior in place of a meaningful behavior/treatment plan.

(18) "Child" means an individual under the age of 18 and who has a provisional eligibility determination of developmental disability.

(19) "Choice" means the individual's and guardian'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.

(20) "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.

(21) "Community Developmental Disability Program Director" means the director of a community mental health and developmental disability program which 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.

(22) "Competency Based Training Plan" means a written description of the agency's process for providing training to newly hired agency staff and proctor providers. At a minimum the plan must address health, safety, rights, values and personal regard, and the provider's mission. The plan will describe competencies; training methods; timelines; how competencies of

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staff are determined and documented, including steps for remediation; and when a competency (ies) may be waived by the agency to accommodate a staff person's or proctor provider's specific circumstances.

(23) "Complaint Investigation" means an investigation of any allegation which has been made to a proper authority that the program has taken an action which is alleged to be contrary to law, rule or policy that is not covered by an abuse investigation or a grievance procedure.

(24) "Condition" means a provision attached to a new or existing certificate, which limits or restricts the scope of the certificate or imposes additional requirements on the agency or proctor provider.

(25) "Contracting Entity" means the CDDP or agency contracting with the Department.

(26) "Crisis" means a situation, as determined by a qualified Services Coordinator that could result in civil court commitment under ORS 427 and an imminent risk of loss of the community support system for an adult or the imminent risk of loss of home for a child with no appropriate alternative resources available.

(27) "Denial" is the refusal of the Department of Human Services to issue a certificate to operate a Proctor Agency because the Department has determined that the agency is not in compliance with one or more of these administrative rules.

(28) "Department" means Department of Human Services (DHS), Seniors and People with Disabilities (SPD), 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.

(29) "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 continued, or can be expected to continue, indefinitely; and

(c) Constitutes a substantial impairment in adaptive behavior; and

(d) The condition or impairment must not otherwise primarily be attributed to mental illness, substance abuse, an emotional disorder, Attention Deficit and Hyperactivity Disorder (ADHD), a learning disability, or sensory impairment; or

(e) 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.

(30) "Developmental Disability" for children five years and younger means the condition or impairment 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 is always provisional; AND

(a) There is a standardized test demonstrating significant adaptive impairment (more than two standard deviations below the norm) in at least two of the following areas of functioning: Self care, receptive and expressive language, learning, mobility, and self-direction; OR

(b) 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 OAR 411-320-0020(5).

(31) "Developmental Disability" for children six years and older is always provisional and means:

(a) There is a diagnosis of mental retardation; OR

(b) There is a diagnosis of developmental disability; AND

(A) There is a significant adaptive impairment (more than two standard deviations below the norm) in at least two of the following areas: Self-care, receptive and expressive language, learning, mobility, self-direction; AND

(B) 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

(C) The individual is expected to need multiple, specialized supports indefinitely.

(32) "Direct Nursing Services" means the provision of child-specific advice, plans or interventions, based on nursing process as outlined by the Oregon State Board of Nursing, by a nurse at the home/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 staff.

(33) "Educational Surrogate" means a person who acts in place of a parent in safeguarding a child's rights in the special education decision-making process when the parent cannot be identified or located after reasonable efforts; when there is reasonable cause to believe that the child has a disability and is a ward of the state; or at the request of a parent or adult student.

(34) "Entry" means admission to a Department funded developmental disability service provider. For purposes of this rule entry means admission to a certified proctor provider home.

(35) "Executive Director" means the person designated by a board of directors or corporate owner responsible for the administration of the program's services for individuals.

(36) "Exit" means termination from a Department funded developmental disability service provider. Exit does not mean transfer within the agency.

(37) "Foster Care" for the purpose of this rule means 24-hour substitute care for children in a certified foster home that is maintained and lived in by the person named on the foster home certificate, and contracted with the Proctor Agency.

(38) "Grievance" means a formal complaint by the individual or a person acting on his/her behalf about any aspect of the program's services or an employee of the program.

(39) "Guardian" means a parent of a child under the age of 18 years or a person or agency appointed by the courts that is authorized by the court to make decisions about services for either a child or an adult.

(40) "Health Care Provider" means a person licensed, certified or otherwise authorized or permitted by law of this state to administer health care in the ordinary course of business or practice of a profession, and includes a health care facility.

(41) "Incident report" means a written report of any injury, accident, acts of physical aggression or unusual incident involving an individual, written by the proctor provider or agency representative involved in or witnessing the incident.

(42) "Independence" means the extent to which persons with mental retardation or developmental disabilities exert control and choice over their own lives.

(43) "Individual" means an adult or a child with developmental disabilities for whom services are planned, provided and authorized by a qualified Services Coordinator.

(44) "Individualized Education Plan" (IEP) means a written plan of instructional goals and objectives in conference with the teacher, parent/guardian, student, and a representative of the school district.

(45) "Individual Support Plan" or "ISP" means the written details of the supports, activities and resources required for the individual to achieve personal goals. The Individual Support Plan is developed to articulate decisions and agreements made during a person-centered process of planning and information gathering. The ISP is the individual's Plan of Care for Medicaid purposes.

(46) "Individual Support Plan Team" or "ISP team" in comprehensive services means a team composed of the individual served, the foster provider, agency representatives who provide service to the individual (if appropriate for in-home supports), the guardian, if any, relatives of the individual, and the Services Coordinator and other persons who are well liked by the individual.

(47) "Integration" means the use by persons with mental retardation or other developmental disabilities of the same community resources that are used by and available to other persons in the community and participation in the same community activities in which persons without a disability participate, together having 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. (See ORS 427.005.)

(48) "Legal representative" means the parent if the individual is under age 18, unless the court appoints another individual or agency to act as guardian.

(49) "Majority Agreement" means for purposes of entry, exit, transfer and annual ISP team meetings that no one member of the ISP team will have the authority to make decisions for the team. Representatives from

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service provider(s), families, the Services Coordinator, or advocacy agencies will be considered as one member of the ISP team for the purpose of reaching majority agreement.

(50) "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.

(51) "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.

(52) "Medication" means any drug, chemical, compound, suspension or preparation in suitable form for use as a curative or remedial substance taken either internally or externally by any person.

(53) "Modified Diet" means the texture or consistency of food or drink is altered or limited. Examples include, but are not limited to, no nuts or raw vegetables, thickened fluids, mechanical soft, finely chopped, pureed, bread only soaked in milk.

(54) "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.

(55) "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 these needs will be met. It includes which tasks will be taught or delegated to the provider and staff.

(56) "Oregon Core Competencies" is:

(a) A list of skills and knowledge for newly hired staff in the areas of health, safety, rights, values and personal regard, and the service provider's mission; and

(b) The associated timelines in which newly hired staff must demonstrate competencies.

(57) "Oregon Intervention System" or "OIS" means a system of providing training to people who work with designated individuals with developmental disabilities, to provide elements of positive behavior support and non-aversive behavior intervention. The system uses principles of proactive support and describes approved physical intervention techniques that are used to maintain health and safety.

(58) "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.

(59) "Physical restraint" means a physical intervention that includes manual physical holding of or contact with an individual that restricts the individual's freedom of movement.

(60) "Prescription Medication" means any medication that requires a physician prescription before it can be obtained from a pharmacist.

(61) "Proctor Agency" means an entity or program certified by the Department of Human Services to provide contracted and supervised services in foster homes.

(62) "Proctor Care Services" means a comprehensive residential program certified by the Department of Human Services to provide intensive individually focused contracted foster care, training, and support to individuals with developmental disabilities, experiencing emotional, medical, or behavioral difficulties.

(63) "Proctor Provider" means the provider of the home who is either licensed as an adult foster home or certified as a child foster home individual with developmental disabilities.

(64) "Productivity" means engagement in income-producing work by a person with mental retardation or other developmental disabilities that is measured through improvements in income level, employment status or job advancement or engagement by a person with mental retardation or other developmental disabilities in work contributing to a household or community.

(65) "Protection" means necessary actions taken to prevent subsequent abuse or exploitation of the individual, to prevent self-destructive acts, and to safeguard an individual's person, property and funds.

(66) "Protective Services" means necessary actions taken to prevent subsequent abuse or exploitation of the individual, to prevent self-destructive acts, and safeguard an individual's person, property, and funds as soon as possible.

(67) "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.

(68) "Respite Care" means short-term services for a period of up to 14 days. Respite care may include both day and overnight care.

(69) "Revocation" is the action taken to rescind a proctor provider home or agency certificate after the Department has determined that the program is not in compliance with one or more of these administrative rules.

(70) "Self-Administration of Medication" means without supervision, the individual manages and takes his/her own medication. It includes identifying his/her medication and the times and methods of administration, placing the medication internally in or externally on his or her own body without staff assistance, upon the written order of a physician, and safely maintaining the medication(s).

(71) "Services Coordinator" means an employee of the CDDP or other agency which contracts with the County or Department, who is selected to plan, produce, coordinate, monitor individual support plan services and to act as a proponent for persons with developmental disabilities as long as the Department holds the direct contract with the Proctor Agency.

(72) "Service Provider" means a public or private community agency or organization that provides recognized mental health or developmental disability services and is approved by the Department or other appropriate agency to provide these services. For the purpose of this rule "provider", "proctor agency", "proctor agency staff", "applicant", "foster provider", "proctor provider", "alternative care-giver", "baby sitter", "respite provider", "crisis provider", "skill trainer" or "sub contractor" are synonymous with "service provider".

(73) "Significant Other" means a person selected by the individual and guardian to be his/her friend.

(74) "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. This does not include diets where extra or additional food is offered, but may not be eaten, for example, offer prunes each morning at breakfast, and include fresh fruit with each meal.

(75) "Support" means those services that assist the individual in maintaining or increasing his or her functional independence, achieving community presence and participation, enhancing productivity, and enjoying a satisfying lifestyle. Support services can include training, the systematic, planned maintenance, development or enhancement of self-care, social or independent living skills, or the planned sequence of systematic interactions, activities, structured learning situations, or educational experiences designed to meet each individual's specified needs in the areas of integration and independence. Support also includes services the Proctor Agency provides to its contracted proctor providers. Provider support can include respite, individualized training, and consultation.

(76) "Suspension of Certificate" is an immediate withdrawal of the approval to operate a proctor provider home or agency when the Department determines that there is imminent danger to the health or safety of the individuals served.

(77) "Transfer" means movement of an individual from one proctor home to another within the same agency within the same county.

(78) "Transition Plan" means a written plan for the period of time between an individual's entry into a particular service and when the individual's ISP is developed and approved by the ISP team. The plan must include a summary of the services necessary to facilitate adjustment to the services offered, the supports necessary to assure health and safety, and the assessments and consultations necessary for the ISP development.

(79) "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.

(80) "Variance" means an exception from a regulation or provision of these rules, which may be granted by the Department, upon written application by the proctor provider or agency.

(81) "Volunteer" is any person assisting in a proctor home or the agency without pay to support the care provided to individuals residing in the home or facility.

Stat. Auth.: ORS 410.070, 409.050, 427.007, 430.215

Stats. Implemented: ORS 430.021(4) & 430.610 - 430.670

Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 32-2006, f. 12-27-06, cert. ef. 1-1-07

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Program Management and Personnel Practices

(1) Non-discrimination. The agency must comply with all applicable state and federal statutes, rules and regulations in regard to non-discrimination in employment practices.

(2) Basic personnel policies and procedures. The agency must have and implement personnel policies and procedures, which address suspension, increased supervision, or other appropriate disciplinary employment procedures when an agency staff member, or subcontractor, including respite providers and volunteers, has been identified as an alleged perpetrator in an abuse investigation or when the allegation of abuse has been substantiated. Policy shall reflect that any incurred crime as described under the Criminal History Rule shall be reported to the agency.

(3) For investigations conducted by the Department or its designee in homes certified for children, the definitions of abuse described in OAR 411-320-0020(2)(b)(A-E) and (c)(A-G) shall apply.

(4) Prohibition against retaliation. The agency must not retaliate against any agency staff member, subcontractor including respite providers and volunteers, or proctors providers who report in good faith suspected abuse, or retaliate against the individual in care, with respect to any report. An alleged perpetrator cannot self-report solely for the purpose of claiming retaliation.

(a) Subject to penalty. 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, will be subject to a penalty up to \$1000, notwithstanding any other remedy provided by law.

(b) Adverse action defined. Any adverse action is evidence 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 individual or adult because of the report and includes, but is not limited to:

(A) Discharge or transfer from the program, 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 program or the individuals served by the program.

(5) Responsibilities of Proctor Agency. The proctor agency must:

(a) Implement policies and procedures to assure support, health, safety, and crisis response for individuals served, including policies and procedures to assure necessary training of agency staff and proctor providers.

(b) Implement policies and procedures to assure that provider payment and agency support is commensurate to the support needs of individuals enrolled in the proctor care services. Policies and procedures must include frequency of review.

(c) Implement policies and procedures to assure support, health, safety, and crisis response for individuals placed in all types of respite care, including policies and procedures to assure training of respite care providers. The types of respite care include but are not limited to: respite care in the proctor provider's home during day hours only, respite care in the home of someone other than the proctor provider for day time only, overnight care in the proctor provider's home, and overnight care at someone other than the proctor provider's home.

(d) Implement policies and procedures to assure confidentiality of individuals in service and of family information.

(e) Implement policies and procedures to review and document that each child enrolled in proctor care services continues to require such services. Policies and procedures must include frequency of review and the criteria as listed below.

(A) The child's need for a formal Behavior Support Plan based on the Risk Tracking Record (RTR) and functional assessment of the behavior.

(B) The child has been stable and generally free of serious behavioral or delinquency incidents for the past 12 months.

(C) The child has been free of psychiatric hospitalization (hospital psychiatric unit, Oregon State Hospital, and sub acute) for the last 12 months, except for assessment and evaluation.

(D) The child poses no significant risk to self or community.

(E) The proctor provider has not needed or utilized the agency crisis services in response to the child's medical, mental health, or behavioral needs more than one time in the past 12 months.

(F) The proctor provider is successfully supporting the child over time, with a minimum of agency case management contact other than periodic monitoring and check in.

(G) The proctor provider does not require professional support for the child, and there has been or could be a reduction in ongoing weekly professional support for the child including consultation, skill training and staffing.

(H) The proctor agency is not actively working with the child's family to return the child to the family home.

(f) Adults in proctor services. The agency will develop and implement policies and procedures that the ISP Team evaluates annually the individual's support needs and need for proctor services.

(g) Assure that preliminary certification or licensing (whichever is appropriate) activities are completed per the relevant foster care statutes and OAR chapter 411, divisions 346 or 360. Such work is submitted to Department of Human Services Seniors and People with Disabilities Division for final review and approval.

(h) Complete an initial home study for all proctor provider applicants that are updated annually for all licensed or certified proctor providers.

(i) Provide and document training and support to agency staff, proctor provider, subcontractors, volunteers, and respite providers to maintain the health and safety of the individuals served.

(j) Provide and document training and support to the agency staff, proctor provider, subcontractors, volunteers, and respite providers to implement the ISP process, including completion of a Risk Tracking Record development of protocols and BSP for each individual served and the development of the ISP.

(k) Have a plan for emergency back-up for home provider including but not limited to, use of crisis respite, other proctor homes, additional staffing, and behavior support consultations.

(l) Coordinate and document entries, exits, and transfers.

(m) Report to the Department, and the CDDP, any placement changes due to a crisis plan made outside of normal working hours. Notification must be made by 9:00 a.m. of the first working day after the change has happened.

(n) Assure that each proctor provider has a current emergency disaster plan on file in the proctor provider home, in the agency office and provided to the CDDP and any case manager of an individual who is not an employee of the local CDDP.

(o) Assure that emergency backup in the event the proctor provider is unavailable.

(6) General Requirements for Safety and Training. All volunteers having contact with the individual, proctor providers, substitute caregivers, respite providers, child care providers and agency staff, except for those providing services in a crisis situation must:

(a) Receive training specific to the individual. This training must at a minimum consist of basic information on environment, health, safety, ADLs, positive behavioral supports, and behavioral needs for the individual, including the ISP, BSP, required protocols, and any emergency procedures. Training must include required documentation for health, safety, and behavioral needs of the individual.

(b) Receive OIS training. OIS Certification is required if physical intervention is likely to occur as part of the BSP. Knowledge of OIS principles, not certification is required if it is unlikely that physical intervention will be required.

(c) Receive mandatory reporter training.

(d) Receive confidentiality training.

(e) Be at least 18 years of age, and have a valid social security card.

(f) Be cleared by the DHS Criminal History Check requirements.

(g) Have a valid Oregon Driver's License, and proof of insurance.

(h) Receive training in applicable agency policies and procedures.

(7) In addition to the above general requirements, the following requirements must be met for each specific provider classification as listed below.

(a) Proctor Providers:

(A) Must receive and maintain current First Aid and CPR training.

(B) Must have knowledge of OAR chapter 411, divisions 335 and 346, or division 360 as appropriate to their license or certificate.

(b) Skills Trainers, Advisors, or other Agency Staff:

(A) Must receive and maintain current First Aid and CPR training.

(B) Must have knowledge of OAR chapter 411, divisions 335 and 346 or division 360.

(C) Anyone age 18 or older, living in an agency staff persons uncertified home must have an approved DHS Criminal History background check per OAR chapter 410, division 007 prior to any visit of an individual to the staff person's home.

(D) Must assure health and safety guidelines for alternative caregivers, including but not limited to the following:

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(i) The home and premises are free from objects, materials, pets, and conditions that constitute a danger to the occupants; and the home and premises must be clean and in good repair.

(ii) Any sleeping room used for an individual in respite must be finished, attached to the house, and not a common living area, closet, storage area, or garage. If a child is staying overnight, the sleeping arrangements must be safe and appropriate to the individual's age, behavior, and support needs.

(iii) The home must have tubs or showers, toilets and sinks that are operable and in good repair with hot and cold water.

(iv) The alternative caregivers must have access to a working telephone in the home, and must have a list of emergency telephone numbers and know where the numbers are located.

(v) All medications, poisonous chemicals and cleaning materials must be stored in a way that prevents the individuals from accessing them, unless otherwise addressed in an individual's ISP.

(vi) Firearms must be stored unloaded. Firearms and ammunition must be stored in separate locked locations. Loaded firearms will never be carried in any vehicle while it is being used to transport an individual.

(vii) First aid supplies must be available in the home and in the vehicles that will be used to transport an individual.

(c) Respite Providers

(A) In Proctor Provider Home — Day or Night

(i) Must be trained on basic health needs of the individuals in service.

(ii) Must be trained on basic safety in the home including, but not limited to first aid supplies, the emergency plan, and the fire evacuation plan.

(B) In other than Proctor Provider Home — Day or Night. Must assure health and safety guidelines for alternative caregivers, including, but not limited to:

(i) The home and premises are free from objects, materials, pets, and conditions that constitute a danger to the occupants; and the home and premises must be clean and in good repair.

(ii) Any sleeping room used for an individual in respite must be finished, have an openable window, be attached to the house, and not a common living area, storage area, closet, or garage. If the individual is staying overnight, the sleeping arrangements must be safe and appropriate to the individual's age, behavior, and support needs.

(iii) The home must have tubs or showers, toilets and sinks that are operable and in good repair with hot and cold water.

(iv) The alternative caregivers must have access to a working telephone in the home, and must have a list of emergency telephone numbers and know where the numbers are located.

(v) All medications, poisonous chemicals and cleaning materials must be stored in a way that prevents an individual from accessing them.

(vi) Firearms must be stored unloaded. Firearms and ammunition must be stored in separate locked locations. Loaded firearms will never be carried in any vehicle while it is being used to transport an individual.

(vii) First aid supplies must be available in the home and in the vehicles that will be used to transport individuals.

(d) Alternate Care Givers

(A) Day Care, Camp.

(i) When a child is cared for by a childcare provider, camp, or child care center, the Proctor agency must assure that the camp, provider home or center is certified, licensed, or registered as required by the State Individual Care Division (ORS 657A.280). The agency must also assure that the ISP team is in agreement with the plan for the child to attend the camp, childcare center, or childcare provider home.

(ii) Adults participating in employment or alternatives to employment must have such services addressed in their ISP. Any camping or alternative day service experience must be addressed in the ISP and approved by the ISP Team.

(B) Social Activities for less than 24 hours, including overnight arrangements.

(i) Proctor Agency must assure the person providing care is capable of assuming all care responsibilities, and will be present at all times.

(ii) Proctor Agency must assure that the ISP team is in agreement with the planned social activity.

(iii) Proctor agency must assure that the proctor provider maintains back-up responsibilities for the person in service.

(8) General Crisis Requirements for Individuals already in Proctor Agency Homes.

(a) Crisis Service Providers must:

(A) Be at least 18 years of age.

(B) Have an initial and annual approval to work based on current Department policies and procedures for review of criminal history per OAR

chapter 410, division 007 prior to supervising any individual. Providers serving children must also have a Child Welfare check completed on an annual basis.

(C) Upon placement of the individual, have knowledge of the individual's needs. This knowledge must consist of basic information on health, safety, ADLs, and behavioral needs for the individual, including the ISP, BSP, and required protocols. Training for the provider must include information on required documentation for health, safety, and behavioral needs of the individual.

(b) The Agency must:

(A) Make follow-up contact with the crisis providers within 24 hours of the placement to assess and assure the individual's and provider's support needs are met.

(B) Initiate transition planning with the ISP team and document the plan within 72 hours.

(9) Mandatory abuse reporting personnel policies and procedures. Proctor agency staff and caregivers are mandatory abuse and neglect reporters under Oregon State law (ORS 419B.005 and ORS 430). Upon reasonable cause to believe that abuse or neglect has occurred, all members of the household and any proctor provider, substitute care givers, agency employees, independent contractors or volunteers must report pertinent information to DHS-CW, the CDDP, or law enforcement. For reporting purposes the following will apply:

(a) Notification of mandatory reporting status must be made at least annually to all proctor providers, agency employees, substitute caregivers, subcontractors, and volunteers, on forms provided by the Department.

(b) All agency employees and proctor providers must be provided with a Department produced card regarding abuse reporting status and abuse reporting requirements.

(10) Director qualifications. The program must be operated under the supervision of a Director who has a minimum of a bachelor's degree and two years of experience, including supervision, in developmental disabilities, mental health, rehabilitation, social services or a related field. Six years of additional experience in the identified fields may be substituted for a degree.

(11) Proctor agency staff and proctor providers, including subcontractors and volunteers qualifications. Any agency staff including skill trainers, respite providers, substitute caregivers, subcontractors, and volunteers must meet the following criteria:

(a) Be at least 18 years of age, and have a valid social security card.

(b) Have approval to work based on current Department policies and procedures for review of Criminal History Check per OAR chapter 410, division 007.

(c) Be literate and capable of understanding written and oral orders, be able to communicate with individual's physicians, Services Coordinators and appropriate others, and be able to respond to emergency situations at all times.

(d) Have met the basic qualification in the agency's training plan.

(e) Meet any additional qualifications specified for substitute caregivers in OAR 411-360-0110(3)(a-k) and 411-360-0120(3) if working in a home licensed as an AFH-DD.

(12) Personnel files and qualification records. The agency must maintain clear, written, signed, and up to date job descriptions and respite agreements when applicable, as well as a file available to the Department or CDDP for inspection that includes written documentation of the following for each agency employee. The record must include the following.

(a) Written documentation that references and qualifications were checked.

(b) Written documentation of an approved Criminal History Check clearance by the Department as required by OAR chapter 410, division 007.

(c) Written documentation of employees' notification of mandatory abuse training and reporter status prior to supervising individuals and annually thereafter.

(d) Written documentation of any substantiated abuse allegations.

(e) Written documentation kept current that the agency staff person has successfully completed competency-based training in areas identified by the agency's training plan as required by Oregon's Core Competencies defined in OAR chapter 411, division 325 and chapter 411, division 335 and that is appropriate to their job description.

(f) Written documentation of 12 hours of job-related in-service training annually.

(g) Proctor providers must meet all of the certification standards as written in the child foster certification OAR chapter 411, divisions 346 and 335 or the adult foster home licensing standards OAR Chapter 411, divi-

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sions 335 and 360 or Child Welfare administrative rules, chapter 413, divisions 200 and 220 whichever apply to the type of foster home.

(13) Agency documentation requirements. All documentation required by this rule must:

(a) Be prepared at the time, or immediately following the event being recorded.

(b) Be accurate and contain no willful falsification.

(c) Be legible, dated and signed by the person(s) making the entry.

(d) Be maintained for no less than three years.

(e) Be made readily available for the purposes of inspection.

(14) Dissolution of agency. Prior to the dissolution of an agency, a representative of the governing body or owner must notify the Department 30 days in advance in writing and make appropriate arrangement for the transfer of individual's records.

Stat. Auth.: ORS 410.070, 409.050, 427.005-427.007, 430.215

Stats. Implemented: ORS 430.021(4) & 430.610 - 430.670

Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 32-2006, f. 12-27-06, cert. ef. 1-1-07

411-335-0050

Issuance of Proctor Care Agency Certificate

(1) Certificate. No person, agency or governmental unit acting individually or jointly with any other person, agency or governmental unit will establish, conduct, maintain, manage or operate Department funded Proctor Services in proctor provider homes for individuals with developmental disabilities without being certified by the Department for each home or facility.

(2) Not transferable. No certificate is transferable or applicable to any other agency, management agent or ownership other than that indicated on the application and certificate.

(3) Terms of certificate. The Department will issue a certificate to an agency found to be in compliance with these rules. The certificate will be in effect for two years from the date issued unless revoked or suspended.

(4) Any home managed and contracted to serve children with developmental disabilities by a proctor care agency under this certificate must be certified by the Department in accordance with Seniors and People with Disabilities Division's OAR for Children's Foster provider homes: OAR 411-346-0100 through 311-346-0230.

(5) Any home managed and contracted to serve adults with developmental disabilities must be licensed as an adult foster home for adults with developmental disabilities (AFH-DD) in accordance with OAR chapter 411, division 360.

Stat. Auth.: ORS 410.070, 409.050, 427.005-427.007, 430.215

Stats. Implemented: ORS 430.021(4) & 430.610 - 430.670

Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 32-2006, f. 12-27-06, cert. ef. 1-1-07

411-335-0060

Application for Proctor Care Agency Certificate

(1) Application. At least 60 days prior to anticipated certification the agency must submit an application on a Department approved form and must include all information required by the Department.

(2) Number of homes and individuals. The agency must identify the number of homes and children the agency is presently capable of managing at the time of application, considering ancillary service capability and the requirements as specified by these rules. For purposes of agency certification renewal, the number of homes to be certified or licensed and the number of individuals to be served must not exceed the number identified on the certificate to be renewed unless approved by the Department.

(3) Certification required prior to providing services. A Proctor Agency must not recruit, train, perform preliminary certification activities or provide any proctor services prior to receiving a written confirmation of Proctor Agency Certification from the Department.

(4) Demonstrated Capability and Performance History

(a) If an agency fails to provide complete, accurate, and truthful information during the application and certification process the approval process may be delayed and the Department may deny the application or revoke the certificate.

(b) Any applicant(s) or person(s) with a controlling interest in an agency will be considered responsible for acts occurring during, and relating to, the operation of such agency for purpose of certification.

(c) The Department may consider the background and operating history of the agency, the Executive Director and each person with a having an incident of ownership in the facility of ten percent or more when determining whether to issue certificate.

(d) When an application for initial certification is made by an agency that manages, owns or operates other certified services or licensed facilities in Oregon, the Department may deny the certificate if the agency's existing

home(s) or facility(ies) are not, or have not been, in substantial compliance with applicable Oregon Administrative Rules.

(5) Admittance of individuals.

(a) No proctor agency or home contracted with the proctor agency will admit individuals to a home whose care needs or age, exceed the home's certificate or license, or would violate conditions on the certificate or license, without prior written consent of the Department or its designee.

(b) No proctor agency or home contracted with the proctor agency will admit or continue to serve children or adults whose numbers exceed the capacity on the proctor provider's Child Foster Home certificate or Adult Foster Home license without Department approval.

(c) No proctor agency or home contracted to provide proctor services, will admit or continue to provide proctor services to children who can be safely and appropriately supported in foster care, if available, or the individual's family home, as outlined in this OAR 411-335-0030(5)(e)(A-H).

(d) No proctor agency or home contracted with the proctor agency will admit an individual from another funding source without first determining that the care and safety needs of all individuals in the home may be maintained, and that there is prior written approval from the placing agency(s) and the Community Developmental Disability Program (CDDP) where the foster home is located.

Stat. Auth.: ORS 410.070, 409.050, 427.005-427.007, 430.215

Stats. Implemented: ORS 430.021(4) & 430.610 - 430.670

Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 32-2006, f. 12-27-06, cert. ef. 1-1-07

411-335-0070

Certificate Expiration, Termination of Operations, Certificate Return

(1) Expiration. Unless revoked, suspended or terminated earlier, each certificate to operate a proctor agency will expire two years following the date of issuance.

(2) Termination of operation. The certificate will be considered void immediately if the operation is discontinued for any reason by voluntary action of the agency or if there is a change in ownership.

(3) Return of certificate. The certificate must be returned to the Department immediately upon suspension or revocation of the certificate or when the operation is voluntarily or involuntarily discontinued.

Stat. Auth.: ORS 410.070, 409.050, 427.005-427.007, 430.215

Stats. Implemented: ORS 430.021(4) & 430.610 - 430.670

Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 32-2006, f. 12-27-06, cert. ef. 1-1-07

411-335-0080

Renewal of Certification

(1) Renewal application required. A certificate is renewable upon submission of an application to the Department.

(2) Filing of application extends date of expiration. Filing of an application for renewal before the date of expiration extends the effective date of expiration until the Department takes action upon such application. If the renewal application is not submitted prior to the expiration date, the agency will be considered as not certified to provide Proctor Care Services for individuals with developmental disabilities funded by the Department.

(3) Certification review. The Department will conduct a certification review of the agency and agency services prior to the renewal of the certificate. The review may be unannounced, will be conducted prior to expiration of the certificate and will review compliance with OAR chapter 411, division 335 and where appropriate, chapter 411, divisions 346 or 360.

(4) Refusal to renew a certification. The Department will not renew a certificate if the agency or its services are not in substantial compliance with these rules.

Stat. Auth.: ORS 410.070, 409.050, 427.005-427.007, 430.215

Stats. Implemented: ORS 430.021(4) & 430.610 - 430.670

Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 32-2006, f. 12-27-06, cert. ef. 1-1-07

411-335-0090

Change of Ownership, Legal Entity, Legal Status, Management Corporation

Notice of pending change in ownership, legal entity, legal status, or management corporation: new certificate required. The agency must notify the Department in writing of any pending change in the program's ownership or legal entity, legal status, or management corporation and submit a certification application at least 30 days prior to change in ownership, legal entity or legal status.

Stat. Auth.: ORS 410.070, 409.050, 427.005-427.007, 430.215

Stats. Implemented: ORS 430.021(4) & 430.610 - 430.670

Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 32-2006, f. 12-27-06, cert. ef. 1-1-07

411-335-0100

Inspections and Investigations

(1) Inspections and investigations required. All services covered by this rule must allow the following types of investigations and inspections:

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(a) Quality assurance, certificate renewal and onsite inspections; including a review of records at the agency office, as well as onsite review of at least one or more proctor provider home(s) as selected by the Department.

(b) Complaint investigations; and

(c) Abuse investigations. Priority review may be given when protective service investigations have taken place.

(2) Inspections and investigations by the Department, its designee or proper authority. The Department, its designee, or proper authority will perform all inspections and investigations.

(3) Unannounced. Any inspection or investigation may be unannounced.

(4) Required documentation. All documentation and written reports required by this rule must be:

(a) Open to inspection and investigation by the Department, its designee or proper authority; and

(b) Submitted to or be made available for review by the Department within the time allotted.

(5) Priority of investigation under (1)(c). When abuse is alleged or death of an individual has occurred and a law enforcement agency, or the Department or its designee has determined to initiate an investigation, the provider must not conduct an internal investigation. For the purposes of this section, an internal investigation is defined as conducting interviews of the alleged victim, witness, the alleged perpetrator or any other person who may have knowledge of the facts of the abuse allegation or related circumstances, reviewing evidence relevant to the abuse allegation, other than the initial report; or any other actions beyond the initial actions of determining:

(a) If there is reasonable cause to believe that abuse has occurred; or

(b) If the alleged victim is in danger or in need of immediate protective services; or

(c) If there is reason to believe that a crime has been committed; or

(d) What, if any, immediate personnel actions must be taken to assure individual safety.

(6) The Department or its designee will conduct investigations and complete reports in accordance with procedures prescribed in OAR chapter 410, division 009. The report must include the findings based upon the abuse investigation. "Inconclusive" means that the matter is not resolved, and the available evidence does not support a final decision that there was reasonable cause to believe that abuse occurred or did not occur. "Not substantiated" means that based on the evidence, it was determined that there is reasonable cause to believe that the alleged incident was not in violation of the definitions of abuse or attributable to the person(s) alleged to have engaged in such conduct. "Substantiated" means that based on the evidence there is reasonable cause to believe that conduct in violation of the abuse definitions occurred and such conduct is attributable to the person(s) alleged to have engaged in the conduct.

(7) Upon completion of the abuse investigation. Upon completion of the abuse investigation by the Department, its designee, or law enforcement agency, an agency may conduct an investigation to determine if any additional personnel actions are necessary.

(8) Abuse Investigation and Protective Services Report. Upon completion of the investigation report according to OAR chapter 410, division 009 the sections of the report, which are public records and not exempt from disclosure under the public records law will be provided to the appropriate provider(s). The agency must implement the actions necessary within the deadlines listed, to prevent further abuse as stated in the report.

(9) Plan of correction. A plan of correction must be submitted to the CDDP and the Department for any noncompliance found during an inspection under these rules.

Stat. Auth.: ORS 410.070, 409.050, 427.005 - 427.007 & 430.215

Stats. Implemented: ORS 430.021(4) & 430.610 - 430.670

Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 32-2006, f. 12-27-06, cert. ef. 1-1-07

411-335-0110

Mid-Cycle Review

(1) Mid-Cycle Review Process. The Department may conduct a mid-cycle monitoring review of the agency and its services nine to fifteen months after renewal of the agency's certificate under the following circumstances:

(a) Failure by the agency to successfully complete certificate renewal as evidenced by two of more follow-up reviews; or

(b) Failure by the agency to successfully complete plans of correction for protective service investigations; or

(c) Upon the request of the CDDP or other Department designee, or agency.

(2) Self-Assessment Required. As part of the mid-cycle process the agency must conduct a self-assessment based upon the requirements of this rule.

(a) The agency must document the findings of the self-assessment on forms provided by the Department;

(b) The agency must develop and implement a plan of correction based upon the findings of the self-assessment; and

(c) The agency must submit the self-assessment to the local CDDP with a copy to the Department 30 days prior to the mid-cycle review.

(3) Compliance with OAR chapter 411, division 335. The review will be conducted for compliance with OAR chapter 411, division 335 and where applicable, OAR chapter 411, divisions 346 or 360. The review may be announced or unannounced based on the discretion of the Department.

Stat. Auth.: ORS 410.070, 409.050, 427.005 - 427.007 & 430.215

Stats. Implemented: ORS 430.021(4) & 430.610 - 430.670

Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 32-2006, f. 12-27-06, cert. ef. 1-1-07

411-335-0120

Variations

(1) Criteria for a variance. The Department may grant a variance to these rules based upon a demonstration by the agency that the requested variance provides equal or greater program effectiveness and does not adversely impact the welfare, health, safety or rights of individuals.

(2) Variance application. The agency requesting a variance must submit, in writing, a variance request on Department forms either to the SPD Residential Services Coordinator or the CDDP designee whichever entity holds the contract for proctor services. The representative for the entity holding the contract will review the request, make a recommendation for approval or denial and submit to the Department. Any variance that applies to a proctor provider home must be submitted in accordance with this rule OAR chapter 411, divisions 335 or 360 whichever rule apply to the home. Variance applications must at a minimum contain 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 that provides equal or greater program effectiveness that does not adversely impact health, safety or rights;

(d) Evidence, when appropriate, that the variance is consistent with a currently approved ISP according to OAR chapter 411, divisions 335 and 360; and

Provide any supplementary information as may be required by the Department.

(3) Program review. The Manager or designee of the contracting entity will forward the signed variance request form with a recommendation for approval or denial to the Department within 30 days of receipt of the request indicating its position on the proposed variance. If variance affects more than one contracting entity the variance must be reviewed and signed by each.

(4) Department review. The Administrator or designee will approve or deny the request for a variance.

(5) Notification. The Department must notify the proctor agency and the contracting entity of the decision. The Department will send this notice within 30 calendar days of receipt of the request with a copy to other relevant Department programs or offices.

(6) Appeal. An Agency may appeal of the denial of a variance by submitting a request in writing to the Administrator or his designee within 10 days of the denial with a copy sent to the contracting entity. The Administrator's decision will be final.

(7) Duration of variance. The Department will determine the duration of the variance. A variance cannot extend beyond the term of the certificate.

(8) Written approval. The agency or proctor provider may implement a variance only after receiving written approval from the Department.

Stat. Auth.: ORS 410.070, 409.050, 427.005-427.007, 430.215

Stats. Implemented: ORS 430.021(4) & 430.610 - 430.670

Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 32-2006, f. 12-27-06, cert. ef. 1-1-07

411-335-0130

Direct Contracted Services

For purposes of this rule OAR chapter 411, division, 335, Proctor Agencies directly contracting services with the Department will submit required documentation for children's services to the SPD Residential Services Coordinator, in addition to the CDDP services coordinator, unless otherwise specified.

Stat. Auth.: ORS 410.070, 409.050, 427.005-427.007, 430.215

Stats. Implemented: ORS 430.021(4) & 430.610 - 430.670

Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 32-2006, f. 12-27-06, cert. ef. 1-1-07

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411-335-0140

Individual/Family Involvement Policy

Individual/family involvement policy needed. The agency must have and implement a written policy that addresses:

- (1) Opportunities for the adult service recipients and guardians to participate in decisions regarding the operations of the agency;
- (2) Opportunities for families, guardians, legal representatives and significant others of the individuals served by the agency to interact;
- (3) Opportunities for adult service recipients, families, guardians, legal representatives and significant others to participate on the Board or on committees or to review policies of the program that directly affect the individuals served by the agency.

Stat. Auth.: ORS 410.070, 409.050, 427.005-427.007, 430.215
Stats. Implemented: ORS 430.021(4) & 430.610 - 430.670
Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 32-2006, f. 12-27-06, cert. ef. 1-1-07

411-335-0150

Rights: General

(1) Abuse prohibited. Individuals must not be abused, nor will abuse be tolerated by any foster provider, agency employee, alternate or substitute caregiver, respite provider, contractor or volunteer of the agency.

(2) Protection and well-being. The agency must assure the health and safety of individuals from abuse including the protection of individual's rights, as well as, encouraging and assisting individuals through the ISP process to understand and exercise these rights. With the exception of individuals under the age of 18, where a parent or guardian has placed reasonable limitations, these rights must, at a minimum, provide for:

(a) Assurance that each individual has the same civil and human rights accorded to other citizens of the same age except when limited by a court order;

(b) Adequate food, housing, clothing, medical and health care;

(c) Visits and communication with family members, guardians, friends, advocates and others of the individual's choosing, as well as legal and medical professionals; unless limited due to legal process;

(d) Confidential communication including personal mail and telephone;

(e) Personal property and fostering of personal control and freedom regarding that property;

(f) Privacy in all matters that do not constitute a documented health and safety risk to the individual;

(g) Protection from abuse and neglect, including freedom from unauthorized training, treatment and chemical or mechanical or physical interventions or restraints;

(h) Freedom to choose whether or not to participate in religious activity;

(i) The opportunity to vote for individuals over the age of 18 and training in the voting process;

(j) Expression of sexuality within the framework of State and Federal Laws, and, for adults over the age of 18, the freedom to marry and to have children;

(k) Access to community resources, including recreation, agency services, employment and community inclusion services, school, educational opportunities and health care resources;

(l) Individual choice for children and adults that allows for decision-making and control of personal affairs appropriate to age;

(m) Services, which promote independence, dignity and self-esteem and reflect the age and preferences of the individual child or adult;

(n) Individual choice for adults to consent to or refuse treatment unless incapable and then an alternative decision maker is allowed to consent or refuse. For children, consent to or refusal of treatment by the child's parent or guardian except as defined in statute (ORS 109.610) or limited by court order;

(o) Individual choice to participate in community activities, except where limited by a court order;

(p) Access to a free and appropriate education for children and individuals under the age of 21 including a procedure for school attendance or refusal to attend.

(3) Policies and procedures. The agency must have and implement written policies and procedures that protect an individual's rights as listed in OAR chapter 411, division 335.

(4) Notification of policies and procedures. The agency must inform each individual and parent or guardian orally and in writing of their rights and a description of how to exercise these rights. This must be completed at entry to the program and in a timely manner thereafter as changes occur. Information must be presented using language, format, and methods of

communication appropriate to the individual's and family/guardian's needs and abilities.

Stat. Auth.: ORS 410.070, 409.050, 427.005 - 427.007 & 430.215
Stats. Implemented: ORS 430.021(4) & 430.610 - 430.670
Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 32-2006, f. 12-27-06, cert. ef. 1-1-07

411-335-0160

Rights: Behavior Support

(1) Written policy required. The agency must implement a written policy for behavior support that utilizes individualized positive behavior support techniques and prohibits abusive practices.

(2) Development of an individualized plan to alter an individual's behavior. A decision to develop a plan to alter an individual's behavior must be made by the ISP team, and must be based on the Risk Tracking Record. Documentation of the ISP team decision must be maintained by the agency.

(3) Functional assessment required. The agency must conduct a functional assessment of the behavior, which must be based upon information provided by one or more persons who know the individual. The functional assessment must include:

(a) A clear, measurable description of the behavior that includes frequency, duration and intensity of the behavior;

(b) A clear description and justification of the need to alter the behavior;

(c) An assessment of the meaning of the behavior, which includes the possibility that the behavior is one or more of the following:

(A) An effort to communicate;

(B) The result of medical conditions;

(C) The result of psychiatric conditions; and

(D) The result of environmental causes or other factors.

(d) A description of the context in which the behavior occurs; and

(e) A description of what currently maintains the behavior.

(4) BSP requirements. The BSP must include:

(a) An individualized summary of the individual's needs, preferences and relationships;

(b) A summary of the function(s) of the behavior, (as derived from the functional assessment);

(c) Strategies that are related to the function(s) of the behavior and are expected to be effective in reducing problem behaviors;

(d) Prevention strategies including environmental modifications and arrangement(s);

(e) Early warning signals or predictors that may indicate a potential behavioral episode and a clearly defined plan of response;

(f) A general crisis response plan that is consistent with the Oregon Intervention System (OIS).

(g) A plan to address post crisis issues;

(h) A procedure for evaluating the effectiveness of the plan that includes a method of collecting and reviewing data on frequency, duration and intensity of the behavior;

(i) Specific instructions for agency staff to follow regarding the implementation of the plan; and

(j) Positive behavior supports that includes the least intrusive intervention possible.

(5) Additional documentation requirements for implementation of behavioral support plans. The agency must maintain the following additional documentation for implementation of behavioral support plans:

(a) Written evidence that the individual, guardian or legal representative (if applicable) and the ISP team are aware of the development of the plan and any objections or concerns have been documented;

(b) Written evidence of the ISP team decision for approval of the implementation of the BSP; and

(c) Written evidence of all informal and positive strategies used to develop an alternative behavior.

(6) Notification of policies and procedures. The agency must inform each individual and guardian of the behavior support policy and procedures at the time of entry to the program and as changes occur.

Stat. Auth.: ORS 410.070, 409.050, 427.005 - 427.007 & 430.215
Stats. Implemented: ORS 430.021(4) & 430.610 - 430.670
Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 32-2006, f. 12-27-06, cert. ef. 1-1-07

411-335-0170

Rights: Physical Intervention

(1) Circumstances allowing the use of physical intervention. The agency must assure that agency staff and foster providers employ only physical intervention techniques that are included in the current approved OIS curriculum or as approved by the OIS Steering Committee. Physical intervention techniques must only be applied:

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(a) When the health and safety of the individual or others is at risk, and the ISP team has authorized the procedures as documented by an ISP team decision, included in the ISP and the procedures are intended to lead to less restrictive intervention strategies; or

(b) As an emergency measure, if absolutely necessary, to protect the individual or others from immediate injury; or

(c) As a health related protection prescribed by a physician, if absolutely necessary during the conduct of a specific medical or surgical procedure, or for the individual's protection during the time that a medical condition exists.

(2) Staff and training. Agency staff members and foster providers who support individuals with a history of behavior that may require the application of physical intervention, and the ISP team has determined that there is probable cause for future application of physical intervention, must be trained by an instructor certified in the Oregon Intervention System (OIS). Documentation verifying such training must be maintained in the personnel file.

(3) Modification of OIS physical intervention procedures. The program must obtain the approval of the OIS Steering Committee for any modification of standard OIS physical intervention technique(s). The request for modification of physical intervention technique(s) must be submitted to the OIS Steering Committee and must be approved in writing by the OIS Steering Committee prior to the implementation of the modification. Documentation of the approval must be maintained in the individual's record.

(4) Physical intervention techniques in emergency situations. Use of physical intervention techniques that are not part of an approved plan of behavior support in emergency situations must:

(a) Be reviewed by the agency's executive director or designee within one hour of application. Review will verify the following:

(A) The physical intervention was used in an emergency and only until the individual was no longer an immediate threat to self or others.

(B) An incident report is prepared and submitted within one working day to the Services Coordinator and the individual's guardian.

(C) Determine the need for an ISP team meeting if the emergency intervention is used three times in a six-month period.

(5) Incident report. Any use of any physical intervention must be documented in an incident report. Agency staff or proctor providers or other support staff who are involved in the incident, or who have witnessed the event, must write the report. The report must include:

(a) The name of the individual to whom the physical intervention was applied;

(b) The date, type, and length of time the physical intervention was applied;

(c) A description of the incident precipitating the need for the use of the physical intervention;

(d) Documentation of any injury;

(e) The name and position of the agency staff member(s) or proctor provider(s) applying the physical intervention;

(f) The name(s) and position(s) of the agency staff or proctor provider(s) witnessing the physical intervention;

(g) The name and position of the person providing the initial review of the use of the physical intervention; and

(h) Documentation of an administrative review that includes the follow-up to be taken to prevent a recurrence of the incident by the director or his/her designee who is knowledgeable in OIS, as evident by a job description that reflects this responsibility.

(6) Copies submitted. A copy of the incident report must be forwarded to the Services Coordinator and the legal guardian within five working days of the incident,

(a) Copies of incident reports will not be provided to a legal guardian, personal or other service providers, when the report is part of an abuse or neglect investigation.

(b) Copies provided to a legal guardian, personal agent, or other service provider must have confidential information about other individuals removed or redacted as required by federal and state privacy laws.

(c) All interventions resulting in injuries must be documented in an incident report and forwarded to the Services Coordinator and the legal guardian within one working day of the incident.

(7) Behavior data summary. The program may substitute a behavior data summary in lieu of individual incident reports when:

(a) There is no injury to the individual or others.

(b) The intervention utilized is not a physical restraint.

(c) There is a formal written functional assessment and written behavioral support plan.

(d) The individual's behavior support plan defines and documents the baseline level of behavior.

(e) The physical intervention technique(s), and the behavior(s) for which they are applied remain within the parameters outlined in the individual's behavior support plan and OIS curriculum.

(f) The behavior data collection system for recording observation, intervention and other support information critical to the analysis of the efficacy of the behavior support plan, is also designed to record items as required in support in OAR 411-325-0350(5)(a)-(c) and (e)-(h).

(g) There is written documentation of an ISP team decision that a behavior data summary had been authorized for substitution in lieu of incident reports.

(8) Copy to Services Coordinator. A copy of the behavior data summary must be forwarded to the Services Coordinator, Department designee, and the individual's legal guardian every thirty days.

Stat. Auth.: ORS 410.070, 409.050, 427.005 - 427.007 & 430.215

Stats. Implemented: ORS 430.021(4), 430.610-430.670

Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 32-2006, f. 12-27-06, cert. ef. 1-1-07

411-335-0190

Safety: Incident Reports and Emergency Notifications

(1) Incident reports. A written report that describes any injury, accident, act of physical aggression or unusual incident involving an individual must be placed in the individual's record. The agency staff or proctor provider who was involved in the incident must write the incident report. Someone who witnessed the event may also write the report. The report must include:

(a) Conditions prior to or leading to the incident.

(b) A description of the incident.

(c) Agency staff or proctor provider response at the time.

(d) Administrative review to include the follow-up to be taken to prevent a recurrence of the incident.

(2) Sent to guardian and Services Coordinator. Copies of all unusual incident reports must be sent to the individual's Services Coordinator within five working days of the incident. Upon request of the guardian, copies of incident reports will be sent to the guardian within five working days of the incident. Such copies must have any confidential information about other individuals removed or redacted as required by federal and state privacy laws. Copies of incident reports will not be provided to a guardian when the report is part of an abuse or neglect investigation.

(3) Immediate notification of allegations of abuse and abuse investigations. The program must notify the CDDP or the Department, if the Department holds the direct contract, immediately of an incident or allegation of abuse falling within the scope of OAR 411-320-0020(1)(a)(A)-(G), (b)(A)-(E), and (c)(A)-(H). When an abuse investigation has been initiated, the contracting entity will assure that either the Services Coordinator or the program will also immediately notify the individual's legal guardian or conservator. The parent who is not the guardian, next of kin or other significant person may also be notified unless the adult requests the parent, next of kin or other significant person not be notified about the abuse investigation or protective services, or notification has been specifically prohibited by law.

(4) Immediate notification for serious illness, injury or death. In the case of a serious illness, injury or death of an individual, the program must immediately notify:

(a) The individual's guardian or conservator, parent, next of kin or other significant person;

(b) The CDDP and the Department, if the Department holds the direct contract.

(c) Any agency responsible for or providing services to the individual.

(5) Emergency notification. In the case of an individual who is away from the residence, without support beyond the time frames established by the ISP team, the program must immediately notify:

(a) The individual's guardian, if any, or nearest responsible relative;

(b) The individual's designated contact person;

(c) The local police department; and

(d) The CDDP and the Department, if the Department holds the direct contract.

Stat. Auth.: ORS 410.070, 409.050, 427.005 - 427.007 & 430.215

Stats. Implemented: ORS 430.021(4) & 430.610 - 430.670

Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 32-2006, f. 12-27-06, cert. ef. 1-1-07

411-335-0200

Rights: Individuals' Personal Property

Record of personal property. The program must ensure that individual written records of personal property are prepared and accurately maintained for each individual of personal property that has significant monetary value

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or is important to the individual as determined by a documented ISP team or guardian decision. The record must include:

- (1) The description and identifying number, if any;
- (2) Date of inclusion in the record;
- (3) Date and reason for removal from the record;
- (4) Signature of agency staff or proctor provider making each entry;

and

- (5) A signed and dated annual review of the record for accuracy.

Stat. Auth.: ORS 410.070, 409.050, 427.005 - 427.007 & 430.215

Stats. Implemented: ORS 430.021(4) & 430.610 - 430.670

Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 32-2006, f. 12-27-06, cert. ef. 1-1-07

411-335-0210

Rights: Handling and Managing Individuals' Money

(1) Policies and procedures. The program must implement written policies and procedures for the handling and management of individuals' money. Such policies and procedures must provide for:

- (a) Safeguarding of the individual's funds;
- (b) Individuals receiving and spending their money; and
- (c) Taking into account the individual's interests and preferences.

(2) Individual written record. The agency must assure that documentation of the individual's financial plan is completed II as part of the Proctor Care Individual Support Plan for each individual served.

(3) Reimbursement to individual. The agency must reimburse the individual any funds that are missing due to theft, or mismanagement on the part of any agency staff member or proctor provider, for any funds within the custody of the agency that are missing. Such reimbursement must be made within 10 working days of the verification that funds are missing. Where appropriate the agency will ensure that the proctor provider reimburses any funds missing due to theft or mismanagement on the part of the proctor provide.

Stat. Auth.: ORS 410.070, 409.050, 427.005 - 427.007 & 430.215

Stats. Implemented: ORS 430.021(4) & 430.610 - 430.670

Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 32-2006, f. 12-27-06, cert. ef. 1-1-07

411-335-0220

Safety: Individual Summary Sheets

A current one to two page summary sheet must be maintained for each individual receiving services from the proctor agency. The record must include:

(1) The individual's name, current and previous address, date of entry into the program, date of birth, sex, religious preference, preferred hospital, medical prime number and private insurance number where applicable, and guardianship status.

(2) The name, address and telephone number of:

(a) The individual's legal representative, family, advocate or other significant person, and for children, the individual's parent or guardian, education surrogate, if applicable.

(b) The individual's preferred physician, secondary physician or clinic.

(c) The individual's preferred dentist.

(d) The individual's identified pharmacy.

(e) The individual's school, day program, or employer, if applicable.

(f) The individual's CDDP Services Coordinator, and for Department direct contracts, a Department representative.

(g) Other agency representatives providing services to the individual.

(3) Any court ordered or guardian authorized contacts or limitations.

Stat. Auth.: ORS 410.070, 409.050, 427.005 - 427.007 & 430.215

Stats. Implemented: ORS 430.021(4) & 430.610 - 430.670

Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 32-2006, f. 12-27-06, cert. ef. 1-1-07

411-335-0230

Individual Support Plan

(1) Department Individual Support Plan required. A copy of each individual's ISP and supporting documentation on the required Department forms must be available at the proctor provider home within 60 days of entry and annually thereafter. The agency must assure that agency staff and proctor providers are trained to implement the Proctor ISP in a manner consistent with the Department prescribed process.

(2) Preparation for ISP. The following required documents must be completed and summarized within 45 days prior to the ISP meeting for an individual:

(a) Risk Tracking Record;

(b) Necessary protocols or plans that address health, behavioral, and safety (including financial) supports as identified on the Risk Tracking Record;

(c) A Nursing Care Plan, if applicable, including but not limited to those tasks required by the Risk Tracking Record; and

(d) Other documents required by the ISP team.

(e) Personal Focus Worksheet.

(3) Content of Individual Support Plan. A completed ISP must be documented on the Department required form. Documentation of ISP Team members' signatures must be attached to the ISP.

(4) Any protocols as required by the Risk Tracking Record must be available for the proctor provider and any other caregivers.

(5) Availability and Implementation of ISP. The ISP and all documents of support must be available in the home for the provider(s) and any staff. The provider(s) and any staff must be trained in the ISP and it be implemented as written. Implementation must occur within the month of the expiration of the current ISP.

(6) Documentation required. The agency must maintain documentation of implementation of each support and service noted in the individual's ISP. This documentation must be kept current and be available for review by the individual, guardian, CDDP and Department representatives.

Stat. Auth.: ORS 410.070, 409.050, 427.005 - 427.007 & 430.215

Stats. Implemented: ORS 430.021(4) & 430.610 - 430.670

Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 32-2006, f. 12-27-06, cert. ef. 1-1-07

411-335-0240

Health: Medical

(1) Written policies and procedures. The agency must assure implementation of policies and procedures that maintain and protect the physical health of individuals placed in certified proctor provider homes operated and overseen by the Proctor Agency. Policies and procedures must address the following:

(a) Each individual's health care;

(b) Medication administration;

(c) Medication storage;

(d) Response to emergency medical situations;

(e) Nursing service provision, if needed;

(f) Disposal of medications; and

(g) Early detection and prevention of infectious disease.

(2) Individual health care. Each individual receiving proctor provider services must receive care that promotes their health and well-being as follows:

(a) The agency must assure each individual has a primary physician or qualified health care provider that the individual or guardian chooses from among qualified providers;

(b) The agency must assure each individual receives a medical evaluation by a qualified health care provider no less than every two years or as recommended by a physician;

(c) The agency must assure that the health status and physical conditions of each individual is monitored, and take action in a timely manner in response to identified changes or conditions that could lead to deterioration or harm;

(d) The agency must assure that a physician's or qualified health care providers written, signed order is obtained prior to the usage or implementation of all of the following:

(A) Prescription medications;

(B) Non-prescription medications except over the counter topical preparations;

(C) Treatments other than basic first aid;

(D) Modified or special diets;

(E) Adaptive equipment; and

(F) Aids to physical functioning.

(e) The agency must maintain a copy of the order in the individual's central record, and assure that the original is maintained in the proctor provider home.

(f) The agency must assure that its contracted proctor provider, their designee, or proctor agency staff implements orders by a physician or qualified health care provider's as written.

(3) Required documentation. The agency must maintain records on each individual to aid physicians, licensed health professionals and proctor providers in understanding the individual's medical history. Such documentation must include:

(a) A list of known health conditions, medical diagnoses; known allergies and immunizations;

(b) A record of visits to licensed health professionals that include documentation of the consultation and any therapy provided; and

(c) A record of known hospitalizations and surgeries.

(4) Medication procurement and storage. All medications must be:

(a) Kept in their original containers;

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(b) Labeled by the dispensing pharmacy, product manufacturer or physician, as specified per the physician's or licensed health care practitioner's written order; and

(c) Kept in a secured locked container and stored as indicated by the product manufacturer, or as identified and outlined in the ISP.

(5) Medication administration. All medications and treatments must be recorded on an individualized medication administration record (MAR). 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) For topical medications and treatments without a physician's order, a transcription of the printed instructions from the package;

(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) Documentation of any known allergy or adverse drug reaction.

(6) Self-administration of medication. For individuals who independently self-administer medications, there must be a plan as determined by the ISP team for the periodic monitoring and review of the self-administration of medications.

(7) Self-administration medications unavailable to other individuals. The program must assure that individuals able to self-administer medications keep them in a place unavailable to other individuals residing in the same proctor provider home, and store them as recommended by the product manufacturer.

(8) PRN/Psychotropic medication prohibited. PRN (i.e., as needed), orders will not be allowed for psychotropic medication.

(9) Adverse medication affects safeguards. Safeguards to prevent adverse effects or medication reactions must be utilized and include:

(a) Obtaining, whenever possible, all prescription medication except samples provided by the health care provider, for an individual from a single pharmacy that maintains a medication profile for him or her;

(b) Maintaining information about each medication's desired effects and side effects;

(c) Ensuring that medications prescribed for one individual are not administered to, or self-administered by, another individual, proctor provider, or respite provider.

(d) Documentation in the individual's record of reason why all medications should not be provided through a single pharmacy.

(10) Unused, discontinued, outdated, recalled and contaminated medications. All unused, discontinued, outdated, recalled and contaminated medications must be disposed of in a manner designed to prevent the illegal diversion of these substances. A written record of their disposal must be maintained that includes documentation of:

(a) Date of disposal;

(b) Description of the medication, including dosage strength and amount being disposed;

(c) Individual for whom the medication was prescribed;

(d) Reason for disposal;

(e) Method of disposal;

(f) Signature of the person disposing of the medication; and

(g) For controlled medications, the signature of a witness to the disposal.

(11) Direct nursing services. When direct nursing services are provided to an individual, the agency must:

(a) Coordinate with the nurse or nursing service and the ISP team to assure 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.

(12) Notification. When the individual's medical, behavioral or physical needs change to a point that they cannot be met by the agency, the Services Coordinator must be notified immediately and that notification documented.

Stat. Auth.: ORS 410.070, 409.050, 427.005 - 427.007 & 430.215

Stats. Implemented: ORS 430.021(4) & 430.610 - 430.670

Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 32-2006, f. 12-27-06, cert. ef. 1-1-07

411-335-0270

Emergency Plan and Safety Review

(1) Written emergency plan. The agency must write an emergency plan to include instructions for the proctor provider and agency staff in the event of a fire, explosion, earthquake, accident, or other emergency including evacuation, if appropriate, of individuals served at the proctor provider home. The plan will be available at the Agency offices and the proctor home. A copy shall also be provided to the CDDP.

(2) Emergency telephone numbers. Emergency telephone numbers must be readily available in each proctor provider home, in close proximity to phone(s):

(a) The telephone numbers of the local fire, police department and ambulance service, if not served by a 911 emergency service; and

(b) The telephone number of the Executive Director, emergency physician and other persons to be contacted in the case of an emergency.

(3) Monthly safety review. A documented safety review that is specific to each proctor provider home must be conducted monthly to assure that the home is free of hazards. The agency must keep these reports for three years and make them available upon request to the Services Coordinator and Department representatives.

(4) Provider Absence. There must be a written contingency plan for each child that is available for substitute caregivers and agency staff in the event of an emergency absence of the proctor provider.

Stat. Auth.: ORS 410.070, 409.050, 427.005 - 427.007 & 430.215

Stats. Implemented: ORS 430.021(4) & 430.610 - 430.670

Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 32-2006, f. 12-27-06, cert. ef. 1-1-07

411-335-0300

Rights: Confidentiality of Records

Confidentiality. All individuals' records are confidential except as otherwise provided by applicable State and Federal rule or laws.

(1) For the purpose of disclosure from individual medical records, service providers under these rules are considered "providers" as defined in ORS 179.505

(2) For the purposes of disclosure from non-medical individual records, all or portions of the information contained in these records may be exempt from public inspection under the personal privacy information exemption to the public records law set forth in ORS 192.502(2).

(3) The proctor agency, proctor provider and the proctor provider's family must treat personal information about an individual or an individual's family in a confidential manner. Confidential information is to be used and disclosed in accordance with OAR 410-014-0020(1-5) only on a need to know basis to law enforcement, Services Coordinator, DHS-CW child protective services staff, SOSCF DHS-CW caseworker, CDDP or OIT investigators, and medical professionals who are treating or providing services to the child. The information shared must be limited to the health and safety, and service needs of the individual.

(4) The proctor agency, proctor provider and the proctor provider's family must comply with the provisions of ORS 192.518 to 192.523 and OAR 410-014-0020(1-5) and therefore may use or disclose an individual's protected health information as defined in OAR 410-014-0000(33) only:

(a) To law enforcement, CDDP, SPD, or DHS-CW staff;

(b) As authorized by the child or adults personal representative, including but not limited to a guardian appointed under ORS 125.305, 419C.481 or 419C.555;

(c) For purposes of obtaining healthcare and treatment of the individual;

(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.

(5) The proctor agencies and the proctor providers must keep all written records for each individual in a manner that assures their confidentiality.

Stat. Auth.: ORS 410.070, 409.050, 427.005 - 427.007 & 430.215

Stats. Implemented: ORS 430.021(4) & 430.610 - 430.670

Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 32-2006, f. 12-27-06, cert. ef. 1-1-07

411-335-0320

Rights: Medicaid Fair Hearings

Medicaid service recipient's policy and procedure. The program must have a policy and procedure that provides for immediate referral to the CDDP when a Medicaid recipient, parent or guardian requests a fair hearing. The policy and procedure must include immediate notice to the individual, parent or guardian of the right to a Medicaid fair hearing each time a program takes action to deny, terminate, suspend or reduce an individual's access to services covered under Medicaid.

Stat. Auth.: ORS 410.070, 409.050, 427.005 - 427.007 & 430.215

Stats. Implemented: ORS 430.021(4) & 430.610 - 430.670

Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 32-2006, f. 12-27-06, cert. ef. 1-1-07

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411-335-0330

Entry, Exit and Transfer: General

(1) Qualifications for Department funding. All individuals considered for Department funded services must:

- (a) Be referred through the CDDP;
 - (b) Be determined to have a developmental disability by the Department or its designee; and
 - (c) Not be discriminated against because of race, color, creed, disability, national origin, duration or Oregon residence, or other forms of discrimination under applicable state or federal law.
- (d) For children, be in the custody of the State of Oregon, DHS Child Welfare, or OYA; or have a Developmental Disabilities Individual Placement Agreement with the Department signed by the child's parent or guardian.

(2) Authorization of Services. The Department must authorize admission into Children's Residential Services. The CDDP services coordinator for the adult will authorize admission into an adult proctor service.

(3) Information required for entry meeting. The agency must acquire the following information prior to or upon entry ISP team meeting:

- (a) A copy of the individual's eligibility determination document;
- (b) A statement indicating the individual's safety skills including the ability to evacuate a building when warned by a signal device, and adjusting water temperature for bathing and washing;
- (c) A brief written history of any behavioral challenges including supervision and support needs;
- (d) A medical history and information on health care supports that includes, where available:
 - (A) The results of a physical exam made within 90 days prior to entry;
 - (B) Results of any dental evaluation;
 - (C) A record of immunizations;
 - (D) A record of known communicable diseases and allergies; and
 - (E) A record of major illnesses and hospitalizations.
- (e) A written record of any current or recommended medications, treatments, diets and aids to physical functioning;

(f) Copies of documents relating to guardianship or conservatorship or any other legal restrictions on the rights of the individual, if applicable;

(g) Written documentation that the individual is participating in out of residence activities including school enrollment until the age of 21; and

(h) A copy of the most recent Functional Assessment, BSP, ISP and IEP.

(i) The entry agreement for family contact and visits that includes, but is not limited to, the names of the family members who can visit, with the level of agency staff supervision needed during visits; and any limitations on location or length of visits.

(j) Medical insurance information and medical card.

(4) Crisis entries from family homes. If the individual is being admitted from his or her family home and the information required in OAR 411-335-0330(3) is not available the agency will assure that they assess the individual upon entry for issues of immediate health or safety and document a plan to secure the remaining information no later than thirty days after entry. This must include a written justification as to why the information is not available.

(5) Entry meeting. An entry ISP team meeting must be conducted prior to the onset of services to the individual. The findings of the meeting must be recorded in the individual's file and include at a minimum:

- (a) The name of the individual proposed for services;
 - (b) The date of the meeting and the date determined to be the date of entry;
 - (c) The names and role of the participants at the meeting.
- (d) Documentation of the pre-entry information required by 411-335-0330(3)(a-j).
- (e) Documentation of the decision to serve or not serve the individual, with reasons; and
- (f) A written transition plan to include all medical, behavior and safety supports needed by the individual, to be provided to the individual for no longer than 60 days, if the decision was made to serve.

(6) Exit meeting. Each individual considered for exit must have a meeting by the ISP team before any decision to exit is made. Findings of such a meeting must be recorded in the individual's file and include, at a minimum:

- (a) The name of the individual considered for exit;
- (b) The date of the meeting;
- (c) Documentation of the participants included in the meeting;
- (d) Documentation of the circumstances leading to the planned exit;

(e) Documentation of the discussion of strategies to prevent an unplanned exit from service (unless the individual, individual's parent or guardian is requesting exit);

(f) Documentation of the decision regarding exit including verification of a majority agreement of the meeting participants regarding the decision; and documentation of discussion and criteria, as outlined in section (6) of this rule if applicable.

(g) Documentation of the proposed plan for services to the individual after the exit.

(7) Requirements for waiver of exit meeting. Requirements for an exit meeting may be waived if an individual is immediately removed from the home under the following conditions:

- (a) The individual and his/her guardian or legal representative requests an immediate move from the home; or
- (b) The individual is removed by legal authority acting pursuant to civil or criminal proceedings other than detention;

(8) Transfer meeting. A meeting of the ISP team must precede transfer of an individual before any decision to transfer is made. Findings of such a meeting must be recorded in the individual's file and include, at a minimum:

- (a) The name of the individual considered for transfer;
- (b) The date of the meeting or telephone call(s);
- (c) Documentation of the participants included in the meeting or telephone call(s) including, a parent or guardian who is participating to sign documents;
- (d) Documentation of the circumstances leading to the proposed transfer;
- (e) Documentation of the alternatives considered instead of transfer;
- (f) Documentation of the reasons any preferences of the individual, guardian, legal representative, parent or family members cannot be honored;

(g) Documentation of a majority agreement of the participants with the decision; and

(h) The written plan for services to the individual after transfer.

Stat. Auth.: ORS 410.070, 409.050, 427.005 - 427.007 & 430.215

Stats. Implemented: ORS 430.021(4) & 430.610 - 430.670

Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 32-2006, f. 12-27-06, cert. ef. 1-1-07

411-335-0340

Entry, Exit and Transfer Appeals

(1) Appeals. In cases where the adult, or the parent or guardian objects to, or the ISP team cannot reach majority agreement regarding an entry refusal, a request to exit the program or a transfer within a program, an appeal may be filed by any member of the ISP team.

(2) In cases where the ISP team cannot reach majority agreement or when the parent or guardian objects to an entry refusal, a request to exit the program or a transfer within a program, and an appeal has been filed the following requirements apply.

(a) In the case of a refusal to serve, the program vacancy may not be permanently filled until the appeal is resolved.

(b) In the case of a request to exit or transfer, the individual must continue to receive the same services until the appeal is resolved.

(3) Appeal to the CDDP. All appeals must be made to the CDDP Director or designee in writing, in accordance with the CDDPs dispute resolution policy. The CDDP will provide written response to the individual making the appeal within the timelines specified in the CDDPs dispute resolution policy.

(4) Appeal to Department. In cases where the CDDPs decision is in dispute written appeal must be made to the Department within ten days of receipt of the CDDPs decision.

(5) Department appeal process. The Administrator or designee will review all unresolved appeals. Such review will be completed and a written response provided within 45 days of receipt of written request for Department review. The decision of the Administrator or designee will be final.

(6) Documentation required. Documentation of each appeal and its resolution must be filed or noted in the individual's record.

Stat. Auth.: ORS 410.070, 409.050, 427.005 - 427.007 & 430.215

Stats. Implemented: ORS 430.021(4) & 430.610 - 430.670

Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 32-2006, f. 12-27-06, cert. ef. 1-1-07

411-335-0350

Respite Care Services

(1) The proctor agency may provide respite services in a proctor home to an individual not enrolled in proctor services.

(2) Qualifications for respite care services. All individuals not currently enrolled in proctor services with the agency and who are being con-

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sidered for respite care services to be provided by the Proctor Agency and proctor home must:

(a) Be referred by the Department or by the CDDP whichever entity holds the contract for the services;

(b) Be determined to have a developmental disability by the Department or its designee; and

(c) Not be discriminated against because of race, color, creed, disability, national origin, duration of Oregon residence, or other forms of discrimination under applicable state or federal law.

(3) Respite care plan. The individual and the guardian and services coordinator, or other ISP team members (as available) must participate in an entry meeting prior to the initiation of respite care services in a proctor provider's home. This meeting may occur by phone and the Services Coordinator or Proctor Agency will assure that any critical information relevant to the individual's health and safety, including physicians' orders, will be made immediately available to the provider. The outcome of this meeting will be a written respite care plan which must take effect upon entry and be available on site, and must:

(a) Address the individual's health, safety and behavioral support needs;

(b) Indicate who is responsible for providing the supports described in the plan; and

(c) Specify the anticipated length of stay at the residence up to 14 days.

(4) Waiver of exit meeting requirement. Exit meetings are waived for individuals receiving respite care services.

(5) Waiver of appeal rights for entry, exit and transfer. Individuals receiving respite care services do not have appeal rights regarding entry, exit or transfer.

Stat. Auth.: ORS 410.070, 409.050, 427.005 - 427.007 & 430.215

Stats. Implemented: ORS 430.021(4) & 430.610 - 430.670

Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 32-2006, f. 12-27-06, cert. ef. 1-1-07

411-335-0360

Crisis Services

(1) Proctor Agency Responsibilities in Provision of Crisis Services. All individuals considered for crisis services funded through the Department must:

(a) Be referred by the Department or designee;

(b) Be determined to have a developmental disability by the Department or its designee.

(c) Not be discriminated against because of race, color, creed, disability, national origin, duration of Oregon residence, or other forms of discrimination under applicable state or federal law.

(2) In-Home Support Services Plan, ISP or Plan of Care, and Crisis Addendum required. Individuals receiving CDDP in-home supports or foster care who require crisis services must have a crisis addendum to their current plan of care upon entry to proctor care services.

(3) Plan of Care required for individuals not enrolled in CDDP in-home support services. Individuals not enrolled in CDDP support services, receiving crisis services for less than 90 consecutive days must have a plan of care on entry that addresses any critical information relevant to the individual's health and safety including current physician's orders.

(4) Risk Tracking Record required. Individuals not enrolled in CDDP in-home support services, receiving crisis services for 90 days or more must have a completed Risk Tracking Record and a Plan of Care that addresses all identified health and safety supports as noted in the Risk Tracking Record.

(5) Entry meeting required. Entry meetings are required for individuals receiving crisis services.

(6) Exit meeting required. Exit meetings are required for individuals receiving crisis services.

(7) Waiver of appeal rights for entry, exit and transfers. An individual or a guardian of an individual receiving crisis services does not have appeal rights regarding entry, exit or transfers.

Stat. Auth.: ORS 410.070, 409.050, 427.005 - 427.007 & 430.215

Stats. Implemented: ORS 430.021(4) & 430.610 - 430.670

Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 32-2006, f. 12-27-06, cert. ef. 1-1-07

411-335-0380

Conditions

(1) Circumstances under which conditions may be applied to a certificate. Conditions may be attached to a certificate upon a finding that:

(a) Information on the application or initial inspection requires a condition to protect the health and safety of individuals;

(b) There exists a threat to the health, safety, and welfare of individuals;

(c) There is reliable evidence of abuse, neglect, or exploitation;

(d) The home or agency is not being operated in compliance with these rules; or

(e) The proctor provider is certified to care for a specific person(s) only and further placements must not be made into that home or facility.

(2) Imposing conditions. Conditions that may be imposed on a certificate include, include but not limited to:

(a) Restricting the total number of individuals;

(b) Restricting the number and support level of individuals allowed within a certified classification level based upon the capacity of the proctor provider and agency staff to meet the health and safety needs of all individuals;

(c) Reclassifying the level of individuals that can be served;

(d) Requiring additional agency staff or agency staff qualifications;

(e) Requiring additional training of proctor providers and agency staff;

(f) Requiring additional documentation; or

(g) Restriction of admissions.

(3) Written notification. The agency will be notified in writing of any conditions imposed, the reason for the conditions, and be given an opportunity to request a hearing under ORS Chapter 183.310 to 183.502.

(4) Administrative review. In addition to, or in lieu of, a contested case hearing, an agency may request a review by the Administrator or designee of conditions imposed by the Department. The review does not diminish the agency's right to a hearing.

(5) Length of conditions. Conditions may be imposed for the duration of the certificate period (two years) or limited to some other shorter period of time. If the condition corresponds to the certification period, the reasons for the condition will be considered at the time of renewal to determine if the conditions are still appropriate. The effective date and expiration date of the condition will be indicated on an attachment to the certificate.

Stat. Auth.: ORS 410.070, 409.050, 427.005 - 427.007 & 430.215

Stats. Implemented: ORS 430.021(4) & 430.610 - 430.670

Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 32-2006, f. 12-27-06, cert. ef. 1-1-07

411-335-0390

Certificate Denial, Suspension, Revocation, Refusal to Renew

(1) Substantial failure to comply with rules. The Department will deny, suspend, revoke or refuse to renew a certificate where it finds there has been substantial failure to comply with these rules; or where the State Fire Marshal or his representative certifies there is failure to comply with all applicable ordinances and rules relating to safety from fire.

(2) Imminent danger to individuals. The Department will immediately suspend the home or agency certificate where imminent danger to health or safety of individuals exists.

(3) Debarred providers or individuals. The Department will deny, suspend, revoke or refuse to renew a certificate or license where it finds that a provider or agency is on the current Centers for Medicare and Medicaid Services list of excluded or debarred providers.

(4) Revocation, suspension or denial done in accordance with ORS Chapter 183. Such revocation, suspension or denial will be done in accordance with these rules and ORS Chapter 183.

(5) Failure to disclose requested information. Failure to disclose requested information on the application or provision of incomplete or incorrect information on the application will constitute grounds for denial or revocation of the certificate.

(6) Failure to implement a plan of correction or comply with a final order. The Department will deny, suspend, revoke or refuse to renew a certificate if the agency fails to implement a plan of correction or comply with a final order of the Department.

Stat. Auth.: ORS 410.070, 409.050, 427.005 - 427.007 & 430.215

Stats. Implemented: ORS 430.021(4) & 430.610 - 430.670

Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 32-2006, f. 12-27-06, cert. ef. 1-1-07

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Rule Caption: Additions of definitions for clarification and arrangement of facility and community rule into respective sections.

Adm. Order No.: SPD 33-2006

Filed with Sec. of State: 12-21-2006

Certified to be Effective: 12-21-06

Notice Publication Date: 11-1-06

Rules Amended: 411-020-0002, 411-020-0020, 411-020-0100, 411-020-0120

Subject: The proposed rule changes are for the purposes of clarification, arranging facility and community investigation rule into

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respective sections, and to promote consistency regarding field office practice and rule application. The specific rule areas considered for change are as follows:

a) 411-020-0002: Addition of definitions for non-facility vs. facility settings; addition of language to the definition of “neglect”; definition of “conclusion”, “reported perpetrator”, “wrongdoing”, and “reported victim”; and removal of “self-neglect” from the definitions of abuse to a individually defined term.

b) 411-020-0020: Heading change to “Reporting of Abuse and Neglect”; moving subsection (4) and (5) to respective sections of rule for community and facility investigations.

c) 411-020-0100: Heading change to “Community Investigation, Documentation and Notification”; moving facility related rule to respective section of rule.

d) 411-020-0120: Heading change to “Facility Investigation, Documentation and Notification”; moving community related rule to respective section; change in investigatory language from findings of “abuse or neglect” to “wrongdoing” in respect to Adult Protective Service investigation reports.

Rules Coordinator: Lisa Richards—(503) 945-6398

411-020-0002

Definitions

(1) “Abuse” in a non-facility setting, means a range of actions or inactions, including abandonment, financial exploitation, neglect, physical abuse, emotional or verbal abuse, self-neglect, and sexual abuse.

(a) “Abandonment” means the desertion or intentional forsaking of an older adult or an adult with a disability for any period of time by a person who has assumed responsibility for providing care, when that desertion or forsaking would place the adult at serious risk of harm.

(b) “Emotional or verbal abuse” means the intentional infliction of anguish, distress, or intimidation through verbal or non-verbal acts or denial of civil rights.

(c) “Financial exploitation” means the illegal or improper use, by means including, but not limited to, deceit, coercion, fraud, or undue influence, of the resources (including medications) of an older adult or individual with a disability. This includes causing alarm by conveying a threat to wrongfully take or appropriate money or property, which would be expected to cause an older adult to believe the threat will be carried out.

(d) “Neglect” means the failure (whether intentional, careless or due to inadequate experience, training or skill) to provide basic necessary care or services when agreed to by legal, contractual, or otherwise assumed responsibility when such failure leads to actual or serious potential for physical or emotional harm. This includes failure of a person who has fiduciary responsibility to assure the continuation of necessary care (for example, failure to pay for necessary care resulting in the withdrawal of services).

(e) “Physical abuse” means the use of physical force that may result in bodily injury, physical pain, or impairment. Physical abuse may include, but is not limited to:

(A) Such acts of violence as striking (with or without object), hitting, beating, punching, shoving, shaking, slapping, kicking, pinching, and burning;

(B) The intentionally inappropriate use of drugs or physical restraints;

(C) The intentional mis-administration of types or amounts of drugs in order to cause harm to the person receiving them; and

(D) The use of force-feeding or physical punishment.

(f) “Sexual abuse” means non-consensual sexual contact or behavior that includes, but is not limited to, sexual harassment, inappropriate or unwanted sexual comments, and threats. These activities are considered non-consensual if a person does not make, or is incapable of making, an informed choice.

(2) “Abuse” in a facility setting, means abuse or neglect of care, as defined in the applicable licensing or certification rules, that occurs in facilities that are licensed (such as Residential Care Facilities, Assisted Living Facilities, Nursing Facilities, Commercial or Limited License Adult Foster Homes); or Room and Board Facilities that are registered, when the reported perpetrator is the facility itself or is an employee or agent of the facility. Relative Foster Homes are to be treated as non-facility settings.

(3) “APS Risk Management” means the process by which APS continues to maintain ongoing active contact with a reported victim who continues to be at serious risk of harm.

(4) “Area Agency on Aging (AAA)” means the agency designated by the Department with responsibility to provide a comprehensive and coordinated system of service to older adults or adults with disabilities in a designated planning and service area.

(5) “At-risk” means there is reason to believe injury, hazard, damage or loss may occur.

(6) “Community Based Care Facility” means an Assisted Living Facility, Residential Care Facility, Adult Foster Home, or registered Room and Board Facility.

(7) “Conclusion” for the purposes of a facility investigation means a determination by the APS Worker whether an incident occurred and, if it did, whether the incident was the result of wrongdoing. “Conclusion” for the purposes of a community investigation or self-neglect assessment, means a determination by the APS worker as to whether an incident occurred and, if it did, whether the incident was the result of wrongdoing or self-neglect.

(8) “Conservatorship” means that a court has issued an order appointing and investing a person with the power and duty of managing the property of another person.

(9) “Department” means the Department of Human Services, Seniors and People with Disabilities.

(10) “Disability” for the purposes of these rules means any physical or cognitive condition that significantly interferes with an adult’s ability to protect his or her self from harm or neglect (See section 411-020-0015, Eligibility.)

(11) “Elder abuse” means abuse as defined in OAR 411-021-0005, Alleged Elderly Abuse, of any adult aged 65 years of age or older. Abuse to adults 65 and over which does not fall within those administrative rules is considered Adult Protective Services.

(12) “Evidence” for the purpose of these rules means material gathered, examined or produced during the course of an APS investigation. This includes, but is not limited to, witness statements, documentation, photographs and relevant physical evidence.

(13) “Guardianship” means a court has issued an order appointing and investing a person with the power and duty of managing the care, comfort or maintenance of an incapacitated adult.

(14) “Imminent danger” means there is reasonable cause to believe an adult’s life, physical well-being, or resources are in danger if no intervention is initiated immediately.

(15) “Inconclusive” means that after a careful analysis of the evidence gathered in an investigation, a determination of whether wrongdoing occurred cannot be reached by a preponderance of the evidence.

(16) “Informed choice” means the person has the mental capacity, adequate information, and freedom from undue influence to understand the current situation, understand the options available and their likely consequences, and be able to reasonably choose from among those options and communicate that choice.

(17) “Law enforcement agency” means:

(a) Any city or municipal police department;

(b) Any county sheriff’s office;

(c) The Oregon State Police;

(d) Any District Attorney; or

(e) The Oregon Department of Justice.

(18) “Licensed care facility” means a facility licensed by the Department, including Nursing Facilities, Assisted Living Facilities, Residential Care Facilities, and Adult Foster Homes.

(19) “Local office” means the local service staff of the Department or Area Agency on Aging.

(20) “Mandatory reporter” for the purpose of these rules means any public or private official who is required by statute to report suspected abuse or neglect.

(a) If a person is a mandatory reporter and, while acting in an official capacity, comes in contact with and has reasonable cause to believe that any person living in a nursing facility or an older adult in any setting has suffered abuse or neglect, he or she must immediately file a report with local law enforcement or an office of the Department.

(b) Definitions of abuse or neglect for these purposes and procedures for investigation are defined in ORS 124.050 to 124.095 and OAR chapter 411, division 021, (Elder Abuse) or ORS 441.615 to 441.695 and OAR 411-085-0005 and 411-085-0360 to 411-085-0370 (Nursing Facility Abuse).

(c) Mandatory reporting is also required if the person, while acting in an official capacity, comes into contact with anyone who has abused an older adult or any person living in a nursing facility.

(d) The public or private officials who are mandatory reporters are:

(A) Physician, including any intern or resident;

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(B) Licensed practical nurse, registered nurse, nurse's aide, home health aide or employee of an in-home health service;

(C) Employee of the Department of Human Services, county health department, community mental health and developmental disabilities program or a nursing facility or a person who contracts to provide services to a nursing facility.

(D) Peace officer;

(E) Clergy;

(F) Licensed clinical social worker; physical, speech, or occupational therapist;

(G) Senior center employee;

(H) Information and referral or outreach worker;

(I) Area Agency on Aging employee; and

(J) For nursing facility abuse, all of the above, plus legal counsel, guardian, or family member of the resident;

(K) For elder abuse, all of the above, excluding (J); and

(L) Firefighter; or

(M) Emergency Medical Technician.

(21) "Older adult," for the purpose of these rules, means any person 65 years of age or older.

(22) "Relevant" means tending to prove or disprove the allegation at hand.

(23) "Reported Perpetrator" (RP) means the facility, an agent or employee of the facility, or any individual reported to have committed wrongdoing.

(24) "Reported Victim" (RV) means the individual person whom wrongdoing or self-neglect is reported to have been committed against.

(25) "Risk Assessment" means the process by which a person is evaluated for risk of harm and for the physical and cognitive abilities to protect his or her interests and personal safety. The living situation, support system and other relevant factors are also evaluated to determine their impact on the person's ability to become or remain safe.

(26) "Self-determination" means an adult's ability to decide his or her own fate or course of action without undue influence.

(27) "Self-Neglect" means the inability of an adult to understand the consequences of his or her actions or inaction when that inability leads to or may lead to harm or endangerment to self or others.

(28) "Serious risk of harm" means that without intervention the person is likely to incur substantial injury or loss.

(29) "Substantiated" means that the preponderance (majority) of the evidence gathered and analyzed in an investigation indicates that the allegation is true.

(30) "Undue influence" means the process by which a person uses his or her role and power to exploit the trust, dependency, and fear of another person and to deceptively gain control over the decision making of the second person.

(31) "Unsubstantiated" means that the preponderance (majority) of the evidence gathered and analyzed in an investigation indicates that the allegation is not true.

(32) "Wrongdoing" for the purposes of a facility investigation means an act that violates a licensing or other rule without regard to the intent of the reported perpetrator or the outcome to the reported victim. "Wrongdoing" for the purposes of a community investigation is an action or inaction that meets the definition of abuse as defined in OAR 411-020-0002, without regard to the intent of the reported perpetrator or the outcome to the reported victim.

Stat. Auth.: ORS 410.070, 411.116, 441.635, 443.500 & 443.767

Stats. Implemented: ORS 410.070 & 411.116

Hist.: SSD 5-1994, f. & cert. ef. 11-15-94; SSD 5-1995, f. 5-31-95, cert. ef. 6-1-95; SPD 6-2005, f. 4-29-05, cert. ef. 7-1-05; SPD 10-2006, f. 3-23-06, cert. ef. 4-1-06; SPD 33-2006, f. & cert. ef. .12-21-06

411-020-0020

Reporting of Abuse and Neglect

(1) Mandatory reporters must report instances of suspected elder abuse (as defined in ORS 124.050) or abuse of residents in nursing facilities (as defined in ORS 441.650) to a Department designated local office or a local law enforcement agency.

(2) Reporting of instances involving abuse or neglect of older adults and adults with disabilities is highly encouraged for non-mandatory reporters. Anyone participating in the making of a report of elder abuse on reasonable grounds and good faith will have immunity from any civil liability. The same immunity applies to participating in any judicial proceeding resulting from the report.

(3) The identity of the person reporting the suspected abuse must be confidential and can be disclosed only with the consent of that person, by

judicial process (including administrative hearing), or as required to perform the investigation by the Department or a law enforcement agency.

Stat. Auth.: ORS 410.070, 411.116, 441.635, 443.500 & 443.767

Stats. Implemented: ORS 410.070 & 411.116

Hist.: SSD 5-1994, f. & cert. ef. 11-15-94; SPD 6-2005, f. 4-29-05, cert. ef. 7-1-05; SPD 10-2006, f. 3-23-06, cert. ef. 4-1-06; SPD 33-2006, f. & cert. ef. .12-21-06

411-020-0100

Community Investigation, Documentation and Notification

(1) Investigation is the process of determining whether abuse or neglect occurred. The investigation results in a finding as to whether the initial complaint is substantiated or unsubstantiated, or whether the results of the investigation are inconclusive.

(2) An investigation is to be completed and documented when a perpetrator is reported to have abused or neglected a victim.

(3) Investigations are to be objective, professional and complete.

(4) In completing the investigation, the adult protective service worker is responsible for carrying out the following steps:

(a) Identifying the reported victim(s), the reported perpetrator(s) and any parties reported to have information relevant to proving or disproving the allegation;

(b) Immediately notifying law enforcement if any of the following conditions exist and proceeding collaboratively in a way that does not further endanger the reported victim. Any law enforcement officer accompanying the investigator must be identified as such to any party interviewed. Conditions include:

(A) There is reason to believe a crime has been committed;

(B) Access to the reportedly abused person is denied and legal assistance is needed in gaining access;

(C) The situation presents a credible danger to the Department worker or others and police escort is advisable; or

(D) Forensic photographic or other evidence is needed.

(c) Conducting unannounced interviews with the above parties to gather all relevant available evidence. All interviews are to be private unless the person being interviewed requests the presence of someone else. Any persons sitting in should be advised of the confidential nature of the investigation;

(d) Obtaining and reviewing any available and relevant documentary or physical evidence;

(e) Creating additional investigatory aids, such as maps or drawings that can aid in proving or disproving the allegation;

(f) Maintaining a record of interviews and evidentiary review, in notes, tape recordings, copies, photographs, or other appropriate means;

(g) Determining the facts of the case based on a fair and objective review of the available relevant evidence;

(h) Concluding whether the preponderance (majority) of the evidence indicates whether the incident occurred and whether abuse or neglect is substantiated or unsubstantiated, or determining that the evidence is inconclusive.

(5) The local office will document the investigation in a timely manner and in a standard report format consistent with Department policy.

(a) Documentation of community assessments and investigations will include, but not necessarily be limited to:

(A) A summary of the findings;

(B) Conclusions; and

(C) Any plans of action that are recommended or taken.

(b) Data in the report will include:

(A) Characteristics of the reported victim;

(B) Relationship of the reported victim to the complainant, witnesses and reported perpetrator;

(C) Type of reported mistreatment/abuse;

(D) Conclusion; and

(E) Outcome.

(c) Reports are to be written and closed on a Department-approved system, (e.g., Oregon ACCESS).

(6) When a community complaint investigation has been completed, the complainant may be informed (verbally, unless notification in writing is requested) either that appropriate action is being taken, or that no abuse was found.

Stat. Auth.: ORS 410.070, 124.050-124.095, 411.116, 441.635, 443.500, 443.767

Stats. Implemented: ORS 410.040, 410.070 & 411.116

Hist.: SPD 6-2005, f. 4-29-05, cert. ef. 7-1-05; SPD 33-2006, f. & cert. ef. .12-21-06

411-020-0120

Facility Investigation, Documentation and Notification

(1) Investigations are to be objective, professional and complete.

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(2) In completing the investigation, the adult protective services worker is responsible for carrying out the following steps:

(a) Identifying the reported victim(s), the reported perpetrator(s) and any parties reported to have information relevant to proving or disproving the allegation;

(b) Immediately notifying law enforcement if any of the following conditions exist, and proceeding collaboratively in a way that does not further endanger the reported victim. Any law enforcement officer accompanying the investigator must be identified as such to any party interviewed. Conditions include:

(A) There is reason to believe a crime has been committed;

(B) Access to the reportedly abused person is denied and legal assistance is needed in gaining access;

(C) The situation presents a credible danger to the Department worker or others and police escort is advisable; or

(D) Forensic photographic or other evidence is needed.

(c) Conducting interviews with the above parties to gather all relevant available evidence. Interviews should be unannounced whenever possible. All interviews are to be private unless the person being interviewed requests the presence of someone else. Any persons sitting in should be advised of the confidential nature of the investigation;

(d) Obtaining and reviewing any available and relevant documentary or physical evidence;

(e) Creating additional investigatory aids, such as maps or drawings that can aid in proving or disproving the allegation;

(f) Maintaining a record of interviews and evidentiary review, in notes, tape recordings, copies, photographs, or other appropriate means;

(g) Determining the facts of the case based on a fair and objective review of the available relevant evidence;

(h) Concluding whether the preponderance (majority) of the evidence indicates the incident occurred and whether wrongdoing was substantiated or unsubstantiated, or determining that the evidence is inconclusive. The determination as to whether substantiated wrongdoing meets the definitions of abuse will be determined by the Department's Central Office.(3) In conducting facility abuse investigations, the Department protocols governing activities of investigations further include:

(a) Notifying the Department's Client Care Monitoring Unit (CCMU) if:

(A) A situation exists in a nursing facility that meets criteria for CCMU to complete the investigation. Where CCMU will conduct the investigation, the field office will provide coordination to assure victim safety;

(B) A situation exists in a residential care facility or an assisted living facility that could cause CCMU to conduct a survey. This includes reports of facility-wide issues.

(b) Providing an opportunity for the complainant or a designee of the complainant, or both, to accompany the investigator to the site of the reported violation for the sole purpose of identifying persons or objects relevant to the investigation;

(c) Conducting an unannounced site visit to the facility;

(d) Arranging for immediate protection. The worker is to direct the provider to correct any substantiated problem immediately.

(4) The local office shall submit detailed investigation reports written on the Departments Facility Report Writing System (723) to the Office of Licensing and Quality of Care in Central Office. The local office is to refer these reports to the appropriate office within 60 days of the receipt of the complaint for a community based care facility and within 62 days for a nursing facility.

(a) Facility investigations are to be written at the local office on the Departments Facility Report Writing System (723). Documentation of facility investigations will include, for each allegation:

(A) A statement of the allegation;

(B) Summary of witness statements;

(C) Investigator observations, including documentary review;

(D) Findings of fact;

(E) Conclusion.

(b) When wrongdoing is substantiated, findings in the investigation may be used to support civil or criminal sanctions against the perpetrator or care facility.

(c) The local office retains hard copies of facility investigation reports for a period of ten years after last activity.

(5) When a facility investigation has been completed, notification to the complainant and other appropriate parties will be done according to procedures as specified in the relevant facility licensing rules or policy.

(6) If the reported abuse is also the subject of a law enforcement report or criminal prosecution, copies of investigation reports must be forwarded to the law enforcement agency having jurisdiction.

(7) The Department may collect standardized statewide data on all types of Adult Protective Services including, but not limited to, information on the number of cases, types of incidents, person characteristics, and outcomes.

Stat. Auth.: ORS 410.070, 410.610 - 410.700, 411.116, 441.635, 443.500 & 443.767
Stats. Implemented: ORS 410.070 & 411.116

Hist.: AFS 5-1980, f. & ef. 1-25-80; Renumbered from 461-011-0005 by Ch. 784, OL 1981 & AFS 69-1981, f. 9-30-81, ef. 10-1-81; SSD 5-1994, f. & cert. ef. 11-15-94; Renumbered from 411-020-0050, SPD 6-2005, f. 4-29-05, cert. ef. 7-1-05; SPD 33-2006, f. & cert. ef. .12-21-06

Department of Justice Chapter 137

Rule Caption: Amends child support rules to mandate support disbursement by EFT and updates confidentiality rules.

Adm. Order No.: DOJ 1-2007

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

Certified to be Effective: 1-2-07

Notice Publication Date: 10-1-06

Rules Adopted: 137-055-6010

Rules Amended: 137-055-1020, 137-055-1100, 137-055-1120, 137-055-1160, 137-055-1320, 137-055-4320, 137-055-5510, 137-055-6020, 137-055-6021, 137-055-6022, 137-055-6024, 137-055-6025, 137-055-6120, 137-055-6210

Subject: The changes to OAR 137-055-6020 mandates DOJ-DCS disburse support payments via electronic funds transfer by direct deposit or a stored value card unless an exception is granted. Changes to OARs 137-055-1020; 137-055-1100; 137-055-4320; 137-055-5510; 137-055-6010; 137-055-6021; 137-055-6022; 137-055-6024; 137-055-6025; 137-055-6120; 137-055-6210 change rule cites to correct cites. Changes to OAR 137-055-1120 defines "no longer a current support order" to include when there was never a support order and allows for case closure when another state requests closure and certain criteria is met. Changes to OAR 137-055-1160 reflect changes required due to ORS Chapter 192, the Address Confidentiality Program and allows for an "Order for nondisclosure of information" and when the CSP will make an order. Changes to OAR 137-055-1320 enlarges on the definition of "reasonable evidence of possible domestic violence" to include situations and parties who have been accepted into the Address Confidentiality Program.

Rules Coordinator: Shawn Brenizer—(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 administrator's or a district attorney's 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 enforce-

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ment 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 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 which requires service of documents on the parties.

(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 lowincome 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

137-055-1100

Continuation of Services

(1) When a family's assistance grant is closed, support enforcement services will automatically be continued. The Division of Child Support (DCS) will notify the support obligee and any child attending school under ORS 107.108 and OAR 137-055-5110, in writing, of the services to be provided. DCS will notify the obligee, and the child attending school that subject to the obligor's right to request services:

(a) An obligee may at any time request that support enforcement services no longer be provided. If the obligee so requests and case closure procedures pursuant to OAR 137-055-1120 have been completed, all support enforcement services on behalf of the obligee will be discontinued. However, except as provided in section (2) of this rule, if an order has already been established, DCS will continue efforts to collect arrears assigned to the state. DCS will apply any collections received against the assigned arrears until this amount has been collected.

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(b) An obligee may also request under section (2) of this rule that support enforcement services no longer be provided for either the obligee or the state.

(c) A child attending school may request that support enforcement services no longer be provided. If the child attending school so requests, all support enforcement services on behalf of the child attending school will be discontinued.

(2) If an obligee believes that physical or emotional harm to the family may result if support enforcement services are provided, the obligee may request that the administrator discontinue all activity against the obligor. Upon such a request by an obligee, the administrator will immediately suspend all activity on the case, add good cause case coding and send a Client Safety Packet on Good Cause to the obligee requesting a response within 30 days.

(a) If the obligee returns the completed and signed Good Cause portion of the Client Safety Packet on Good Cause, the administrator will proceed with case closure pursuant to OAR 137-055-1120(1)(k), and, except for arrears assigned to the Oregon Youth Authority, DCS will satisfy any and all permanently assigned arrears as defined in OAR 137-055-6010(8)(a) and (b).

(b) If the obligee returns the completed and signed Claim of Risk portion of the Client Safety Packet on Good Cause, the administrator will remove the good cause case coding and make a finding and order for nondisclosure of information pursuant to ORS 25.020 and OAR 137-055-1160.

(c) If the obligee returns the completed and signed Address of Record portion of the Client Safety Packet on Good Cause, the administrator will remove the good cause case coding and update the child support case record appropriately.

(d) If the obligee does not send a reply to the Client Safety Packet on Good Cause within 30 days, the administrator will proceed with case closure pursuant to OAR 137-055-1120(1)(k), and DCS will satisfy any and all permanently assigned arrears as defined in OAR 137-055-6010(8)(a) and (b).

(e) If the obligee claims good cause, the child attending school may apply for services pursuant to OAR 137-055-1090 and 137-055-5110.

(3) If a case has been closed pursuant to this rule, an obligee or a child attending school may at any time request the child support case be reopened by completing a new application for services. If an application for services is received, arrears may be reestablished pursuant to OAR 137-055-3240, except for permanently assigned arrears which have been satisfied or which accrued to the state prior to the reapplication for services, except as provided in OAR 137-055-5120.

Stat. Auth.: ORS 25.080 & 180.345

Stats. Implemented: ORS 18.400, 25.020 & 25.080

Hist.: AFS 34-1986(Temp), f. & ef. 4-14-86; AFS 65-1986, f. & ef. 9-19-86; AFS 28-1988, f. & cert. ef. 4-5-88; AFS 66-1989, f. 11-28-89, cert. ef. 12-1-89, Renumbered from 461-035-0054; 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 461-195-0055; AFS 28-2001, f. 12-28-01, cert. ef. 1-1-02; 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 461-200-1100; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-1100; DOJ 4-2005, f. & cert. ef. 4-1-05; DOJ 9-2005, f. & cert. ef. 10-3-05; DOJ 1-2006, f. & cert. ef. 1-3-06; DOJ 6-2006, f. & cert. ef. 10-2-06; DOJ 1-2007, f. & cert. ef. 1-2-07

137-055-1120

Case Closure

(1) The administrator may close a child support case, whenever the case meets at least one of the following criteria for case closure:

(a) There is no longer a current support order, and arrears are under \$500 and there are no reasonable expectations for collection or the arrears are uncollectible under state law. For the purposes of this subsection, "no longer a current support order" means the support order is not currently accruing or there never was a support order. This subsection specifically includes but is not limited to cases in which:

(A) Action to establish support has not been initiated and the child is at least 18 years old;

(B) The child has been adopted;

(C) The child is deceased; or

(D) Parental rights for the child have been terminated;

(b) The non-custodial parent or putative father is deceased and no further action, including a levy against the estate, can be taken;

(c) Paternity cannot be established because:

(A) A parentage test, or a court or administrative process, has excluded the putative father and no other putative father can be identified;

(B) In a case involving incest or forcible rape, or where legal proceedings for adoption are pending, the Department of Human Services

(DHS) or the administrator has determined that it would not be in the best interests of the child to establish paternity; or

(C) The identity of the biological father is unknown and cannot be identified after diligent efforts, including at least one interview by the administrator with the recipient of services;

(D) Action to establish paternity has not been initiated and the child is at least 18 years old.

(d) The location of the non-custodial parent is unknown, and the state parent locator service has made regular attempts using multiple sources, all of which have been unsuccessful, to locate the non-custodial parent:

(A) Over a three-year period when there is sufficient information to initiate an automated locate effort; or

(B) Over a one-year period when there is not sufficient information to initiate an automated locate effort;

(e) When paternity is not at issue and the non-custodial parent cannot pay support for the duration of the child's minority because the parent is both:

(A) Institutionalized in a psychiatric facility, is incarcerated with no chance for parole, or has a medically verified total and permanent disability with no evidence of support potential; and

(B) Without available income or assets which could be levied or attached for support;

(f) The non-custodial parent:

(A) Is a citizen of, and lives in, a foreign country;

(B) Does not work for the Federal government or for a company or state with headquarters in or offices in the United States;

(C) Has no reachable income or assets in the United States; and

(D) Oregon has been unable to establish reciprocity with the country;

(g) The state parent locator service has provided location-only services based upon a request under 45 CFR 302.35(c)(3);

(h) The custodial parent or recipient of services requests closure, and:

(A) There is no assignment to the state of medical support; and

(B) There is no assignment of arrears that have accrued on the case;

(i) Another state requests closure and:

(A) The state requesting closure is currently providing child support services; or

(B) Oregon is providing child support services at the request of that state.

(j) The custodial parent or recipient of services is deceased and no trustee or personal representative has requested services to collect arrears;

(k) DHS or the administrator pursuant to OAR 137-055-1100(2), has made a finding of good cause or other exceptions to cooperation and has determined that support enforcement may not proceed without risk or harm to the child or caretaker;

(l) In a non-TANF case (excluding a Medicaid case), the administrator is unable to contact the custodial parent, or recipient of services, within 60 calendar days, despite an attempt of at least one letter sent by first class mail to the last known address;

(m) In a non-TANF case, the administrator documents the circumstances of non-cooperation by the custodial parent, or recipient of services, and an action by the custodial parent, or applicant for services, is essential for the next step in providing enforcement services; or

(n) The administrator documents failure by the initiating state to take an action which is essential for the next step in providing services.

(2)(a)(A) Except as otherwise provided in this section, if the administrator elects to close a case pursuant to subsection (1)(a), (1)(e), (1)(f), (1)(j) or (1)(l) through (1)(n) of this rule, the administrator will notify all parties to the case in writing at least 60 calendar days prior to closure of the case of the intent to close the case.

(B) If the administrator elects to close a case pursuant to subsection (1)(b) through (1)(d) of this rule, the administrator:

(i) Will notify the obligee and any child attending school in writing at least 60 days prior to closure of the case of the intent to close the case;

(ii) Is not required to notify the obligor of the intent to close the case; and

(iii) If the provisions of paragraph (1)(c)(D) apply, is not required to notify any other party.

(C) If the administrator elects to close a case pursuant to subsection (1)(g) or (1)(i) of this rule, the administrator is not required to notify any party of the intent to close the case. However, if the case is closed pursuant to paragraph (1)(i)(A), the administrator will send a courtesy notice to the parties advising:

(i) The reason for closure is that another state is providing services; and

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(ii) The state that is providing services, along with a contact address for that state, if known.

(D) If the administrator elects to close a case pursuant to subsection (1)(h) of this rule, the administrator will notify all parties to the case in writing at least 60 calendar days prior to closure of the case of the intent to close the case, except:

(i) When the case is a Child Welfare or Oregon Youth Authority case in which the child has left state care, an order under OAR 137-055-3290 is not appropriate, and a notice and finding has not been initiated, the case will be closed immediately; and

(ii) No closure notice will be sent to the parents unless a parent had contact with the Child Support Program, Child Welfare or the Oregon Youth Authority regarding the child support case.

(E) If the administrator elects to close a case pursuant to subsection (1)(k) of this rule, the administrator will:

(i) Notify the obligee and any child attending school in writing at least 60 days prior to closure of the case of the intent to close the case; and

(ii) Not notify the obligor of the intent to close the case.

(b) The 60-day time frame in paragraph (2)(a)(A) is independent of the 60-day calendar time frame in subsection (1)(l).

(c) The administrator will document the notice of case closure by entering a narrative line, or lines, on the child support computer system and will include the date of the notice.

(d) The content of the notice in paragraph (2)(a)(A) must include, but is not limited to, the specific reason for closure, actions a party can take to prevent closure, and a statement that an individual may reapply for services at any time.

(3) Notwithstanding paragraph (2)(a)(A) of this rule, a case may be closed immediately if:

(a) All parties agree to waive the notice of intent to close and the 60-day objection period when the notice of intent to close has not yet been sent; or

(b) All parties agree to waive the remainder of the 60-day objection period when the notice of intent to close has already been sent.

(4) The administrator will keep a case open if, in response to the notice sent pursuant to paragraph (2)(a)(A) of this rule:

(a) The applicant or recipient of services:

(A) Supplies information which could lead to the establishment of paternity or of a support order, or enforcement of an order; or

(B) Reestablishes contact with the administrator, in cases where the administrator proposed to close the case under subsection (1)(l) of this rule; or

(b) The party who is not the applicant or recipient of services completes an application for services.

(5) A party may request at a later date that the case be reopened if there is a change in circumstances that could lead to the establishment of paternity or a support order, or enforcement of an order, by completing a new application for services.

(6) The administrator will document the justification for case closure by entering a narrative line or lines on the child support computer system in sufficient detail to communicate the basis for the case closure.

Stat. Auth.: ORS 25.080 & 180.345

Stats. Implemented: ORS 25.020 & 25.080

Hist.: AFS 35-1986(Temp), f. & ef. 4-14-86; AFS 66-1986, f. & ef. 9-19-86; AFS 27-1988, f. & cert. ef. 4-5-88; AFS 66-1989, f. 11-28-89, cert. ef. 12-1-89, Renumbered from 461-035-0055; AFS 15-1993, f. 8-13-93, cert. ef. 8-15-93; AFS 13-1999, f. 10-29-99, cert. ef. 11-1-99; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0050; AFS 2-2001, f. 1-31-01, cert. ef. 2-1-01; 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 461-200-1120; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-1120; DOJ 4-2005, f. & cert. ef. 4-1-05; DOJ 8-2005(Temp), f. & cert. ef. 9-1-05 thru 2-17-06; DOJ 1-2006, f. & cert. ef. 1-3-06; DOJ 6-2006, f. & cert. ef. 10-2-06; DOJ 1-2007, f. & cert. ef. 1-2-07

137-055-1160

Confidentiality — Finding of Risk and Order for Nondisclosure of Information

(1) For the purposes of this rule the following definitions apply:

(a) “ACP Order for nondisclosure of information” means an order by the administrator, which may be made ex parte, to not contain or disclose the information specified in ORS 25.020(8)(a) or OAR 137-055-1140(6)(a) because the party is a participant in the Address Confidentiality Program (ACP) pursuant to ORS chapter 192;

(b) “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;

(c) “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 ACP, the administrator will make an ACP 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 or an ACP 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) A finding of risk and order for nondisclosure of information entered pursuant to subsection (3)(a) will be documented on the child support case file and will remain in force until such time as a party who requested a claim of risk retracts the claim in writing;

(b) An ACP order for nondisclosure of information entered pursuant to subsection (3)(b) will be documented on the child support case file and will remain in force until such time as the party’s participation in the ACP is cancelled or the party is no longer certified.

(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 or an ACP order for nondisclosure of information will be subject to disclosure when the order for nondisclosure of information or ACP 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 court’s 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 party’s mailing, contact

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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 party's mailing, contact or resident address as the address of record, and the new address of record may be released to the other party(ies).

Stat. Auth.: ORS 25.020 & 180.345

Stats. Implemented: ORS 25.020

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

137-055-1320

Access to FPLS for Purposes of Parentage Establishment; Child Support Establishment, Modification or Enforcement; or Determining Who Has or May Have Parental Rights

(1) For the purposes of this rule and OAR 137-055-1360, the following definitions apply:

(a) "FPLS" means the Federal Parent Locator Service operated by the United States Department of Health and Human Services.

(b) "Original requestor" means a party to a paternity or child support case who is seeking FPLS information, directly, through an attorney, or through court request.

(c) "Custodial Parent" includes a caretaker or caretaker relative as defined in OAR 461-120-0610.

(d) "Legal Guardian" means a person appointed as a guardian under ORS chapter 125 or similar provision.

(e) "Reasonable evidence of possible domestic violence" means:

(A) A record on the Oregon Judicial Information Network or the Law Enforcement Data System that an order of protection has or had been issued against the original requestor in favor of the person being sought; or

(B) A record that the person being sought has or had been granted good cause pursuant to ORS 418.042 not to establish paternity or to establish or enforce a support order against the original requestor; or

(C) A record that the person being sought has or had been granted an order for nondisclosure of information or an ACP order for nondisclosure of information pursuant to OAR 137-055-1160 in a case where the original requestor is or was the other party in a legal action.

(f) "Reasonable evidence of possible child abuse" means that there is a record with the Department of Human Services child welfare program that the original requestor has been investigated for alleged abuse of any child.

(2) For the purposes of this rule, an authorized person is:

(a) A custodial parent, legal guardian, attorney, or agent of a child (other than a child receiving Temporary Assistance for Needy Families (TANF)), seeking to establish parentage or to establish, modify or enforce a support order.

(b) A court or agent of the court which has the authority to issue an order of paternity or support and maintenance of a child or to serve as the initiating court to seek such an order from another state; or

(c) A state agency responsible for administering an approved child welfare plan or an approved foster care and adoption assistance plan.

(3) An authorized person as defined in section (2) of this rule, may request information to facilitate the discovery or location of any individual:

(a) Who is under an obligation to pay child support;

(b) Against whom a child support obligation is sought;

(c) To whom a child support obligation is owed; or

(d) Who has or may have parental rights with respect to a child.

(4) If available from FPLS, the information that may be provided about an individual described in subsections (3)(a)-(d) of this rule includes:

(a) The address and verification of the social security number of the individual sought;

(b) The name, address and federal employer identification number of the employer of the individual sought; and

(c) Information about income from employment and benefits from employment, including health care coverage.

(5) A request pursuant to this rule must be made in writing directly to the Division of Child Support (DCS) and must contain:

(a) The purposes for which the information is requested;

(b) The full name, social security number (if known) and date of birth or approximate date of birth of the individual sought;

(c) The full name and date of birth and social security number of the person making the request;

(d) Whether the individual is or has been a member of the armed forces or if the individual is receiving federal compensation or benefits, if known; and

(e) If the request is from the court, the signature of the judge or agent of the court.

(6) The request may be made on a form adopted by the Child Support Program (CSP) and available from any CSP office.

(7) When DCS receives a request from an authorized person pursuant to subsections (2)(a) or (2)(b) of this rule, it will determine if there is any record of possible domestic violence by the original requestor against the individual sought or any record of possible child abuse by the original requestor.

(8) If reasonable evidence of domestic violence or child abuse is found pursuant to section (7) or FPLS does not return information due to a family violence indicator, an authorized person may ask the court to determine, pursuant to 42 USC 653(b)(2)(B), whether disclosure of the information could be harmful to the parent or child sought.

(a) If the court concludes that disclosure of the information would not be harmful to the parent or child, DCS will submit the request along with the court's determination to FPLS.

(b) If the court concludes that disclosure of the information would be harmful to the parent or child, the request will be denied.

Stat. Auth.: ORS 25.265 & 180.345

Stats. Implemented: ORS 25.265 & 183.380

Hist.: 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 461-195-0279; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-1320; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-1320; DOJ 7-2004, f. 3-30-04, cert. ef. 4-1-04; DOJ 16-2004, f. 12-30-04, cert. ef. 1-3-05; DOJ 1-2007, f. & cert. ef. 1-2-07

137-055-4320

Collection of Delinquent Support Obligations Through the Oregon Department of Revenue

(1) The administrator may claim Oregon tax refunds otherwise due to be paid to an obligor, to collect:

(a) Support arrears;

(b) Unpaid award amounts from any judgment entered against the obligor for birth expenses or for the cost of parentage tests to establish a child's paternity.

(2) The Division of Child Support (DCS) will file such claims with the Oregon Department of Revenue (DOR) according to rules and procedures established by DOR.

(3) Referral of arrears will be a liquidated claim, debt, or account established by a court or administrative order.

(4) DCS will not refer any case where the case record indicate that one or more of the following is applicable:

(a) The arrears are less than \$25;

(b) The obligor has filed for bankruptcy, as defined by federal bankruptcy code, unless the bankruptcy claim has been resolved and the administrator has legal authority to proceed with collection;

(c) The obligee has claimed "good cause" for not cooperating with efforts to establish or enforce support.

(5) DCS will distribute tax refunds recovered by this process as set out in OAR 137-055-6021.

(6) The Child Support Program will send an advance written notice to the parties of the intent to claim the tax refund and apply it to the obligor's account. The notice will advise of the obligor's right to an administrative review of the proposed action. The only issues that may be considered in the review are:

(a) Whether the obligor is the person who owes the support as indicated by the case record; or

(b) Whether the arrears indicated in the notice are correct.

(7) Upon receipt of the request for review, the administrator will schedule the review and notify the parties of the date, time and place of the review.

(8) At any time any refund is claimed, DOR will send by regular mail written notice to the obligor of the intention to apply the tax refund to the obligor's delinquent account. The notice will advise the obligor of the right to an administrative hearing regarding this action that:

(a) The obligor, within 30 days from the date of this notice, may request an administrative hearing before an administrative law judge;

(b) The request for hearing must be in writing.

(9) No hearing will be held if the obligor, after having been given due notice of rights to a hearing, has failed to exercise such rights in a timely manner as specified in the notice.

(10) No issues may be considered at the administrative hearing that have been litigated previously or where the obligor failed to exercise rights

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to appear and be heard or to appeal a decision which resulted in the accrual of the arrears.

Stat. Auth.: ORS 180.345
Stats. Implemented: ORS 25.610 & 293.250
Hist.: AFS 13-1978, f. & ef. 4-4-78; AFS 23-1987(Temp), f. 6-19-87, ef. 7-1-87; AFS 60-1987, f. & ef. 11-4-87; AFS 66-1989, f. 11-28-89, cert. ef. 12-1-89, Renumbered from 461-035-0004; AFS 25-1990, f. 11-21-90, cert. ef. 12-1-90; AFS 30-1995, f. 11-6-95, cert. ef. 11-15-95; AFS 7-1997, f. & cert. ef. 6-13-97; AFS 6-2000, f. 2-19-00, cert. ef. 3-1-00; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0205; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-4320; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-4320; DOJ 1-2006, f & cert. ef. 1-3-06; DOJ 1-2007, f. & cert. ef. 1-2-07

137-055-5510

Request for Credit Against Child Support Arrears for Physical Custody of Child

The terms used in this rule have the meanings set out in OAR 137-055-6010.

(1) In accordance with ORS 416.425, the administrator may allow a credit against child support arrearages for periods of time during which the obligor has physical custody of the child(ren) when:

(a) Physical custody was pursuant to a court ordered parenting time schedule and the court order specifically states that the obligor is allowed a credit for parenting time that is not already factored into the monthly child support amount;

(b) Physical custody was with the knowledge and consent of the obligee; or

(c) The obligor has custody of the child(ren) pursuant to court order.

(2) A request for credit against child support arrears under this rule must be made in writing:

(a) If the credit is requested for a time period immediately prior to the effective date of the modification; or

(b) Independently of a request for modification, for any time period within two years prior to the date of the request.

(3)(a) Credit for physical custody may only be given if the child(ren) is/are with the obligor for 30 consecutive days or the entire month for which credit is sought. When the obligor is seeking a credit for less than all of the children under a child support order, a credit may only be given if the order is not a class order as defined in OAR 137-055-1020.

(b) Credit for physical custody may not be given against any arrears which have accrued to a child attending school account under ORS 107.108 and OAR 137-055-5110.

(4) Notwithstanding subsections (3)(a) and (b), the credit may only be allowed to the extent it will not result in a credit balance, as defined in OAR 137-055-3490(1).

(5) The administrator will send to the parties by regular mail, or by service, as part of the modification action, notice and proposed order of the intended action, including the amount to be credited. Such notice will inform the parties that:

(a) Within 30 days from the date of this notice, a party may request an administrative hearing;

(b) The request for hearing must be in writing;

(c) The only basis upon which a party may object is that:

(A) The obligor did not have physical custody of all the child(ren) under the support order for the time periods requested;

(B) The obligor had physical custody of the child(ren), but the custody was not with the knowledge and consent of the obligee and the obligor does not have legal custody of the child(ren);

(C) The obligor had physical custody of the child(ren) pursuant to a court order for parenting time and the order does not allow the obligor a credit for periods of parenting time.

(6) Credit for physical custody will not be allowed for any child who is a child attending school or an adult child as defined in ORS 107.108 and OAR 137-055-5110.

(7) If a credit is allowed pursuant to this rule, the credit will be applied as follows:

(a) If none of the arrears are assigned to the state, the credit will be applied to the family's unassigned arrears;

(b) If there are arrears assigned to the state and the child was receiving assistance during any time period for which the obligor had physical custody of the child(ren), the credit will be applied in the following sequence:

(A) State's permanently assigned arrears, not to exceed the amount of unreimbursed assistance;

(B) State's temporarily assigned arrears, not to exceed the amount of unreimbursed assistance;

(C) Family's unassigned arrears;

(D) Family's conditionally assigned arrears.

(c) If there are arrears assigned to the state and the child was not receiving assistance during any time period for which the obligor had physical custody of the child(ren), the credit will be applied in the following sequence:

(A) Family's unassigned arrears;

(B) Family's conditionally assigned arrears;

(C) State's permanently assigned arrears, not to exceed the amount of unreimbursed assistance;

(D) State's temporarily assigned arrears, not to exceed the amount of unreimbursed assistance.

(8) Any appeal of the decision made by an administrative law judge must be to the circuit court for a hearing de novo pursuant to ORS 416.427.

Stat. Auth.: ORS 180.345 & 416.455

Stats. Implemented: ORS 416.425

Hist.: DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; DOJ 10-2004, f. & cert. ef. 7-1-04; 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

137-055-6010

Definitions for Distribution

For purposes of OAR 137-055-6020 through 137-055-6024, the following definitions apply:

(1) "Assistance" means cash assistance under Temporary Assistance for Needy Families (TANF) program, or foster care maintenance payments provided by the Department of Human Services (DHS), or cost of care provided by the Oregon Youth Authority (OYA).

(2) "Current support" is the monthly support amount ordered by a court or administrative process for the benefit of a child and/or a former spouse.

(3) "Electronic funds transfer (EFT)" and "Electronic data interchange (EDI)" is the movement of funds and information by nonpaper means, usually through a payment system including, but not limited to, an automated clearing house (ACH), the Federal Reserve's Fedwire system, magnetic tape, direct deposit or stored value card.

(4) "Family's conditionally-assigned arrears" is past-due support that accrues during non-assistance periods, and was not permanently assigned under pre-October 1997 assignments, which revert back to the family on either October 1, 2000, if the family terminates assistance prior to October 1, 2000, or on the date the family leaves the assistance program if on or after October 1, 2000. Family's conditionally-assigned arrears revert to state's temporarily-assigned arrears during periods that the family receives assistance.

(5) "Family's unassigned arrears" is past-due support which accrues after the family's most recent period of assistance, or at any time in the case where a family has never received assistance.

(6) "Family's unassigned arrears during assistance period" is past-due support which accumulates while a family receives assistance and exceeds the total amount of unreimbursed assistance paid to the family.

(7) "Future support" is an amount received which represents payment on current support or arrears for future months.

(8) "State's permanently-assigned arrears" is:

(a) Past-due support which accrues during the period the family receives assistance and past-due support which accrued before the family applied for assistance in pre-October 1997 assignments only; or

(b) Advance payments owed to the State of Oregon under OAR 137-055-6210.

(9) "State's temporarily-assigned arrears" is past-due support assigned to the state during assistance periods, but which accrued during non-assistance periods, and were not permanently assigned under pre-October 1997 assignments. As of October 1, 2000, state's temporarily-assigned arrears revert to family's conditionally-assigned arrears during periods that the family is not receiving assistance.

(10) "Unreimbursed assistance" means the cumulative amount of assistance paid to a family or on behalf of a child(ren) for all months which has not been recovered by assigned support collections. The total amount of unreimbursed assistance that may be recovered is limited by the total amount of the assigned support obligation. [Table not included. See ED. NOTE.]

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

Stat. Auth.: ORS 25.020; 180.345

Stats. Implemented: ORS 25.020; 418.032; 418.042

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

137-055-6020

Disbursement by Electronic Funds Transfer/Electronic Data Interchange

(1) In addition to the definitions found in OAR 137-055-5110 and 137-055-6010, the following terms have the meanings given below:

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(a) "Individual" includes but is not limited to: a judgment creditor, obligee, caretaker, child attending school, or adult child.

(b) "Other entities" includes but is not limited to: private collection agencies and other state IV-D agencies.

(2) The Department of Justice (DOJ), Division of Child Support's (DCS) primary payment method, to any individual entitled to receive support payments, is electronic funds transfer (EFT) which may be by:

(a) Direct deposit to a checking or savings account that is located in a financial institution in the United States; or

(b) Stored value card (including but not limited to ReliaCard).

(3) Notwithstanding section (2), DCS will disburse support payments to individuals by check when specific exceptions apply:

(a) The individual does not have a social security number; or

(b) The individual's special circumstances, which DOJ will review on a case by case basis based on the criteria of whether the issuance of a paper check would be in the best interests of the child(ren).

(4) A request for exception must be made in writing.

(5) DCS will review the request for exception, determine whether to allow or deny the exception, and notify the requesting party of its decision within 30 days of receipt of the request.

(6) DCS's decision is final with regard to the request for exception, but the decision may be appealed as an other than contested case under ORS 183.484.

(7) DCS may disburse payments to other entities by EFT, electronic data interchange (EDI) or by paper check.

(8) Support payments for individuals who have contracted with a private collection agency will be handled pursuant to OAR 137-055-6025.

Stat. Auth.: ORS 25.020; 180.345; 293.525

Stats. Implemented: ORS 293.525

Hist.: PWC 851(Temp), f. & ef. 8-11-77; Renumbered from 461-004-0518 to 461-035-0003 by AFS 3-1978, f. & ef. 1-6-78; AFS 88-1980, f. & ef. 12-10-80; AFS 23-1987(Temp), f. 6-19-87, ef. 7-1-87; AFS 60-1987, f. & ef. 11-4-87; AFS 31-1989, f. 6-6-89, cert. ef. 6-9-89, Renumbered from 461-035-0003; AFS 66-1989, f. 11-28-89, cert. ef. 12-1-89, Renumbered from 461-035-0410; AFS 6-2000, f. 2-19-00, cert. ef. 3-1-00; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0248; AFS 23-2001, f. 10-2-01, cert. ef. 10-6-01; AFS 28-2001, f. 12-28-01, cert. ef. 1-1-02; 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 461-200-6020; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-6020; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; DOJ 10-2004, f. & cert. ef. 7-1-04; DOJ 12-2004, f. & cert. ef. 10-1-04; DOJ 5-2005, f. & cert. ef. 7-15-05; DOJ 9-2005, f. & cert. ef. 10-3-05; DOJ 1-2007, f. & cert. ef. 1-2-07

137-055-6021

Distribution: General Provisions

The terms used in this rule have the meanings set out in OAR 137-055-6010.

(1) The Department of Justice (DOJ) will distribute support payments within two business days after receipt if sufficient information identifying the payee is provided, except:

(a) Support payments received as a result of tax refund intercepts or administrative offsets will be distributed within thirty calendar days of receipt or, if applicable, within fifteen calendar days of an administrative review or hearing. If the state is notified by the Secretary of the U.S. Treasury (the Secretary) or the Oregon Department of Revenue (DOR) that an offset on a non-assistance case is from a refund based on a joint return, distribution may be delayed, up to a maximum of six months, until notified by the Secretary or DOR that the obligor's spouse has been paid their share of the refund;

(b) Support payments received from a garnishment, issued pursuant to ORS chapter 18, will be held for 40 days if the garnishee is making a payment of other than wages or 120 days if the garnishee is making a payment of wages unless the obligor waives the right to make a challenge to a garnishment as set out in OAR 137-055-4520 or, if the obligor or any person who has an interest in the garnished property makes a challenge to garnishment, the support payment will be sent to the court where the challenge to garnishment has been filed;

(c) Support payments for future support will be distributed as provided in section (10) of this rule;

(d) Support payments for less than five dollars:

(A) May be delayed until a future payment is received which increases the payment amount due the family to at least five dollars; or

(B) May be retained by DOJ if case circumstances are such that there is no possibility of a future payment, unless the obligee requests issuance of a check.

(e) When an obligor contests an order to withhold, funds will be disbursed pursuant to OAR 137-055-4160(5).

(2) DOJ will distribute support payments received on behalf of a family who has never received assistance to the family, first toward current support, then toward support arrears, not to exceed the amount of arrears.

(3)(a) DOJ may send support payments designated for the obligee to another person or entity caring for the child(ren) if physical custody has changed from the obligee to the other person or entity; however, prior to doing so, DOJ will require a notarized statement of authorization from the obligee or a court order requiring such distribution.

(b) DOJ will change the payee to a private collection agent that the obligee has retained for support enforcement services only in accordance with OAR 137-055-6025.

(c) DOJ will redirect payments from the child who qualifies as a child attending school under ORS 107.108 and OAR 137-055-5110 only in accordance with 137-055-5110.

(4) Child support and spousal support have equal priority in the distribution of payments.

(5)(a) For Oregon support orders or modifications, a prorated share (unless otherwise ordered) of current support payments received within the month due will be distributed directly to the child who qualifies as a child attending school under ORS 107.108 and OAR 137-055-5110.

(b) Any arrears resulting from unpaid current support to the child attending school will accrue to the child until the child reaches the age of 21 or is otherwise emancipated, at which time arrears will revert to, and be owed to, the obligee.

(c) Any payment received on arrears, except for a federal tax offset, will be distributed in equal shares to the obligee and the child attending school until the child reaches the age of 21 or is otherwise emancipated.

(6) If the obligor has a current support obligation for multiple children on a single case, those children have different assistance status and the order does not indicate a specified amount per child, current support payments will be prorated based upon the number of children and their assistance status. Support payments in excess of current support for these cases will be distributed as provided in OAR 137-055-6022.

(7) DOJ will retain the fee charged by the Secretary for cases referred for Full Collection Services per OAR 137-055-4360 from any amount subsequently collected by the Secretary under this program. DOJ will credit the obligor's case for the full amount of collection and distribute the balance as provided in OAR 137-055-6022.

(8) Within each arrears type in the sequence of payment distribution in OAR 137-055-6022, 137-055-6023 or 137-055-6024, DOJ will apply the support payment to the oldest debt in each arrears type.

(9) Any excess funds remaining after arrears are paid in full will be processed as provided in OAR 137-055-6260 unless the obligor has elected in writing to apply the credit balance toward future support as provided in section (10) of this rule.

(10) DOJ will distribute support payments representing future support on a monthly basis when each such payment actually becomes due in the future. No amounts may be applied to future months unless current support and all arrears have been paid in full.

Stat. Auth.: ORS 25.020, 25.610 & 180.345

Stats. Implemented: ORS 18.645, 25.020 & 25.610

Hist.: DOJ 8-2005(Temp), f. & cert. ef. 9-1-05 thru 2-17-06; DOJ 1-2006, f. & cert. ef. 1-3-06; DOJ 5-2006, f. 6-29-06, cert. ef. 7-3-06; DOJ 1-2007, f. & cert. ef. 1-2-07

137-055-6022

Distribution When Support Assigned

The terms used in this rule have the meanings set out in OAR 137-055-6010. Except as provided in OAR 137-055-6023 and 137-055-6024:

(1) The Department of Justice (DOJ) will distribute support payments received on behalf of a family receiving assistance in the following sequence:

(a) Current support to the state, not to exceed the amount of unreimbursed assistance unless the state is making foster care maintenance payments on behalf of the child(ren);

(b) State's permanently-assigned arrears, not to exceed the amount of unreimbursed assistance unless the state is making foster care maintenance payments on behalf of the child(ren);

(c) State's temporarily-assigned arrears, not to exceed the amount of unreimbursed assistance unless the state is making foster care maintenance payments on behalf of the child(ren);

(d) Family's unassigned arrears during assistance period unless the state is making foster care maintenance payments on behalf of the child(ren);

(e) If the state is making foster care maintenance payments on behalf of the child(ren), support payments in excess of unreimbursed assistance, up to the total support obligation owed, will be reported as excess and be paid to Department of Human Services (DHS) to be used in the manner it determines will serve the best interests of the child(ren).

ADMINISTRATIVE RULES

(2) DOJ will distribute support payments received on behalf of a family who formerly received assistance in the following sequence:

- (a) Current support to the family;
- (b) Family's unassigned arrears;
- (c) Family's conditionally-assigned arrears;
- (d) State's permanently-assigned arrears, not to exceed the amount of unreimbursed assistance;
- (e) Family's unassigned arrears during assistance period.

(3) Notwithstanding any other provisions of this rule, DOJ will distribute support payments received from federal tax refund intercepts or federal administrative offsets in the following sequence:

(a) Fee charged by the Secretary. Despite the fee, DOJ must credit the obligor's case for the full amount of collection. If any portion of the federal tax refund intercept payment or federal administrative offset payment will be applied to subsection (b), (c), or (d) of this section, the fee will be paid by DOJ;

(b) State's permanently-assigned arrears not to exceed the amount of unreimbursed assistance;

(c) State's permanently-assigned arrears;

(d) State's temporarily-assigned arrears, not to exceed the amount of unreimbursed assistance;

(e) Family's conditionally-assigned arrears. However, federal tax refund intercepts or federal administrative offset payments applied to family's conditionally-assigned arrears must be retained by the state, not to exceed the amount of unreimbursed assistance;

(f) Family's unassigned arrears.

(4) Notwithstanding any other provisions of this rule, DOJ will distribute support payments received from state tax refund intercepts in the following sequence:

(a) Fee charged by the DOR. Despite the fee, DOJ must credit the obligor's case for the full amount of collection. If any portion of the state tax refund intercept payment will be applied to assigned current support or subsections (e), (f) or (g) of this section, the fee will be paid by DOJ;

(b) Current support;

(c) Family's unassigned arrears;

(d) Family's conditionally assigned arrears;

(e) State's permanently assigned arrears, not to exceed the amount of unreimbursed assistance;

(f) State's temporarily assigned arrears, not to exceed the amount of unreimbursed assistance;

(g) Parentage testing fee.

(5) Whenever support payments are assigned to the state, the state share of the payments will be either:

(a) Distributed to DHS if funds were expended to provide foster care assistance to the family;

(b) Distributed to Oregon Youth Authority (OYA) if funds were expended by OYA to provide care to a member of the family; or

(c) Retained by the Department of Justice (DOJ) if funds were expended to provide Temporary Assistance for Needy Families (TANF) cash assistance to the family.

(6) Whenever support payments are assigned to a Tribe, the Tribe's share of the payments will be distributed to the Tribe as provided in 42 USC 657.

Stat. Auth.: ORS 25.020 & 180.345

Stats. Implemented: ORS 25.020 & 25.150

Hist.: DOJ 9-2005, f. & cert. ef. 10-3-05; DOJ 1-2007, f. & cert. ef. 1-2-07

137-055-6024

Distribution on Multiple Cases

The terms used in this rule have the meanings set out in OAR 137-055-6010. When an obligor has multiple support cases, the distribution sequence for each case will be as provided in OAR 137-055-6022, but Department of Justice (DOJ) will allocate support payments to each of the multiple cases as follows:

(1) When an income withholder remits a single payment that is a combined payment intended to comply with more than one income withholding order against the obligor, and the obligor's income is sufficient for the withholder to fully comply with each order to withhold income issued pursuant to ORS chapter 25, DOJ will ensure that the amount distributed to each case is consistent with the withholding order's limitations. However, when the obligor is paid on a weekly basis, for those months in which there is an extra pay period due to the manner in which weeks fall during the year, the weekly amount may be distributed to each case when it is received, even if the monthly withholding limitation has already been reached.

(2) When an income withholder remits a single payment that is a combined payment intended to comply with more than one income withholding

order against the obligor, but the obligor's income is not sufficient for the withholder to fully comply with each order to withhold income issued pursuant to ORS chapter 25, DOJ will allocate the amount received as follows:

(a) If the amount is not sufficient to pay the current support due on all of the obligor's support cases for which an order to withhold is in effect, each withholding case will receive a proportionate share of the total amount withheld. For each case, DOJ will determine this amount by dividing the amount ordered as current monthly support on the case by the total combined amount ordered as current support on all of the obligor's support cases for which an order to withhold is in effect, and then multiplying the resulting percentage by the total amount withheld.

(b) If the amount withheld from the obligor's income is sufficient to pay the current support due on all cases, but is not enough to fully comply with the order to withhold on all cases where arrears are owed, the amount received will be allocated as follows:

(A) Current support to each withholding case;

(B) Equally to each withholding case where arrears are owed.

However, no case may receive more than the maximum allowable withholding amount for that case pursuant to ORS 25.414 or, as appropriate, under an expanded income withholding pursuant to ORS 25.387. Any remaining funds will be equally distributed to the obligor's other cases. No case may receive more than the total amount of current support and arrears owed on that case at the time this distribution is made.

(3) When support payments received from federal tax refund intercepts or federal administrative offsets are not sufficient to pay the full arrears amount on each case certified for federal offset, DOJ will allocate the amount received as follows:

(a) If the total amount received is not sufficient to pay the state's permanently-assigned arrears on all of the obligor's certified cases, each certified case will receive an equal share. However, no case may receive more than the state's permanently-assigned arrears on that case.

(b) If the total amount is sufficient to pay the state's permanently-assigned arrears on all certified cases, but is not enough to pay in full all the state's temporarily-assigned arrears on all of the obligor's certified cases, the amount received will be allocated as follows:

(A) State's permanently-assigned arrears to each certified case;

(B) An equal share of the remaining funds for each certified case.

However, no case may receive more than the state's temporarily-assigned arrears on that case.

(c) If the total amount is sufficient to pay the state's permanently assigned arrears and the state's temporarily-assigned arrears on all certified cases, but is not enough to pay in full the family's arrears on all of the obligor's certified cases, the amount received will be allocated as follows:

(A) State's permanently-assigned arrears to each certified case;

(B) State's temporarily-assigned arrears to each certified case;

(C) An equal share of the remaining funds for each certified case.

However, no case may receive more than the total amount of arrears owed on that case at the time this distribution is made.

(4) When support payments received from state tax refund intercepts are not sufficient to pay the current support and full arrears amount on each case certified for state tax offset, DOJ will allocate the amount received as follows:

(a) If the total amount received is not sufficient to pay the current support due on all of the obligor's certified cases, each certified case will receive a proportionate share of the total amount received. For each case, DOJ will determine this amount by dividing the amount ordered as current monthly support on the case by the total combined amount ordered as current support on all of the obligor's support cases certified for state tax offset, and then multiplying the resulting percentage by the total amount received.

(b) If the total amount received is sufficient to pay the current support due on all cases but is not sufficient to pay in full the family's arrears (both conditionally and unassigned arrears) on all of the obligor's certified cases, each certified case will be allocated an equal share. However, no case may receive more than the arrears amount due the family on that case at the time this distribution is made.

(c) If the total amount is sufficient to pay the family's arrears (both conditionally and unassigned arrears) on all certified cases, but is not enough to pay in full all the state's permanently-assigned arrears on all of the obligor's certified cases, the amount received will be allocated as follows:

(A) Family's arrears (both conditionally and unassigned arrears) on all certified cases;

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(B) An equal share of the remaining funds for each certified case toward state's permanently-assigned arrears. However, no case may receive more than the state's permanently-assigned arrears on that case.

(d) If the total amount received is sufficient to pay both the family's arrears and the state's permanently-assigned arrears, but not sufficient to pay the state's temporarily-assigned arrears on all of the obligor's certified cases, the amount received will be allocated as follows:

(A) Family's arrears (both conditionally and unassigned arrears) on all certified cases;

(B) State's permanently-assigned arrears on all certified cases;

(C) An equal share of the remaining funds toward state's temporarily-assigned arrears. However, no case may receive more than the state's temporarily-assigned arrears on that case.

(e) Any remaining funds may be applied toward parentage testing fee.

(5) When a single writ of garnishment is issued for two or more cases as provided in ORS 18.645, DOJ will allocate support payments only among the cases listed in the writ of garnishment and in the manner provided in section (6) of this rule.

(6) Except as provided in OAR 137-055-6023, DOJ will allocate all other support payments received as follows:

(a) If the total amount is not sufficient to pay the current support due on all of the obligor's support cases, each case will receive a proportionate share of the total amount received. For each case, DOJ will determine this amount by dividing the amount ordered as current monthly support on the case by the total combined amount ordered as current support on all of the obligor's support cases, and then multiplying the resulting percentage by the total amount received.

(b) If the amount received is sufficient to pay the current support due on all cases, but is not enough to pay in full all cases where arrears are owed, the amount received will be allocated as follows:

(A) Current support to each case;

(B) Equally to each case where arrears are owed. However, no case may receive more than the total amount of current support and arrears owed on that case at the time this distribution is made. Any remaining funds will be equally distributed to the obligor's other cases.

Stat. Auth.: ORS 25.020 & 180.345

Stats. Implemented: ORS 18.645, 25.020, 25.387, 25.414 & 25.610

Hist.: DOJ 9-2005, f. & cert. ef. 10-3-05; DOJ 1-2007, f. & cert. ef. 1-2-07

137-055-6025

Distribution of Support Payments to Private Collection Agencies

(1) For purposes of this rule, the following definitions apply:

(a) "Collection agency" means a collection agency as defined by ORS 697.005;

(b) "Enforcement action" means any action taken by a collection agency to ensure payment of support by an obligor, including but not limited to contact for the purposes of discussing payments by the collection agency in person or through mail, e-mail or telephone with the obligor, members of the obligor's household or the obligor's employer. "Enforcement action" does not mean investigative and locate services provided by a collection agency.

(c) "Legally entitled to" means support payments which the Division of Child Support (DCS) is required to distribute to the obligee pursuant to OAR 137-055-6010, but does not include support payments that DCS is required to distribute to the child attending school pursuant to ORS 107.108 and OAR 137-055-5110.

(2) When the Oregon Child Support Program (CSP) is notified by a collection agency or an obligee that the obligee has entered into an agreement with a collection agency, the administrator will send to the obligee an authorization form developed pursuant to section (7) of this rule.

(3) Before DCS may adjust the payment records and begin forwarding support payments to the collection agency pursuant to section (4) of this rule, the obligee must submit a signed and notarized authorization form to the CSP with the following information:

(a) The child support case number;

(b) The obligee's and obligor's full names;

(c) The names of the children on the child support case for whom the obligee is entitled to receive support; and

(d) The name and address of the collection agency to which payments should be sent.

(4) Upon receipt of a completed authorization form DCS will:

(a) Adjust the child support case record for disbursement of support payments to the collection agency. If support payments are currently being disbursed to a different collection agency, DCS will adjust the child support case record for disbursement of support payments to the collection agency for which the obligee has most recently provided authorization;

(b) Send the notice developed pursuant to subsection (7)(b) of this rule to the other parties;

(c) Credit the obligor's account for the full amount of each support payment received by DCS; and

(d) Disburse support payments received, to which the obligee is legally entitled, to the collection agency.

(5)(a) DCS may stop disbursing support payments to a collection agency and reinstate disbursements to the obligee if:

(A) The obligee notifies the CSP that the agreement with the collection agency has been terminated;

(B) The obligee requests that the CSP stop disbursing support payments to the collection agency;

(C) The administrator is made aware that the collection agency is not in compliance with the provisions of section (8) of this rule; or

(D) The Department of Consumer and Business Services (DCBS) notifies the Department of Justice that the collection agency is in violation of its rules.

(b) DCS will stop disbursing child support payments to the collection agency only after the child support case record has been adjusted following the date that notification from the obligee was received or the date the administrator is otherwise made aware that the collection agency is not in compliance with section (8) of this rule or rules adopted by DCBS. DCS will, at no time, be responsible for returning support payments to the obligee that were disbursed to the collection agency prior to the child support case record having been adjusted following the date that notification from the obligee was received.

(6) The administrator may use information disclosed by the collection agency to provide support enforcement services under ORS 25.080.

(7) The CSP will develop:

(a) An authorization form to be sent to an obligee when the obligee or the collection agency notifies CSP that the obligee has entered into an agreement with a collection agency. The form will include a notice to the obligee printed in type size equal to at least 12-point type that the obligee may be eligible for support enforcement services from the CSP without paying the interest or fee that is typically charged by a collection agency; and

(b) A form to be sent to the other parties to the case when DCS has been given authorization by the obligee to disburse support payments to a collection agency.

(8) A collection agency to which the obligee has provided authorization for DCS to disburse support payments:

(a) May only provide investigative and locate services to the obligee unless written authorization is received from the administrator as provided in section (9) of this rule;

(b) May disclose relevant information from services provided under subsection (a) of this section to the administrator for purposes of providing support enforcement services under ORS 25.080;

(c) May not charge interest or a fee for services exceeding 29 percent of each support payment received by the collection agency to which the obligee is legally entitled unless the collection agency, if allowed by the terms of the agreement between the collection agency and the obligee, hires an attorney to perform legal services on behalf of the obligee;

(d) Will include in the agreement with the obligee a notice that provides information on the fees, penalties, termination and duration of the agreement; and

(e) Will report in writing to DCS the full amount of any payment collected as a result of an enforcement action taken within ten days of disbursing the payment to the obligee.

(9) Upon request, the administrator may provide written authorization to the collection agency to initiate enforcement action to collect the support award. The authorization may:

(a) Authorize a specific enforcement action only; or

(b) Authorize any enforcement action until further notice from the administrator.

(10) A power of attorney given to a collection agency by an obligee does not change the rights and responsibilities of the parties or a collection agency as described in ORS 25.020 or this rule.

(11) The administrator will not disclose any information from a child support record to a collection agency except as permitted in OAR 137-055-1140.

Stat. Auth.: ORS 25.020; 180.345

Stats. Implemented: ORS 25.020

Hist.: 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 461-200-6025; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-6025; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; DOJ 1-2006, f. & cert. ef. 1-3-06; DOJ 1-2007, f. & cert. ef. 1-2-07

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137-055-6120

Satisfaction of Arrears for Less Than Full Payment

The Division of Child Support (DCS) may satisfy all or any portion of child support arrears that are assigned to the State of Oregon or to any other state, subject to the following requirements:

(1) DCS may satisfy all or any portion of assigned arrears only if one or more of the following circumstances apply:

(a) The arrears are a substantial hardship to the paying parent or that parent's household; or

(b) A compromise of amounts owing will result in greater collection on the case, considering the maximum amount that DCS could reasonably expect to collect from the obligor if no compromise was made and the probable costs of collecting that maximum amount; or

(c) The obligor has entered into an agreement with DCS to take steps to:

(A) Enhance the obligor's ability to pay child support; or

(B) Enhance the obligor's relationship with the child or children for whom the obligor owes the arrears.

(d) An error or legal defect has occurred that indicates a reduction may be appropriate.

(2) If all or any portion of the assigned arrears are the "state's temporarily-assigned arrears" as defined in OAR 137-055-6010, DCS may satisfy the amount only if the obligee consents and willingly signs the appropriate "satisfaction of support judgment" form.

(3) If all or any portion of the assigned arrears are assigned to another state, DCS may satisfy that assigned amount only with the approval of that other state.

(4) DCS will not sign any satisfaction for less than full payment of arrears until:

(a) The obligor has paid the full amount agreed to as appropriate consideration, and the obligor's payment instrument has cleared the appropriate financial institutions; or

(b) DCS has determined that the obligor has satisfactorily met, or is complying with, any agreement made with DCS pursuant to this rule.

(5) DCS will record a summary of each agreement to satisfy arrears for less than full payment on the appropriate microimaging or computer file on the case.

(6) Any satisfaction executed under this rule will be made pursuant to, and in full compliance with, ORS 18.228.

(7) The provisions of this rule notwithstanding, the obligee may satisfy all or any portion of unassigned arrears due the obligee, pursuant to OAR 137-055-5220.

(8) Nothing in this rule precludes the administrator from negotiating a satisfaction of arrears due or potentially due the obligee for less than full payment by the obligor, but such satisfaction will take effect only when the obligee consents and willingly signs a "satisfaction of support judgment" pursuant to OAR 137-055-5220.

Stat. Auth.: ORS 180.345

Stats. Implemented: ORS 18.400, 25.020 & 25.080

Hist.: AFS 77-1982, f. 8-5-82, ef. 9-1-82; AFS 93-1982, f. & ef. 10-18-82; AFS 66-1989, f. 11-28-89, cert. ef. 12-1-89, Renumbered from 461-035-0025; AFS 11-2000, f. 4-28-00, cert. ef. 5-1-00; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0150; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-6120; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-6120; DOJ 9-2005, f. & cert. ef. 10-3-05; DOJ 1-2007, f. & cert. ef. 1-2-07

137-055-6210

Advance Payments of Child Support

(1) "Advance payment" means:

(a) The Department of Justice (DOJ) has transmitted money to an obligee or to a person or entity authorized to receive support payments;

(b) The amount does not exceed the total arrears available for assignment to the state;

(c) (A) DOJ has applied the money incorrectly through no fault or error of the payee; or

(B) The amount transmitted by DOJ is attributable in whole or in part to a tax refund offset collection, all or part of which has been reclaimed by the Internal Revenue Service or the Oregon Department of Revenue; and

(d) The payment is not the result of a dishonored check.

(2) If the obligor is deceased and without assets or an estate, the provisions of this rule do not apply, but the provisions of OAR 137-055-6220 apply.

(3) The person who receives an advance payment owes the amount of the advance payment to DOJ.

(4) Instead of directly collecting the amount of the advance payment from the person who received it, the amount will be removed from the arrears owed to the payee and will be assigned to the state as permanently-

assigned arrears under OAR 137-055-6010. DOJ will notify the payee in writing of the:

(a) Amount to be collected as permanently-assigned arrears;

(b) Right to object and request an administrative review.

(5) When an objection is received, DOJ will conduct an administrative review and notify the payee in writing of the:

(a) Determination resulting from the review; and

(b) Right to challenge the determination by judicial review under ORS 183.484.

(6) Notwithstanding the provisions of section (4) of this rule, designation of permanently-assigned arrears to recover advance payments does not affect whether a case is assigned to DOJ as provided in OAR 137-055-2020 or a district attorney office as provided in OAR 137-055-2040.

(7) For the purposes of this rule, a "dishonored check" is not one which has been paid or made negotiable.

Stat. Auth.: ORS 180.345

Stats. Implemented: ORS 25.020

Hist.: DOJ 10-2004, f. & cert. ef. 7-1-04; DOJ 16-2004, f. 12-30-04, cert. ef. 1-3-05; DOJ 9-2005, f. & cert. ef. 10-3-05; 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

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

Rule Caption: Extend term of agricultural fireworks permits up to three years and some general housekeeping items.

Adm. Order No.: OSFM 15-2006

Filed with Sec. of State: 12-22-2006

Certified to be Effective: 1-1-07

Notice Publication Date: 12-1-06

Rules Amended: 837-012-0305, 837-012-0310, 837-012-0315, 837-012-0320, 837-012-0325, 837-012-0330, 837-012-0340, 837-012-0350, 837-012-0360, 837-012-0370

Subject: Changes are being made to the Agricultural Fireworks Administrative Rules 837-012-0350 through 837-012-0370 to allow an Agricultural Fireworks permit to be valid for up to three years. Other changes have been made for purposes of housekeeping and clarification.

Rules Coordinator: Pat Carroll—(503) 373-1540, ext 276

837-012-0305

Purpose and Scope

(1) These rules establish *agricultural permit*, permit application and other requirements for those persons permitted under ORS 480.122 and 480.124 to obtain agricultural permits to control birds and predatory animals that are injurious to crops.

(2) An *agricultural permit* allows the permit holder to engage only in those activities including the purchase, transportation, possession, storage and use of *agricultural fireworks* (1.4E) when those activities are otherwise in conformance with the requirements of ORS 480.122 and 480.124, these rules, and any other applicable state, federal, or local requirements.

(3) An *individual member of the general public may not buy or use* agricultural fireworks unless they have applied for and obtained an *agricultural fireworks* permit from the Office of State Fire Marshal pursuant to these rules. Violation of these rules may result in confiscation of the fireworks, and the assessment of penalties in accordance with ORS 480.990 and OAR 837-012-0560.

Stat. Auth.: ORS 480.122 & 480.124

Stats. Implemented: ORS 480.110 - 480.165

Hist.: FM 42, f. 4-15-70, ef. 5-11-70; Renumbered from 837-031-0005; OSFM 10-2001(Temp), f. & cert. ef. 12-12-01 thru 6-9-02; OSFM 3-2002, f. & cert. ef. 2-25-02; OSFM 15-2006, f. 12-22-06, cert. ef. 1-1-07

837-012-0310

Agricultural Permit Applications

(1) Any *person engaged in*, or intending to engage in, the use of *agricultural fireworks* must apply for and obtain an agricultural permit issued by the Office of State Fire Marshal.

(2) Upon receipt of a properly completed and approved application, the Office of State Fire Marshal will issue a nontransferable permit to the applicant or persons designated to discharge the fireworks. The State Fire Marshal may deny any application for a permit to discharge agricultural fireworks upon determining the proposed purchase or use is not in accordance with these rules or applicable statutes. A separate agricultural permit

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must be applied for and obtained for each person who desires to use agricultural fireworks.

(3) The permit application for an agricultural fireworks permit must be made on a form provided by the Office of State Fire Marshal.

(4) All information provided by the applicant on the permit application must be true and correct to the agricultural permit applicant's knowledge.

(5) As part of the permit application process, the applicant must obtain the signature of either the state game management or federal game management authority on the permit application.

(6) The applicant must obtain the signature of the game management authority prior to submitting the permit application to the Office of State Fire Marshal.

(7) Permit applications that do not contain the signature required in OAR 837-012-0360(5) will not be approved, and will be returned to the applicant.

(8) The Office of State Fire Marshal will either grant or deny permit applications within 10 days following receipt of a properly completed and submitted permit application.

Stat. Auth.: ORS 480.122 & 480.124
Stats. Implemented: ORS 480.110 - 480.165
Hist.: FM 42, f. 4-15-70, ef. 5-11-70; Renumbered from 837-031-0010; OSFM 10-2001(Temp), f. & cert. ef. 12-12-01 thru 6-9-02; OSFM 3-2002, f. & cert. ef. 2-25-02; OSFM 7-2005, f. 5-24-05, cert. ef. 6-7-05; OSFM 15-2006, f. 12-22-06, cert. ef. 1-1-07

837-012-0315

Definitions

(1) "Agent" means an individual designated by the permit holder to pick up the agricultural fireworks authorized by the agricultural permit from an Oregon licensed wholesaler when the permit holder is unable to pick up the agricultural fireworks. The agent must have the *agricultural permit* (or a copy) issued by the State Fire Marshal in their possession at the time the agricultural fireworks are picked up from the wholesaler.

(2) "Agricultural Fireworks" (also referred to as explosive pest control devices) means fireworks designed and intended solely for the use in controlling wildlife pests and that has a container that is a cardboard/pasteboard-type tube not exceeding 4" in length and 3/4 inch in diameter or a shotgun shell type container. Such devices may only contain pyrotechnic compositions, e.g., black powder, flash powder, or smokeless powder. The component that produces the audible report may not contain more than 40 grains (2.592 grams) of explosive composition. Agricultural fireworks/explosive pest control devices must be tested, classified and approved by the United States Department of Transportation. Agricultural fireworks may be used only for the purpose of scaring away or repelling birds or animals pursuant to ORS 480.122 or controlling Predatory Animals pursuant to ORS 480.124. Agricultural fireworks do not include retail fireworks, public display fireworks, or exempt fireworks.

(3) "Agricultural Permit" means the official written document issued by the Office of State Fire Marshal pursuant to ORS 480.122 and 480.124 and OAR 837-012-0305 through 837-012-0370 granting permission to a person to use agricultural fireworks.

(4) "Exempt Fireworks" means novelties and trick noisemakers.

(5) "Fire Protection District" means any district created under the laws of Oregon or the United States, including rural Fire Protection Districts and any federal, state or private forest patrol areas. Reference ORS 480.110(2).

(6) "Fireworks" has the meaning provided in ORS 480.110(1). The term includes retail fireworks, public display fireworks and agricultural fireworks. The term does not include exempt fireworks.

(7) "Illegal Fireworks" means any fireworks other than those described in ORS 480.127(4) including but not limited to, any firework that flies into the air, or explodes or behaves in an uncontrolled and unpredictable manner.

(8) "Individual" means a single human being.

(9) "Individual Member of the General Public" means any person who has not been issued a wholesale permit, a general, limited or special effects public display permit, a retail permit or an agricultural permit by the Office of State Fire Marshal.

(10) "Local Fire Authority" means the local fire authority having jurisdiction over the agricultural fireworks use and storage sites.

(11) "May" means a regulation of conduct and implies probability or permission.

(12) "May not" means a prohibition of conduct.

(13) "Must" means a mandatory requirement.

(14) "Novelties and Trick Noisemakers" means those items described in ORS 480.110(1)(a) through 480.110(1)(b) and **NFPA 1124, Section 1.4, 2003 Edition**. It also means exempt fireworks.

(15) "Permit Application" means the form and accompanying documentation required to be completed and submitted to the Office of State Fire Marshal for approval prior to the issuance of an agricultural permit.

(16) "Permit Holder" means the person referred to in ORS 480.122 who:

(a) Desires to purchase, maintain, use, and explode agricultural fireworks for the purpose of scaring away or repelling birds or animals which are or may be injurious or destructive to forest or agricultural products or crops,

(b) Has applied to the State Fire Marshal for an agricultural permit;

(c) The State Fire Marshal has issued an agricultural permit referred to in ORS 480.122;

(d) Is responsible for any activities conducted under the agricultural permit.

(17) "Person" means one or more individuals, legal representatives, partnerships, joint ventures, associations, corporations (whether or not organized for profit), business trusts, or any organized group of persons and includes the state, state agencies, counties, municipal corporations, school districts and other public corporations.

(18) "Public Display Fireworks" means fireworks that are authorized under a general, limited, or special effects public display permits issued pursuant to ORS 480.130, 480.140 and 480.150.

(19) "Retail Fireworks" means those items described in ORS 480.127(4), specifically combination items, cone fountains, cylindrical fountains, flutter sparklers, ground spinners, illuminating torches, and wheels. The term does include a firework designed with the means to roll or move while remaining on the ground, that travels 12' or less horizontally on smooth surfaces.

(20) "Sell" means to transfer possession of property from one person to another person for consideration.

(21) "Wholesaler" means any person who sells or provides by any other means, or intends to sell or provide by any other means fireworks, retail fireworks, public display fireworks, or agricultural fireworks.

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

Stat. Auth.: ORS 480.122 & 480.124

Stats. Implemented: ORS 480.110 - 480.165

Hist.: FM 42, f. 4-15-70, ef. 5-11-70; Renumbered from 837-031-0015; OSFM 10-2001(Temp), f. & cert. ef. 12-12-01 thru 6-9-02; OSFM 3-2002, f. & cert. ef. 2-25-02; OSFM 7-2005, f. 5-24-05, cert. ef. 6-7-05; OSFM 15-2006, f. 12-22-06, cert. ef. 1-1-07

837-012-0320

Storage of Agriculture Fireworks

Agricultural fireworks must be stored in accordance with the requirements of these rules, the **Oregon Fire Code** and the **Oregon Structural Specialty Code**.

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

Stat. Auth.: ORS 480.122 & 480.124

Stats. Implemented: ORS 480.110 - 480.165

Hist.: FM 42, f. 4-15-70, ef. 5-11-70; Renumbered from 837-031-0020; OSFM 10-2001(Temp), f. & cert. ef. 12-12-01 thru 6-9-02; OSFM 3-2002, f. & cert. ef. 2-25-02; OSFM 7-2005, f. 5-24-05, cert. ef. 6-7-05; OSFM 15-2006, f. 12-22-06, cert. ef. 1-1-07

837-012-0325

Permits-Denial, Suspension, Revocation

(1) The State Fire Marshal may deny, suspend or revoke an agricultural permit for violation of ORS 480.110 through 480.165 and OAR chapter 837, division 12. Any such revocation, suspension or denial will be in conformance with ORS 183.310 to 183.550.

(2) The period of denial, suspension or revocation may not exceed three years.

(3) The following criteria are used by the Office of State Fire Marshal to determine the appropriate sanction:

(a) The severity of the violation or violations and the impact on public safety, particularly if the circumstances of a violation presented a significant fire hazard or other public safety danger;

(b) The number of similar or related violations; alleged to have been committed in the current transaction or occurrence;

(c) Whether the violation or violations were willful or intentional;

(d) The prior history of sanctions imposed by the Office of State Fire Marshal against the agricultural permit holder or applicant; and

(e) Other circumstances determined by the Office of State Fire Marshal to be applicable to the particular violation or violations.

(4) Suspension or revocation of an agricultural permit may include suspension or revocation of the current permit and the right to apply for a subsequent permit.

Stat. Auth.: ORS 480.122 & 480.124

Stats. Implemented: ORS 480.110 - 480.165

ADMINISTRATIVE RULES

Hist.: FM 42, f. 4-15-70, ef. 5-11-70; Renumbered from 837-031-0025; OSFM 10-2001(Temp), f. & cert. ef. 12-12-01 thru 6-9-02; OSFM 3-2002, f. & cert. ef. 2-25-02; OSFM 15-2006, f. 12-22-06, cert. ef. 1-1-07

837-012-0330

General

(1) Agricultural permit holders desiring to engage in other types of fireworks activities, including wholesale sales, public displays or retail sales, must meet all applicable requirements in ORS 480.110 through 480.165 and OAR chapter 837, division 12.

(2) Agricultural permit holders must notify the Office of State Fire Marshal, in writing, within 24 hours of the date of change, of:

(a) The agricultural permit holder's mailing address, telephone number,

(b) The storage address of the agricultural fireworks.

(3) Change of the storage location of the agricultural fireworks is subject to prior written approval by the local fire authority and the Office of State Fire Marshal.

(4) Agricultural permit holders must comply with all applicable federal, state and local laws, rules and regulations including, without limitation:

(a) ORS 480.110 through 480.165;

(b) OAR chapter 837, division 12;

(c) **Oregon Fire Code, 2004 Edition;** and

(d) **Oregon Structural Specialty Code, 2004 Edition.**

(5) Agricultural permit holders must purchase agricultural fireworks only from wholesalers having the necessary and current permits required by ORS 480.110 to 480.160 and OAR 837-012-0500 through 837-012-0570.

(6) Agricultural permit holders may request a duplicate copy of their agricultural permit by certifying to the Office of State Fire Marshal, in writing, their agricultural permit has been lost, stolen, or destroyed. Written requests must be signed and dated by the agricultural permit holder.

(7) The issuance of an agricultural permit does not in any way constitute approval by the Office of State Fire Marshal of any agricultural fireworks purchased, sold, or provided pursuant to the agricultural permit.

(8) An agricultural permit allows the permit holder to engage in the purchase, transportation, possession, storage and use of agricultural fireworks when those activities are otherwise in conformance with the applicable requirements of ORS 480.110 through 480.165, OAR chapter 837, division 12 and any other federal, state or local laws, rules or regulations pertaining to fireworks.

(9) An agricultural permit does not authorize the:

(a) Purchase, possession or sale of illegal fireworks by or to any person; or

(b) The sale, re-sale, or provision of agricultural fireworks by or to any person other than the agricultural permit holder.

(10) Any agricultural permit holder, other than an individual, is required by the State Fire Marshal to list the name, age, address, and phone number of one individual in a management position within their company or organization, on the permit application.

(11) Individuals firing agricultural fireworks shall be a minimum of 18 years of age.

(12) Only the agricultural permit holder, and any employees of the agricultural permit holder, may engage in activities authorized by the agricultural permit.

(13) Agricultural permits, and the rights conveyed by the agricultural permit, are not transferable.

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

Stat. Auth.: ORS 480.122 & 480.124

Stats. Implemented: ORS 480.110 - 480.165

Hist.: FM 42, f. 4-15-70, ef. 5-11-70; Renumbered from 837-031-0030; OSFM 10-2001(Temp), f. & cert. ef. 12-12-01 thru 6-9-02; OSFM 3-2002, f. & cert. ef. 2-25-02; OSFM 7-2005, f. 5-24-05, cert. ef. 6-7-05; OSFM 15-2006, f. 12-22-06, cert. ef. 1-1-07

837-012-0340

Permit Fees

There are no fees for this application.

Stat. Auth.: ORS 480.122

Stats. Implemented: ORS 480.122 & 480.124

Hist.: OSFM 10-2001(Temp), f. & cert. ef. 12-12-01 thru 6-9-02; OSFM 3-2002, f. & cert. ef. 2-25-02; OSFM 15-2006, f. 12-22-06, cert. ef. 1-1-07

837-012-0350

Issuance of Agricultural Permits

(1) Each *agricultural permit* contains a unique number assigned by the Office of State Fire Marshal.

(2) Only one agricultural permit is required for each agricultural location. A permit application may contain multiple use locations provided each location is owned, leased, or used by the permit holder.

(3) The agricultural permit is valid only for the location of use listed on the agricultural permit.

(4) The agricultural permit will be mailed to the permit holder at the mailing address listed on the permit application.

(5) An initial agricultural permit issued by the Office of State Fire Marshal is valid from the date of issue up to three years as determined by the OSFM.

(6) Upon renewal, agricultural permits are valid for a period not to exceed three years.

Stat. Auth.: ORS 480.122

Stats. Implemented: ORS 480.122 & 480.124

Hist.: OSFM 10-2001(Temp), f. & cert. ef. 12-12-01 thru 6-9-02; OSFM 3-2002, f. & cert. ef. 2-25-02; OSFM 15-2006, f. 12-22-06, cert. ef. 1-1-07

837-012-0360

Purchase of Agricultural Fireworks

(1) Permit holders must be 18 years of age or older.

(2) Agricultural permit holders may purchase or otherwise obtain agricultural fireworks only from wholesalers who possess a valid and current wholesale permit issued by the Office of State Fire Marshal. Exception: In the case of state game management or federal game management authorities who provide agency approved game management assistance to permit holders; once a permit has been issued — state game management or federal game management authorities may supply agricultural fireworks to the permit holder under the following criteria:

(a) Agricultural permit holders may only obtain agricultural fireworks listed on their agricultural fireworks permit.

(b) The state game management or federal game management authority who supplies agricultural fireworks must maintain a record of all agricultural fireworks supplied and make such records available to the Office of State Fire Marshal upon request.

(c) Any decision by a state game management or federal game management authority to supply agricultural fireworks must be in conformance with their specific agency policies and procedures for the distribution of agricultural fireworks.

(3) Once an agricultural fireworks permit has been issued and the wholesaler selected; if an agricultural permit holder desires to obtain agricultural fireworks from another wholesaler, the agricultural permit holder must notify the Office of State Fire Marshal at least 24 hours prior to purchasing the agricultural fireworks from another licensed agricultural fireworks wholesaler.

Stat. Auth.: ORS 480.122

Stats. Implemented: ORS 480.122 & 480.124

Hist.: OSFM 10-2001(Temp), f. & cert. ef. 12-12-01 thru 6-9-02; OSFM 3-2002, f. & cert. ef. 2-25-02; OSFM 15-2006, f. 12-22-06, cert. ef. 1-1-07

837-012-0370

Prohibited Acts and Limitations

(1) An agricultural permit does not allow the permit holder to purchase, possess, or sell any other types of fireworks.

(2) Agricultural fireworks may not be utilized for any purpose other than the use as stated on the permit application.

(3) Agricultural fireworks utilized for any other use than the permitted use may result in the immediate suspension of the agricultural permit and confiscation of the unused agricultural fireworks.

(4) A permit holder may not sell or provide by any other means agricultural fireworks or any other fireworks to any other person including other permit holders.

(5) The agricultural permit does not authorize the manufacture, sale, use, discharge or possession of agricultural fireworks in any city or county where agricultural fireworks are prohibited by law or ordinance.

(6) No permit holder may maintain or allow the existence of a fire hazard at any location under their control where agricultural fireworks are stored, transported, or used.

(7) Permit holders may not provide agricultural fireworks to anyone other than an authorized employee or owner of the permit holder's business for the purpose specified on the permit applications.

Stat. Auth.: ORS 480.122

Stats. Implemented: ORS 480.122 & 480.124

Hist.: OSFM 10-2001(Temp), f. & cert. ef. 12-12-01 thru 6-9-02; OSFM 3-2002, f. & cert. ef. 2-25-02; OSFM 15-2006, f. 12-22-06, cert. ef. 1-1-07

Department of Public Safety Standards and Training Chapter 259

Rule Caption: Amend Public Safety Memorial Fund rules relating to eligibility criteria for Permanent Total Disability.

ADMINISTRATIVE RULES

Adm. Order No.: DPSST 1-2007
Filed with Sec. of State: 1-12-2007
Certified to be Effective: 1-12-07
Notice Publication Date: 12-1-06
Rules Amended: 259-070-0010

Subject: Requires satisfactory evidence that an applicant meets the definition of a permanent total disability found in ORS 656.206 and OAR 436-030-0055.

Rules Coordinator: Bonnie Salle—(503) 378-2431

259-070-0010

Eligibility

(1) Eligibility of award applies to public safety officers who died or became disabled as of October 23, 1999. Subject to availability of funds, the Board may award benefits to family members of public safety officers who died or became disabled after January 1, 1997, through October 23, 1999.

(2) Prior to acceptance of an initial application, any individual applying for benefits based on a qualifying disability must provide satisfactory evidence that they meet the definition of “permanent total disability” found in ORS 656.206 and OAR 436-030-0055.

(3) Satisfactory evidence is established by submitting:

(a) Proof of Determination of Permanent Total Disability in compliance with the Worker’s Compensation Division of the Department of Consumer and Business Services; or

(b) Competent written vocational testimony by a person fully certified by the State of Oregon to render vocational services that the applicant meets the definition of “permanent total disability” found in ORS 656.206 and OAR 436-030-0055.

Stat. Auth.: ORS 245.950

Stats. Implemented: ORS 245.950

Hist.: BPSST 2-2000(Temp), f. 4-21-00, cert. ef. 4-27-00 thru 10-16-00; BPSST 5-2000, f. & cert. ef. 9-29-00; BPSST 3-2002, f. & cert. ef. 2-11-02; DPSST 12-2005, f. & cert. ef. 11-15-05; DPSST 1-2007, f. & cert. ef. 1-12-07

Rule Caption: Amends rules relating to Fire Ground Leader and provides definition of Fire Ground Leader.

Adm. Order No.: DPSST 2-2007

Filed with Sec. of State: 1-12-2007

Certified to be Effective: 1-12-07

Notice Publication Date: 12-1-06

Rules Amended: 259-009-0005, 259-009-0062

Subject: Defines Fire Ground Leader to mean a Fire Service Professional who is qualified to lead emergency scene operations and amends rules relating to Fire Service Personnel Certification for Fire Ground Leader.

Rules Coordinator: Bonnie Salle—(503) 378-2431

259-009-0005

Definitions

(1) “Authority having jurisdiction” shall mean the Department of Public Safety Standards and Training.

(2) “Agency Head” means the chief officer of a fire service agency directly responsible for the administration of that unit.

(3) “Board” means the Board on Public Safety Standards and Training.

(4) “Chief Officer” means an individual of an emergency fire agency at a higher level of responsibility than a company officer. A chief officer supervises two or more fire companies in operations or manages and supervises a particular fire service agency program such as training, communications, logistics, prevention, emergency medical services provisions and other staff related duties.

(5) “Community College” means a public institution operated by a community college district for the purpose of providing courses of study limited to not more than two years full-time attendance and designed to meet the needs of a geographical area by providing educational services, including but not limited to vocational or technical education programs or lower division collegiate programs.

(6) “Company Officer” means a fire officer who supervises a company of fire fighters assigned to an emergency response apparatus.

(7) “Content Level Course” is a course that includes an identifiable block of learning objectives or outcomes that are required for certification at one or more levels.

(8) “Department” means the Department of Public Safety Standards and Training.

(9) “Director” means the Director of the Department of Public Safety Standards and Training.

(10) “Entry Level Fire Fighter” means an individual at the beginning of his/her fire service involvement. During the probationary period an entry level fire fighter is in a training and indoctrination period under constant supervision by a more senior member of a fire service agency.

(11) “Field Training Officer” means an individual who is authorized by a fire service agency of by the Department to sign as verifying completion of tasks required by task books.

(12) “Fire Company” means a group of fire fighters, usually 3 or more, who staff and provide the essential emergency duties of a particular emergency response apparatus.

(13) “Fire Fighter” is a term used to describe an individual who renders a variety of emergency response duties primarily to save lives and protect property. This applies to career and volunteer personnel.

(14) “Fire Ground Leader” means a Fire Service Professional who is qualified to lead emergency scene operations.”

(15) “Fire Inspector” means an individual whose primary function is the inspection of facilities in accordance with the specific jurisdictional fire codes and standards.

(16) “Fire Service Agency” means any unit of state or local government, a special purpose district or a private firm which provides, or has authority to provide, fire protection services.

(17) “Fire Service Professional” means a paid (career) or volunteer fire fighter, an officer or a member of a public or private fire protection agency who is engaged primarily in fire investigation, fire prevention, fire safety, fire control or fire suppression or providing emergency medical services, light and heavy rescue services, search and rescue services or hazardous materials incident response. “Fire service professional” does not include forest fire protection agency personnel.

(18) “Fire Training Officer” means a fire service member assigned the responsibility for administering, providing, and managing and/or supervising a fire service agency training program.

(19) “NFPA” stands for National Fire Protection Association which is a body of individuals representing a wide variety of professions, including fire protection, who develop consensus standards and codes for fire safety by design and fire protection agencies.

(20) “NFPA Airport Firefighter” means a member of a Fire Service Agency who has met job performance requirements of NFPA Standard 1003.

(21) “NFPA Driver-Operator” means a member of a fire service agency licensed to operate a fire service agency vehicle/apparatus in accordance with the job performance requirements of NFPA 1002 and who have met the Entry Level Fire Fighter requirements. Fire service agency vehicle/apparatus operators are required to be certified at NFPA 1001 fire fighter I standard prior to driver operator duties. Additional requirements are involved for those driver operators of apparatus equipped with an attack or fire pump, aerial devices, a tiller, aircraft firefighting and rescue vehicles, wildland fire apparatus, and mobile water supply apparatus (tanker/tender).

(22) “NFPA Fire Fighter I” means a member of a fire service agency who has met the level I job performance requirements of NFPA standard 1001. Sometimes referred to as a journeyman fire fighter.

(23) “NFPA Fire Fighter II” means a member of a fire service agency who met the more stringent level II job performance requirements of NFPA Standard 1001. Sometimes referred to as a senior fire fighter.

(24) “NFPA Fire Inspector I” means an individual who conducts basic fire code inspections and has met the level I job performance requirements of NFPA Standard 1031.

(25) “NFPA Fire Inspector II” means an individual who conducts complicated fire code inspections, reviews plans for code requirements, and recommends modifications to codes and standards. This individual has met the level II job performance requirements of NFPA standard 1031.

(26) “NFPA Fire Investigator” means an individual who conducts post fire investigations to determine the cause and the point of origin of fire. This individual has met the job performance requirements of NFPA Standard 1033.

(27) “NFPA Fire Officer I” means the fire officer, at the supervisory level, who has met the job performance requirements specified in NFPA 1021 Standard Fire Officer Professional Qualifications. (Company officer rank)

(28) “NFPA Fire Officer II” means the fire officer, at the supervisory/managerial level, who has met the job performance requirements in NFPA Standard 1021. (Station officer, battalion chief rank)

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(29) "NFPA Fire Officer III" means the fire officer, at the managerial/administrative level, who has met the job performance requirements in NFPA Standard 1021. (District chief, assistant chief, division chief, deputy chief rank)

(30) "NFPA Fire Officer IV" means the fire officer, at the administrative level, who has met the job performance requirements in NFPA Standard 1021. (Fire Chief)

(31) "Service Delivery" means to be able to adequately demonstrate, through job performance, the knowledge, skills, and ability of a certification level.

(32) "Staff" are those employees occupying full-time, part-time, and/or temporary positions with the Department.

(33) "Task Performance" means to be able to demonstrate the ability to perform the tasks, of a certification level, in a controlled environment while being evaluated.

(34) "The Act" refers to the Public Safety Standards and Training Act (ORS 181.610 to 181.705).

(35) "Topical Level Course" is a course that does not include an identifiable block of learning objectives or outcomes that are required for certification at one or more levels.

(36) "Track" means a field of study required for certification.

(37) "Waiver" means to refrain from pressing or enforcing a rule.

Stat. Auth.: ORS 181.640

Stats. Implemented: ORS 181.640

Hist.: BPSST 22-2002, f. & cert. ef. 11-18-02; DPSST 8-2004, f. & cert. ef. 4-23-04; DPSST 2-2006, f. & cert. ef. 1-24-06; f. & cert. ef. 7-7-06; DPSST 2-2007, f. & cert. ef. 1-12-07

259-009-0062

Fire Service Personnel Certification

(1) A fire service professional affiliated with an Oregon fire service agency may be certified by satisfactorily completing the requirements specified in section (2) of this rule: through participation in a fire service agency training program accredited by the Department; or through a course certified by the Department; or by evaluation of experience as specified in OAR 259-009-0063. The Department may certify a fire service professional who has satisfactorily completed the requirements for certification as prescribed in section (2) of this rule, including the Task Performance evaluations if applicable.

(2) The following standards for fire service personnel are hereby adopted by reference:

(a) The provisions of the NFPA Standard 1001, 2002 Edition, entitled "Fire Fighter Professional Qualifications";

(A) "Authority having jurisdiction" shall mean the Department of Public Safety Standards and Training.

(B) Delete section 1.3.1 (Note: this references NFPA 1500).

(C) Delete section 2.2 (Note: this references NFPA 1500 and 1582).

(D) Entry Level Fire Fighter means an individual trained to the requirements of Section 2-1 Student Prerequisites, NFPA Standard 1403, 1997 Edition, entitled "Live Fire Training Evolutions" and the applicable safety requirements adopted by OR-OSHA. An individual trained to this level and verified so by the agency head is qualified to perform live-fire training exercises and to perform on the emergency scene under constant supervision. An Entry Level Fire Fighter should be encouraged to complete Fire Fighter I training within one year.

(E) All applicants for certification must complete either a Task Performance Evaluation or a Department approved Task Book for Fire Fighter I and Fire Fighter II, signed off by the Agency Head or Training Officer, before an applicant can qualify for certification.

(b) The provisions of the NFPA Standard 1002, 2003 Edition, entitled "Fire Department Vehicle Driver/Operator Professional Qualifications," are adopted subject to the following definitions and modifications hereinafter stated:

(A) 5.1 General. The requirements of NFPA 1001 Fire Fighter I, as specified by the Department and the job performance requirements defined in Sections 5.1 and 5.2, must be met prior to certification as a Fire Service Agency Driver/Operator-Pumper.

(B) 6.1 General. The requirements of NFPA 1001 Fire Fighter I and NFPA 1002 Fire Apparatus Driver/Operator, as specified by the Department and the job performance requirements defined in Sections 6.1 and 6.2, must be met prior to certification as a Fire Service Agency Driver/Operator-Aerial.

(C) 7.1 General. The requirements of NFPA 1001 Fire Fighter I and NFPA 1002 Fire Apparatus Driver/Operator, as specified by the Department and the job performance requirements defined in Sections 7.1 and 7.2 must be met prior to certification as a Fire Service Agency Driver/Operator-Tiller.

(D) 8.1 General. The requirements of NFPA 1001 Fire Fighter I and NFPA 1002 Fire Apparatus Driver/Operator, as specified by the Department and the job performance requirements defined in Sections 8.1 and 8.2, must be met prior to certification as a Fire Service Agency Driver/Operator-Wildland Fire Apparatus.

(E) 9.1 General. The requirements of NFPA 1001 Fire Fighter I and NFPA 1002 Fire Apparatus Driver/Operator, as specified by the Department and the job performance requirements defined in Sections 9.1 and 9.2, must be met prior to certification as a Fire Service Agency Driver/Operator-Aircraft Rescue and Fire Fighting Apparatus (ARFF).

(F) 10.1 General. The requirements of NFPA 1001 Fire Fighter I and NFPA 1002 Fire Apparatus Driver/Operator, as specified by the Department and the job performance requirements defined in Sections 10.1 and 10.2, must be met prior to certification as a Fire Service Agency Driver/Operator-Mobile Water Supply Apparatus.

(G) Delete "the requirements of NFPA 1500, Standard on Fire Department Occupational Safety and Health Program."

(H) All applicants for certification must complete either a Task Performance Evaluation or a Department approved Task Book for: Driver, Pumper Operator, Aerial Operator, Tiller Operator, Wildland Fire Apparatus Operator, Aircraft Rescue and Fire-Fighting Apparatus Operator or Mobile Water Supply Apparatus Operator and signed off by the Agency Head or Training Officer before an applicant can qualify for certification.

(I) An individual who completes the requirements of Chapter 4 and meets the requirements of Entry Level Fire Fighter (NFPA 1403) may be certified as a Driver.

(c) The provisions of the NFPA Standards 1003, 2005 Edition, entitled "Standard for Airport Fire Fighter Professional Qualifications,"

(A) 6.1 General. Prior to certification as a Fire Service Agency NFPA 1003 Airport Fire Fighter, the requirements of NFPA 1001 Fire Fighter II and NFPA 1002 Aircraft Rescue and Fire Fighting Apparatus Operator (ARFF), as specified by the Department, and the job performance requirements defined in sections 6.1 through 6.4 must be met.

(B) All applicants for certification must complete either a Task Performance Evaluation or a Department-approved Task Book for: Airport Fire Fighter and signed off by the Agency Head or Training Officer before an applicant can qualify for certification.

(d) The provisions of the NFPA Standard No. 1031, Edition of 1998, entitled "Professional Qualifications for Fire Inspector and Plan Examiner" are adopted subject to the following definitions and modifications:

(A) Transition Phase:

(i) November 1, 2000, all new certifications will be based on NFPA 1031.

(ii) November 1, 2000, through January 1, 2005, any certified Fire Prevention/Investigation Officer I may become certified at NFPA Fire Inspector I.

(iii) November 1, 2000, anyone certified as an Oregon Fire Prevention Officer II will be certified as an NFPA Fire Inspector II.

(iv) November 1, 2000, anyone certified as an Oregon Fire Prevention Officer III will be certified as an NFPA Fire Inspector III.

(v) An individual who has been working toward certification using Fire Prevention/Investigation Officer (SFM-P-7 10/88) may complete certification based on that standard until January 1, 2005.

(B) All applicants for certification as an NFPA Fire Inspector I shall:

(i) Successfully complete a Department approved Task Book; and

(ii) Furnish proof that they have passed an exam demonstrating proficiency in the model fire code adopted by the State of Oregon or an equivalent.

(C) All applicants for certification as an NFPA Fire Inspector II shall:

(i) Hold a certification as a Fire Inspector I; and

(ii) Successfully complete a Department approved Task Book.

(D) All applicants for certification as an NFPA Fire Inspector III shall:

(i) Hold a certification as a Fire Inspector II; and

(ii) Successfully complete a Department approved Task Book.

(E) Task books shall be monitored by a Field Training Officer approved by the Department. The Field Training Officer shall be certified at or above the level being monitored and have at least 5 years inspection experience. The Department may approve other Field Training Officers with equivalent training, education and experience as determined by designated Department Staff.

(e) The provisions of the NFPA Standard No. 1033, Edition of 1998, entitled "Professional Qualifications for Fire Investigator" are adopted subject to the following definitions and modifications:

(A) Transition Phase:

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(i) Beginning November 1, 2000, all new certifications will be based on NFPA 1033.

(ii) November 1, 2000, anyone certified as an Oregon Fire Investigator II will be certified as an NFPA Fire Investigator and will continue to be recognized as an Oregon Fire Investigator II. No new Oregon Fire Investigator II certificates will be issued after January 1, 2005.

(iii) November 1, 2000, anyone certified as an Oregon Fire Investigator III will be certified as an NFPA Fire Investigator and will continue to be recognized as an Oregon Fire Investigator III. No new Oregon Fire Investigator III certificates will be issued after January 1, 2005.

(iv) An individual who has been working toward certification using Fire Prevention/Investigation Officer (SFM-P-7 10/88) may complete certification based on that standard until January 1, 2005.

(B) All applicants for certification as a Fire Investigator shall successfully complete a Department approved Task Book prior to passing a written certification exam administered by the Department. Exception: Anyone holding a valid IAAI Fire Investigator Certification is exempt from taking the Department's Fire Investigator written exam.

(C) Task books shall be monitored by a Field Training Officer approved by the Department. The Field Training Officer shall be certified at or above the level being monitored and have at least 5 years fire investigation experience. The Department may approve other Field Training Officers with equivalent training, education and experience as determined by designated Department Staff.

(f) The provisions of the NFPA Standard No. 1035, Edition of 2000, entitled "Professional Qualifications for Public Fire and Life Safety Educator" are adopted subject to the following definitions and modifications:

(A) Chapter 6 (Six) "Juvenile Firesetter Intervention Specialist I" and Chapter 7 (Seven) "Juvenile Firesetter Intervention Specialist II," Oregon-amended, shall be adopted with the following changes:

(i) Change the following definitions:

(I) 1-4.4 Change the definition of "Assessment" to read: "A structured process by which relevant information is gathered for the purpose of determining specific child or family intervention needs conducted by a mental health professional."

(II) 1-4.11 Change the title of "Fire Screener" to "Fire Screening" and the definition to read "The process by which we conduct an interview with a firesetter and his or her family using state approved forms and guidelines. Based on recommended practice, the process may determine the need for referral for counseling and/or implementation of educational intervention strategies to mitigate effects of firesetting behavior."

(III) 1-4.14 Include "insurance" in list of agencies.

(IV) 1-4.15 Change the definition to read: "...that may include screening, education and referral for assessment for counseling, medical services."

(V) 1-4.16 Change "person" to "youth" and change age from 21 to 18.

(VI) 1-4.17 Add "using state-approved prepared forms and guidelines."

(VII) 1-4.22 Add "...or by authority having jurisdiction."

(VIII) 1-4.24 Add "...or as defined by the authority having jurisdiction."

(ii) Under 6-1 General Requirements, delete the statement, "In addition, the person shall meet the requirements for Public Fire and Life Safety Educator I prior to being certified as a Juvenile Firesetter Intervention Specialist I."

(B) A task book shall be completed prior to certification as a Public Fire and Life Safety Educator I, II or III.

(C) A task book shall be completed prior to certification as a Public Information Officer.

(D) A task book shall be completed prior to certification as a Juvenile Firesetter Intervention Specialist I and II.

(g) The provisions of the NFPA Standard No. 1041, Edition of 1996, entitled "Standard for Fire Service Instructor Professional Qualifications," are adopted subject to the following definitions and modifications:

(A) "Fundamentals of Instruction" shall mean a 16-hour instructor training course for those instructors used for in-house training. This course includes a task book. This course does not lead to certification.

(B) Successfully complete an approved task book for Fire Service Instructor I and II.

(i) This requirement is effective for any application for certification after January 4, 2002.

(h) The provisions of the NFPA Standard 1021, 2003 Edition, entitled "Standards for Fire Officer Professional Qualifications," are adopted subject to the following definitions and modifications:

(A) 4.1 General. For certification as Fire Officer I, the candidate must be certified at NFPA 1001 Fire Fighter II, and NFPA 1041 Fire Instructor I, as defined by the Department, and meet the job performance requirements defined in Sections 4.2 through 4.7 of this Standard.

(i) Amend section 4.1.2 General Prerequisite Skills to include college courses or Department approved equivalent courses in the following areas of study: Written Communication, Advanced Speech, Technical Writing/Business Writing, Math, and Physics or Chemistry.

(ii) All applicants for certification must complete either a Task Performance Evaluation or a Department approved Task Book for; NFPA Fire Officer I and signed off by the Agency Head or Training Officer before an applicant can qualify for certification.

(B) 5.1 General. For certification as NFPA Fire Officer II, the candidate must be certified as NFPA Fire Officer I, as defined by the Department, and meet the job performance requirements defined in Section 5.2 through 5.7 of the Standard.

(i) Amend section 5.1.2 General Prerequisite Skills to include college courses or Department approved equivalent courses in the following areas of study: Psychology or Sociology.

(ii) Amend section 5.3 Community and Government Relations to include State and Local Government or Department approved equivalent courses.

(iii) All applicants for certification must complete either a Task Performance Evaluation or a Department approved Task Book for NFPA Fire Officer II, and signed off by the Agency Head or Training Officer, before an applicant can qualify for certification.

(C) 6.1 General. For certification as NFPA Fire Officer III, the candidate must be certified as a NFPA Fire Officer II, NFPA, NFPA 1041 Fire Instructor II, as defined by the Department, and meet the job performance requirements defined in Sections 6.2 through 6.7 of the Standard.

(i) Amend section 6.1 to allow individuals certified as NFPA 1033 Fire Investigator, NFPA 1035 Public Fire and Life Safety Educator, or NFPA 1031 Fire Inspector III to apply for certification without attaining NFPA 1001 Fire Fighter II.

(D) 7.1 General. For certification as NFPA Fire Officer IV the candidate must be certified as NFPA Fire Officer III, as defined by the Department, and meet the job performance requirements in Sections 7.2 through 7.7 of the Standard.

(i) 5-1.2 General Requisite Skill: the ability to effectively apply prerequisite knowledge.

(ii) 5-1.3 Existing Curricula — Advanced Institute Classes which would meet Fire Protection Executive Course Requirements: Master Planning; Advanced Legal Aspects; Advanced Fiscal Management; Local Government and Community Politics; Organizational Psychology; Management Information Systems; Labor Management Relations.

(i) Hazardous Materials Responder (DPSST-P-12 1/96).

(j) Fire Ground Leader.

(A) This is a standard that is Oregon-specific.

(B) An applicant applying for Fire Ground Leader shall first be certified as an NFPA Fire Fighter II.

(C) An applicant would need to document training in seven areas:

(i) Building Construction: Non-Combustible;

(ii) Building Construction: Combustible;

(iii) Incident Safety Officer or Fire Fighter Safety;

(iv) Managing Water Supplies Operations;

(v) MCTO – Preparation or PICO;

(vi) MCTO – Decision Making;

(vii) MCTO – Tactics or STICO;

(viii) Incident Command System;

(vix) Fire Investigation.

(D) A task book shall be completed before certification is awarded.

(k) Wildland Interface Fire Fighter, Wildland Interface Engine Boss/Officer, Wildland Strike Team leader, Wildland Division/Group Supervisor (DPSST Wildland Interface Certification Guide, Revised September, 2003).

(l) Maritime Fire Service Operator Standards Professional Qualifications (October, 1999) and completion of an approved task book.

(A) Historical Recognition:

(i) The application shall be submitted with the Fire Chief or designee's signature attesting to the skill level and training of the applicant.

(ii) The application must be submitted to the Department no later than October 1, 2004, to receive certification for Maritime Fire Service Operator without having to complete the task book.

(iii) All applications received after October 1, 2004, will need to show completion of the approved task book.

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(m) Certification guide for Wildland Fire Investigator (August, 2005).
(n) The provisions of the NFPA Standard No. 1006, Edition of 2000, entitled, "Professional Qualifications for Rescue Technician" are adopted subject to the following modifications:

(A) The Authority Having Jurisdiction shall mean the local or regional fire service agency.

(B) Historical Recognition:

(i) Application shall be submitted with the Fire Chief or designee's signature attesting to the skill level and training of the applicant.

(ii) The application to use historical recognition shall be submitted to DPSST on or before March 31, 2003.

(C) Instructors:

(i) Curriculum must be certified by DPSST to meet NFPA 1006.

(ii) An instructor delivering training under a fire service agency's accreditation agreement must be a certified technician in that specialty rescue area.

(D) Task Books:

(i) A task book must be completed for each of the six specialty rescue areas applied for.

(ii) Only a certified technician in that specialty rescue area can sign off the task book.

(iii) The requirements in Chapters 2 and 3 need to be met only one time for all six specialty rescue areas.

(o) Urban Search and Rescue.

(A) This is a standard that is Oregon-specific.

(B) The following eleven (11) specialty Urban Search and Rescue (USAR) certifications are adopted:

(i) Task Force Leader;

(ii) Safety Officer;

(iii) Logistics Manager;

(iv) Rescue Team Manager;

(v) Rescue Squad Officer;

(vi) Rescue Technician;

(vii) Medical Technician;

(viii) Rigging Technician;

(ix) Search Team Manager;

(x) Search Squad Officer;

(xi) Search Technician.

(C) An applicant applying for any USAR certification(s) must complete the appropriate application(s) attesting to completion of the required training.

(3) Task performance evaluations, where prescribed, shall be required prior to certification. Such examinations shall be conducted in the following manner:

(a) Task performance competency shall be evaluated by three people nominated by the employing fire service agency's Chief Officer for approval by the Department or its designated representative.

(b) The employing fire service agency's equipment and operational procedures shall be used in accomplishing the task performance to be tested.

(c) Specific minimum testing procedures, as provided by the Department, shall be used for administration of the evaluation.

(d) The training officer for an accredited fire service agency training program must notify the Department or its designated representative prior to performing a Task Performance Evaluation.

(e) At the request of the fire chief, a representative of the Department will be designated to monitor the task performance evaluation for personnel from a fire service agency whose training program is not accredited.

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

Stat. Auth.: ORS 181.640

Stats. Implemented: ORS 181.640

Hist.: BPSST 22-2002, f. & cert. ef. 11-18-02; DPSST 11-2003 f. & cert. ef. 7-24-03; DPSST 13-2003(Temp), f. & cert. ef. 10-27-03 thru 3-31-04; DPSST 3-2004(Temp), f. & cert. ef. 4-9-04 thru 10-1-04; DPSST 8-2004, f. & cert. ef. 4-23-04; DPSST 2-2006, f. & cert. ef. 1-24-06; DPSST 9-2006 f. & cert. ef. 7-7-06; DPSST 14-2006, f. & cert. ef. 10-13-06; DPSST 16-2006, f. & cert. ef. 11-20-06; DPSST 2-2007, f. & cert. ef. 1-12-07

Rule Caption: Employment Definitions, Adopt ORPAT and Amend Rules relating to Police, Telecommunicators/EMDs and Course Certification.

Adm. Order No.: DPSST 3-2007

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Certified to be Effective: 1-12-07

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Rules Amended: 259-008-0005, 259-008-0011, 259-008-0025, 259-008-0064, 259-008-0065, 259-008-0085

Rules Repealed: 259-008-0065(T)

Subject: Define Full-time and seasonal employment;

Adopt Physical Fitness Standards (ORPAT) for Basic Police;

Eliminate waiver of attendance at Basic Course for Emergency Medical Dispatchers who have not been employed in excess of 2-1/2 years;

Allow maintenance training extension for Telecommunicators and Emergency Medical Dispatchers on authorized leave of absence;

Amend rules relating to medical standards for Telecommunicators and Emergency Medical Dispatchers;

Amend reporting rules for Basic Police Officers reporting mandatory maintenance training requirements due 12-31-06;

Amend rules relating to certification of courses and classes.

Rules Coordinator: Bonnie Salle—(503) 378-2431

259-008-0005

Definitions

(1) "Assistant Department Head" means an officer occupying the first position subordinate to a Department Head, and is primarily responsible for supervision of middle managers and/or supervisors.

(2) "Board" means the Board on Public Safety Standards and Training.

(3) "Casual employment" means employment that is occasional, irregular, or incidental and the employee does not receive seniority rights nor fringe benefits.

(4) "Certified Reserve Officer" means a reserve officer who has been designated by a local law enforcement unit, has received training necessary for certification and has met the minimum standards and training requirements established under ORS 181.640.

(5) "Commissioned" means an authorization granting the power to perform various acts or duties of a police officer and acting under the supervision and responsibility of a county sheriff or as otherwise provided by law.

(6) "Community College" means a public institution operated by a community college district for the purpose of providing courses of study limited to not more than two years full-time attendance and designed to meet the needs of a geographical area by providing educational services, including but not limited to vocational or technical education programs or lower division collegiate programs.

(7) "Corrections Officer" means an officer or member of a law enforcement unit who is employed full-time thereby and is charged with and primarily performs the duty of custody, control or supervision of individuals convicted of or arrested for a criminal offense and confined in a place of incarceration or detention other than a place used exclusively for incarceration or detention of juveniles; and any full-time employee of the Board who possesses requisite qualifications and is so certified pursuant to ORS 181.652.

(8) "Department" means the Department of Public Safety Standards and Training.

(9) "Department Head" means the chief of police, sheriff, or chief executive of a law enforcement unit or a public or private safety agency directly responsible for the administration of that unit.

(10) "Director" means the Director of the Department of Public Safety Standards and Training.

(11) "Educational Credits" are credits earned for studies satisfactorily completed at an accredited post-secondary education institution recognized under 259-008-0025.

(12) "Emergency medical dispatcher" means a person who has responsibility to process requests for medical assistance from the public or to dispatch medical care providers.

(13) "First-Level Supervisor" means a law enforcement officer, telecommunicator, or emergency medical dispatcher occupying a position between the operational level and the middle manager position who is primarily responsible for the direct supervision of subordinates. A first level supervisor position does not include a position with limited or acting supervisory responsibilities.

(14) "Full-time employment" means the employment of a person who has the responsibilities as defined in ORS 181.610(3), (5), (9), (13), (14), (18) of this rule, who has the responsibility for, and is paid to perform the duties described in the above statute and administrative rule for more than 80 hours per month for a period of more than 90 consecutive calendar days. For purposes of this rule, any employment that meets the definition of seasonal, casual, or temporary employment is not considered full-time employment as a public safety professional.

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(15) "High School" is a school accredited as a high school by the Oregon Department of Education, or a school accredited as a high school by the recognized regional accrediting body, or a school accredited as a high school by the state university of the state in which the high school is located.

(16) "Law Enforcement Officers" as used throughout this manual collectively means all police, corrections, and parole and probation officers who are included in the Public Safety Standards and Training Act as described in ORS 181.610, and 181.651.

(17)(a) "Law Enforcement Unit" means a police force or organization of the state, a city, port, school district, mass transit district, county, county service district authorized to provide enhanced law enforcement services under ORS 451.010, Indian reservation, Criminal Justice Division of the Department of Justice, the Department of Corrections, the Oregon State Lottery Commission, or common carrier railroad whose primary duty, as prescribed by law, ordinance, or directive, is any one or more of the following:

(A) Detecting crime and enforcing the criminal laws of this state or laws or ordinances relating to airport security;

(B) The custody, control, or supervision of individuals convicted of or arrested for a criminal offense and confined to a place of incarceration or detention other than a place used exclusively for incarceration or detention of juveniles; or

(C) The control, supervision, and reformation of adult offenders placed on parole or sentenced to probation and investigation of adult offenders on parole or probation or being considered for parole or probation.

(b) "Law enforcement unit" also means a police force or organization of a private entity with a population of more than 1,000 residents in an unincorporated area whose employees are commissioned by a county sheriff.

(18) "Leave of absence" means a leave granted by the employing agency from the public safety officer's certifiable position as defined in ORS 181.610(3), (5), (9), (13), (14), (18), for more than 90 days but less than two and one-half years.

(19) "Middle Manager" means a law enforcement officer, telecommunicator, or emergency medical dispatcher occupying a position between first level supervisor and department head position and is primarily responsible for management and/or command duties. A middle manager position does not include a position with limited, or acting middle management duties.

(20) "Part-time Employment" means the employment of a person who has the responsibility for, and is paid to perform the duties described in statutes and administrative rules for public safety personnel for 80 hours per month, or less, for a period of more than 90 consecutive calendar days.

(21) "Parole and Probation Officer" means

(a) Any officer who is employed full-time by the Department of Corrections, a county or a court and who is charged with and performs the duty of:

(A) Community protection by controlling, investigating, supervising, and providing or making referrals to reformatory services for adult parolees or probationers, or offenders on post-prison supervision; or

(B) Investigating adult offenders on parole or probation or being considered for parole or probation; or

(b) Any officer who:

(A) Is certified and has been employed as a full-time parole and probation officer for more than one year;

(B) Is employed part-time by the Department of Corrections, a county or a court; and

(C) Is charged with and performs the duty of:

(i) Community protection by controlling, investigating, supervising, and providing or making referrals to reformatory services for adult parolees or probationers or offenders on post-prison supervision; or

(ii) Investigating adult offenders on parole or probation or being considered for parole or probation.

(22) "Police Officer" means an officer or member of a law enforcement unit who is employed full-time as a peace officer commissioned by a city, port, school district, mass transit district, county, county service district authorized to provide enhanced law enforcement services under ORS 451.010, Indian reservation, the Criminal Justice Division of the Department of Justice, the Oregon State Lottery Commission, or the Governor, or a member of the Department of State Police who is responsible for enforcing the criminal laws of this state or laws or ordinances relating to airport security; and any full-time employee of the Department who

possesses requisite qualifications and is so certified pursuant to ORS 181.651.

(23) "Public or private safety agency" means any unit of state or local government, a special purpose district or a private firm which provides, or has authority to provide, police, ambulance or emergency medical services.

(24) "Public safety personnel" and "Public safety professional" include corrections officers, emergency medical dispatchers, parole and probation officers, police officers, and telecommunicators.

(25) "Recall" means the administrative inactivation of a certificate issued by the Department until maintenance requirements are met and certification is restored.

(26) "Regulations" mean written directives established by the Department or its designated staff describing training activities and student procedures at the Oregon Public Safety Academy.

(27) "Reimbursement" is the money allocated from the Police Standards and Training Account, established by ORS 181.690, to a law enforcement unit meeting the requirements of these regulations to defray the costs of officer salaries, relief duty assignments, and other expenses incurred while officers attend approved training courses certified by the Department.

(28) "Reserve Officer" means an officer or member of a law enforcement unit:

(a) Who is a volunteer or who is employed less than full time as a peace officer commissioned by a city, port, school district, mass transit district, county, county service district authorized to provide law enforcement services under ORS 451.010, Indian reservation, the Criminal Justice Division of the Department of Justice, the Oregon State Lottery Commission or the Governor or who is a member of the Department of State Police;

(b) Who is armed with a firearm; and

(c) Who is responsible for enforcing the criminal laws and traffic laws of this state or laws or ordinances relating to airport security.

(29) "Seasonal employment" means employment that can be carried on only at certain seasons or fairly definite portions of the year, with defined starting and ending dates based on a seasonally determined need.

(30) "Special assignment leave" is leave from the law enforcement officer's certifiable position, as defined in ORS 181.610(3), (5), (9), (13), (14), (18), for more than 90 days but less than two and one-half years, for such duties as determined by the law enforcement unit administrator. Examples of such leave include, but are not limited to, strategic planning, budget preparation, special task force, or other similar duties.

(31) "Staff" are those employees occupying full-time, part-time, and/or temporary positions with the Department.

(32) "Telecommunicator" means any person employed as an emergency telephone worker as defined in ORS 243.736 or a public safety dispatcher whose primary duties are receiving, processing and transmitting public safety information received through a 9-1-1 emergency reporting system as defined in ORS 401.720.

(33) "Temporary employment" means employment that lasts no more than 90 consecutive calendar days and is not permanent.

(34) "The Act" refers to the Public Safety Standards and Training Act (ORS 181.610 to 181.715).

(35) "Waiver" means to refrain from pressing or enforcing a rule.

Stat. Auth.: ORS 181.640

Stats. Implemented: ORS 181.640

Hist.: PS 12, f. & ef. 12-19-77; PS 1-1979, f. 10-1-79, ef. 10-3-79; PS 1-1983, f. & ef. 12-15-83; PS 1-1985, f. & ef. 4-24-85; Renumbered from 259-010-0010, PS 1-1990, f. & cert. ef. 2-7-90; PS 2-1995, f. & cert. ef. 9-27-95; PS 2-1996, f. 5-15-96, cert. ef. 5-20-96; PS 3-1997, f. 3-20-97, cert. ef. 3-25-97; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 7-2000, f. & cert. ef. 9-29-00; BPSST 11-2000, f. 11-13-00, cert. ef. 11-15-00; BPSST 22-2002, f. & cert. ef. 11-18-02; DPSST 5-2004, f. & cert. ef. 4-23-04; DPSST 12-2006, f. & cert. ef. 10-13-06; DPSST 3-2007, f. & cert. ef. 1-12-07

259-008-0011

Minimum Standards for Employment as a Telecommunicator and Emergency Medical Dispatcher

(1) On or before the date of employment, each telecommunicator and emergency medical dispatcher shall be fingerprinted on standard applicant fingerprint cards.

(a) The hiring agency, if a public agency, is responsible for fingerprinting and shall forward two (2) cards to the Oregon State Police Identification Services Section for processing and assignment of identification number.

(b) If the hiring agency is a private agency it is responsible for fingerprinting and shall forward two (2) cards to the Department along with the appropriate fee.

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(A) Applicant's fingerprints will be retained and kept on file with the Oregon State Police Identification Services Section.

(B) The Oregon State Police Identification Services Section shall notify the Department and the employing agency of any criminal record disclosed through processing the applicant's fingerprint card.

(C) If any procedural change is made by either the Federal Bureau of Investigation or the Oregon State Police Identification Services Section, the Department shall comply with the most current requirements.

(D) If the fingerprint clearance has not been obtained prior to submission of the application for certification, a criminal history affidavit provided by the Department shall be completed and returned to the Department by the applicant pending fingerprint clearance.

(2) Criminal Records. No telecommunicator or emergency medical dispatcher shall have been convicted:

(a) In this state or any other jurisdiction, of a crime designated under the law where the conviction occurred as being punishable as a felony or as a crime for which a maximum term of imprisonment of more than one (1) year may be imposed;

(b) Of violating any law involving the unlawful use, possession, delivery, or manufacture of a controlled substance, narcotic, or dangerous drug;

(c) In this state of violating any law subject to denial or revocation as identified in OAR 259-008-0070 or has been convicted of violating the statutory counterpart of any of those offenses in any other jurisdiction.

(3) Moral Fitness (Moral Character). All telecommunicators and emergency medical dispatchers must be of good moral fitness.

(a) For purposes of this standard, lack of good moral fitness means conduct not restricted to those acts that reflect moral turpitude but rather extending to acts and conduct which would cause a reasonable person to have substantial doubts about the individual's honesty, fairness, respect for the rights of others, or for the laws of the state and/or the nation.

(b) The following are indicators of a lack of good moral fitness:

(A) Illegal conduct involving moral turpitude;

(B) Conduct involving dishonesty, fraud, deceit, or misrepresentation;

(C) Intentional deception or fraud or attempted deception or fraud in any application, examination, or other document for securing certification or eligibility for certification;

(D) Conduct that is prejudicial to the administration of justice;

(E) Conduct that adversely reflects on his or her fitness to perform as a telecommunicator or emergency medical dispatcher. Examples include but are not limited to: Intoxication while on duty, untruthfulness, unauthorized absences from duty not involving extenuating circumstances, or a history of personal habits off the job which would affect the telecommunicator or emergency medical dispatcher's performance on the job which makes the telecommunicator or emergency medical dispatcher both inefficient and otherwise unfit to render effective service because of the agency's and/or public's loss of confidence in the telecommunicator or emergency medical dispatcher's ability to perform competently.

(c) If reliable evidence is received by the Board or Department that a telecommunicator or emergency medical dispatcher lacks good moral fitness, a rebuttable presumption will be raised that the telecommunicator or emergency medical dispatcher does not possess the requisite moral fitness to be a telecommunicator or emergency medical dispatcher. The burden shall be upon the telecommunicator or emergency medical dispatcher to prove good moral fitness.

(4) Education:

(a) Applicants for the position of a telecommunicator or emergency medical dispatcher will be required to furnish documentary evidence of one of the following:

(A) High School diploma; or

(B) Successful completion of the General Educational Development (GED) Test.

(i) For the purpose of determining high school graduation level as required by these rules, the applicant must have achieved a score no less than that required by the Oregon Board of Education before issuing an Oregon GED certificate.

(ii) Applicants holding a GED from another state may be required to obtain an Oregon certificate at the discretion of the Department.

(b) Evidence of the above shall consist of official transcripts, diplomas, or GED test report forms. Other documentation may be accepted, at the discretion of the Department.

(5) Reading and Writing Standard. Before beginning basic telecommunicator or Emergency Medical Dispatcher (EMD) training or challenging basic telecommunicator training, each applicant shall provide evidence to DPSST that the applicant has attained a minimum of a 12th grade read-

ing and writing level in the English language. The hiring agency is responsible for administering a reading and writing instrument, approved by DPSST, and shall forward the results to DPSST on an application for training (Form F-5) prior to the applicant being admitted to basic telecommunicator or EMD training.

(6) Physical Examination. All Telecommunicators and Emergency Medical Dispatcher applicants must be examined by a licensed physician.

(a) The medical examination must be completed not more than 180 days prior to initial offer of employment, nor more than 90 days after initial offer of employment, and must conform to applicable standards of the Americans with Disabilities Act (ADA). Title 42 USC 12101.

(b) Individuals who have had a successfully completed physical examination (while at the same employer) and are selected for a certifiable position in a discipline in which the individual is not yet certified must complete and pass a new physical examination.

(c) The Department will not require a new physical examination when a Telecommunicator or Emergency Medical Dispatcher obtains employment, or re-employment, in the same discipline if the Telecommunicator or Emergency Medical Dispatcher:

(A) Has had a successfully completed a physical examination, and

(B) Is currently certified; or

(C) Is currently employed full-time in another jurisdiction and has successfully completed a comparable physical examination in that jurisdiction.

(d) Notwithstanding subsection (c), a medical examination may be required by a hiring agency at its discretion.

(e) Telecommunicator and Emergency Medical Dispatcher applicants must meet the following criteria:

(A) Visual Acuity. Corrected vision must be at least 20/30 (Snellen) when tested using both eyes together.

(B) Color Vision. Red or green deficiencies may be acceptable, providing the applicant can read at least nine (9) of the first thirteen (13) plates of the Ishihara Test (24 Plate Edition). Applicants who fail the Ishihara test can meet the color vision standard by demonstrating that they can correctly discriminate colors via a field test conducted by the employer and approved by DPSST.

(C) Peripheral Vision. Visual Field Performance must be 120 degrees in the horizontal meridian combined.

(f) Applicants for the position of Telecommunicator or Emergency Medical Dispatcher must have sufficient hearing in both ears to perform essential tasks without posing a direct threat to themselves or others. The applicant must meet National Emergency Number Association (NENA) hearing standard 54-002 (June 10, 2006).

(g) Applicants for the position of Telecommunicator or Emergency Medical Dispatcher must be able to use vocal cords and have significant speaking ability to perform speaking-related essential tasks.

(7) If further medical examination is required, it will be at the expense of the applicant or the hiring authority.

(8) All Telecommunicator and Emergency Medical Dispatcher applicants must submit a current-version DPSST Medical Examination Report for Telecommunicators and Emergency Medical Dispatchers (DPSST Form F-2T), or a medical report completed by a licensed physician containing at a minimum the information on Form F-2T. This Report will be furnished to the examining physician by the hiring agency.

(9) A copy of the Medical Examination Report must be sent to the Department prior to acceptance into a basic course, or any course where such report is required by the Department.

(10) The Department may require an applicant offered conditional employment to take a subsequent examination by a licensed physician of the Department's choice at the expense of the applicant or the hiring authority.

(11) The Board may waive any physical requirement where, in its judgment, the waiver would not be detrimental to the performance of a Telecommunicator or Emergency Medical Dispatcher's duties. The applicant may be required to demonstrate the ability to perform the essential functions of the job.

(12) A person or department head requesting a waiver of any physical requirement set forth in section (11) of this rule must submit the request to the Department in writing, accompanied by supporting documents or pertinent testimony which would justify the action requested. The supporting documents must include information pertinent to the waiver request. The Board or Department may require additional documentation or testimony by the person or department head requesting the waiver if clarification is needed. Any expense associated with providing documentation or testimony will be borne by the person requesting the waiver or the requesting

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agency. If the person requesting the waiver does not obtain employment within one (1) year from the date a waiver is granted, the waiver will be considered void. If the Board grants a waiver, it will be recorded on the certification and any subsequent certification unless removed by the Board upon proof that the condition prompting the waiver no longer exists.

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

Stat. Auth.: ORS 181.640

Stats. Implemented: ORS 181.640

Hist.: BPSST 1-2002, f. & cert. ef. 2-6-02; DPSST 1-2004, f. 1-16-04, cert. ef. 1-20-04;

DPSST 5-2004, f. & cert. ef. 4-23-04; DPSST 3-2007, f. & cert. ef. 1-12-07

259-008-0025

Minimum Standards for Training

(1) Basic Course:

(a) Except as provided in 259-008-0035, all law enforcement officers, telecommunicators, and emergency medical dispatchers shall satisfactorily complete the prescribed Basic Course, including the field training portion. The Basic Course and field training portion shall be completed within twelve months from the date of employment by corrections officers and within 18 months by police officers, parole and probation officers, telecommunicators, and emergency medical dispatchers.

(b) The field training program shall be conducted under the supervision of the employing department. When the field training manual is properly completed, the sign-off pages of the field training manual shall be forwarded to the Department. Upon the approval of the Department, the employee shall receive credit toward basic certification.

(c) Effective July 1, 2007, all police officers must satisfactorily complete the Department's physical fitness standard. The Department's physical standard is:

(A) Successful completion of the OR-PAT at 5:30 (five minutes and thirty seconds) when tested upon entry at the Basic Police Course; or

(B) Successful completion of the OR-PAT at 5:30 (five minutes and thirty seconds) when tested prior to graduation from the Basic Police Course.

(d) Law enforcement officers who have previously completed the Basic Course, but have not been employed as a law enforcement officer as defined in ORS 181.610, subsections (5), (13) and (14), and OAR 259-008-0005, subsections (7), (19), (23), and (24), during the last five (5) years or more, shall satisfactorily complete the full required Basic Course to qualify for certification. This requirement may be waived by the Department upon a finding that the applicant has current knowledge and skills to perform as an officer.

(e) Telecommunicators and emergency medical dispatchers who have previously completed the Basic Course, but have not been employed as a telecommunicator or EMD, as described in ORS 181.610(9) and (18) and 259-008-0005(14) and (32) for two and one-half (2-1/2) years or more, must satisfactorily complete the full required Basic Course to qualify for certification. This requirement may be waived by the Department upon finding that a Telecommunicator has current knowledge and skills to perform as a Telecommunicator. There is no waiver available for an emergency medical dispatcher.

(f) Previously employed law enforcement officers and telecommunicators, may challenge the Basic Course based on the following criteria:

(A) The department head of the applicant's employing agency shall submit the "challenge request" within the time limits set forth in the Oregon Revised Statutes and Oregon Administrative Rules.

(B) The applicant shall provide proof of successful completion of prior equivalent training.

(C) The applicant shall provide documentation of the course content with hour and subject breakdown.

(D) The applicant shall obtain a minimum passing score on all written examinations for the course.

(E) The applicant shall demonstrate performance at the minimum acceptable level for the course.

(F) Failure of written examination or demonstrated performance shall require attendance of the course challenged.

(G) The applicant shall only be given one opportunity to challenge a course.

(g) All law enforcement officers who have previously completed the Basic Course, but have not been employed as a law enforcement officer as described in ORS 181.610(5), (13) and (14), and OAR 259-008-0005(7), (19), (23) and (24) over two and one-half (2-1/2) but less than five (5) years shall complete a Career Officer Development Course if returning to the same discipline. This requirement may be waived after a staff determination that the applicant has demonstrated the knowledge and skills required for satisfactory completion of a Career Officer Development Course.

(h) Corrections and police officers who have not completed the Basic Course shall begin training at an academy operated by the Department within 90 days of their initial date of employment. A 30-day extension of this time period shall be granted by the Board or its designee upon receipt of a written statement of the reasons for the delay from the officer's employer. Any delays caused by the inability of the Department to provide basic training for any reason, shall not be counted as part of the periods set forth above (refer to ORS 181.665 and 181.652).

(i) Law enforcement officers who have previously completed a basic training course out of state while employed by a law enforcement unit, or public or private safety agency, may, upon proper documentation of such training and with approval of the Department, satisfy the requirements of this section by successfully completing a prescribed Career Officer Development Course or other appropriate course of instruction.

(j) Training on the law, theory, policies and practices related to vehicle pursuit driving and vehicle pursuit training exercises shall be included in the basic course for police officers.

(A) This requirement is subject to the availability of appropriate facilities and funding.

(2) Career Officer Development Course:

(a) All law enforcement officers who have not been employed as such for between two and one half (2 1/2) and five (5) years, shall satisfactorily complete the Career Officer Development Course approved by the Department.

(b) A law enforcement officer assigned to a Career Officer Development Course shall also complete the Board's field training program under the supervision of the employing department and submit to the Department a properly completed Field Training Manual. The Department may waive the Field Training Manual requirement upon demonstration by the employing agency that it is not necessary. See 259-008-0025(1)(b).

(c) The Department may also require successful completion of additional specified courses or remedial training.

(3) Supervision Course. All law enforcement officers, telecommunicators, and emergency medical dispatchers promoted, appointed, or transferred to a first-level supervisory position shall satisfactorily complete the prescribed Supervision Course within 12 months after initial promotion, appointment, or transfer to such position. This section shall apply whether the individual is promoted or transferred from within a department, or is appointed from an outside department, without having completed a prescribed Supervision Course, within the preceding five (5) years.

(4) Middle Management Course. All law enforcement officers, telecommunicators, and emergency medical dispatchers promoted, appointed, or transferred to a middle management position must satisfactorily complete the prescribed Middle Management Course within 12 months after initial promotion, appointment, or transfer to such position. This section shall apply whether the individual is promoted or transferred to a middle management position within a department, or employed from outside a department and appointed to a middle manager position without having completed a prescribed middle management course within the preceding five (5) years.

(5) Specialized Courses:

(a) Specialized courses are optional and may be presented at the Academy or regionally. The curriculum is generally selected because of relevancy to current trends and needs in police, corrections, parole and probation, telecommunications, and emergency medical dispatch fields, at the local or statewide level.

(b) Specialized courses may be developed and presented by individual departments of the criminal justice system, local training districts, a college, the Department, or other interested persons. The staff may be available to provide assistance when resources are not available in the local region.

(c) Police officers, including certified reserve officers, shall be trained on how to investigate and report cases of missing children.

(A) The above mandated training is subject to the availability of funds.

(d) Federal training programs shall be offered to police officers, including certified reserve officers, when they are made available at no cost to the state.

(6) Waiver. A person requesting a waiver of any course requirements is required to submit to the Department any supporting documents or pertinent expert testimony and evaluation requested. Any expense associated with providing such documentation, testimony or evaluation shall be borne by the person requesting the waiver or the requesting agency.

Stat. Auth.: ORS 181.640

Stats. Implemented: ORS 181.640

ADMINISTRATIVE RULES

Hist.: PS 12, f. & ef. 12-19-77; PS 1-1979, f. 10-1-79, ef. 10-3-79; PS 1-1982, f. & ef. 7-2-82; PS 1-1983, f. & ef. 12-15-83; PS 1-1985, f. & ef. 4-24-85; Renumbered from 259-010-0030, PS 1-1990, f. & cert. ef. 2-7-90; PS 2-1995, f. & cert. ef. 9-27-95; PS 5-1997, f. 3-20-97, cert. ef. 3-25-97; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 11-2000, f. 11-13-00, cert. ef. 11-15-00; BPSST 13-2001(Temp), f. & cert. ef. 10-26-01 thru 4-10-02; BPSST 2-2002, f. & cert. ef. 2-6-02; BPSST 8-2002, f. & cert. ef. 4-3-02; BPSST 15-2002, f. & cert. ef. 7-5-02; DPSST 14-2003, f. & cert. ef. 12-22-03; DPSST 5-2004, f. & cert. ef. 4-23-04; DPSST 3-2007, f. & cert. ef. 1-12-07

259-008-0064

Maintenance of Certification for Telecommunicators and Emergency Medical Dispatchers

(1) Basic Certification:

(a) All certified telecommunicators must participate in 12 hours of training annually. The training must be reported by July 1st of each year to DPSST on a **Form F-15T**. The content of the training is determined by the public or private safety agency administrator;

(b) The employing agency must maintain documentation of required telecommunicator training on each telecommunicator;

(c) The employing agency must notify the Department of all telecommunicators employed annually, and provide documentation as to the training status of all employed telecommunicators.

(2) Emergency Medical Dispatch Certification: All certified

Emergency Medical Dispatchers must complete four (4) hours of approved in-service training in Emergency Medical Dispatch annually. The in-service training must be reported by July 1st of each year to DPSST on a **Form F-15T**. The content of the training is determined by the public or private safety agency administrator.

(3) Those who are certified in both disciplines under OAR 259-008-0060(17) must report the required training to DPSST by July 1st of each year on a **Form F-15M**.

(4) Failure to comply with sections (1) and (2) of this rule will result in the recall of their certification by the Department.

(5) Recertification following a recall may be obtained at the approval of DPSST by submitting the following to DPSST:

(a) The employing agency head request recertification, along with a justification of why the training was not completed; and

(b) Verification that the missed training was completed.

(6) Notwithstanding paragraph (4) of this subsection, the failure of a telecommunicator or Emergency Medical Dispatcher to complete required maintenance training will not result in recall of certification if the telecommunicator or Emergency Medical Dispatcher is on authorized leave of absence from a public or private safety agency;

(7) The Department may grant an extension of time for completion of any required training or in-service training based upon good cause. A written request for an extension of time must be submitted to the Department by the agency head.

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

Stat. Auth.: ORS 181.640 & 181.644

Stats. Implemented: ORS 181.640 & 181.644

Hist.: PS 2-1995, f. & cert. ef. 9-27-95; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 1-1999, f. & cert. ef. 3-9-99; BPSST 5-2001, f. & cert. ef. 8-22-01; DPSST 3-2007, f. & cert. ef. 1-12-07

259-008-0065

Maintenance of Certification For Active Police Officers

(1)(a) The Board is responsible for setting the standards for active police officer training and the maintenance of certification. The Department is required to uphold those standards, while each agency determines what training will be provided to meet the standards.

(b) It is recommended that agencies provide training time and training opportunities to enable the active police officer to meet the required maintenance training hours.

(2) In order to maintain certification:

(a) All active police officers must maintain current First Aid/CPR certification.

(b) All active police officers must complete a total of at least eighty-four (84) hours of agency approved training every three (3) years. The eighty-four (84) hours will include:

(A)(i) Eight (8) CORE hours of training annually, from either the "Firearms" or "Use of Force" subject areas:

(ii) This training must be reported to the Department as twenty-four (24) hours of CORE training, once every three years.

(B)(i) Active police officers who hold a Supervision, Mid-Management or Executive certification, must complete at least twenty-four (24) hours of agency approved Leadership/Professional training, every three years:

(ii) This training must be reported to the Department as twenty-four (24) hours of agency approved Leadership/Professional training, once every three (3) years.

(C)(i) In addition to the CORE (A)(i) (required of all officers) and Leadership/Professional (B)(i) training hours (only required of officers with Supervision Certification and above), the remaining hours must be completed from the category of "General Law Enforcement" training in the recommended, but not limited to, subject areas of Law and Legal, Ethics and Communication, Investigations, Survival Skills, Child Abuse, Sex Abuse, and Elder Abuse:

(ii) These remaining training hours must be reported to the Department as "General Law Enforcement" training, once every three (3) years.

(3) Beginning on the date a police officer returns to work from any leave of absence, the following requirements must be met:

(a) Maintenance Training Requirements as described in section (7) or (8) of this section;

(b) Proof of current First Aid and CPR cards;

(c) Any other applicable requirement for employment, training or certification as specified in OAR 259-008-0010, 259-008-0025 or 259-008-0060.

(4)(a) The employing agency must maintain documentation of required training on each law enforcement officer;

(b) Any training submitted to the Department on an F-6 Course Roster will be entered into each officer's DPSST training record.

(c) Maintenance training submitted on an F-6 will be credited towards the number of hours required for each maintenance training category in section (2) above.

(d) On or after January 2 of each year, the Department will identify all police officers who are deficient in maintenance training according to Department records and provide notification to the officer and his/her employing agency.

(e) Within 60 days of receipt of the notification in (d) above, the agency must notify the Department of the training status of all police officers identified as deficient in maintenance training by submitting a Form F-15M-Police to the Department, identifying the training completed during the previous three (3) year reporting period.

(A) Maintenance training hours reported to the Department on an F-15M-Police will be used solely to verify completion of maintenance training requirements and will not be added to the officer's DPSST training record.

(B) Failure to notify the Department of completion of the required training for officers with identified training deficiencies will result in a warning notification letter being sent to the agency head and the officer.

(C) A six (6) month extension to complete maintenance training requirements or submit an F-15M-Police will be automatically authorized for officers reporting maintenance requirements due on December 31, 2006.

(5) Failure to complete the training or submit the completed Form F-15M-Police, after the warning notification letter and before the six (6) month extension has expired, will result in the recall of the active police officer's certification.

(a) A police officer with a recalled certification cannot work in a certified position.

(b) Recertification following a recall may be obtained at the approval of the Department by submitting the following:

(A) The employing agency head request certification, along with an explanation of why the training was not completed; and

(B) Verification that the missed training was completed.

(c) After 2 1/2 years in a recalled status the police officer will be required to complete a Career Officer Development Course before s/he can be recertified.

(d) After over 5 years in a recalled status the police officer will be required to complete basic training in the appropriate discipline.

(6) Agency heads of the employing agency may document "excused leave" in extreme circumstances for not completing the annual requirements but must provide documentation as to the reason and indicate when the missed training was completed.

(7) Maintenance Training Requirements for Police Officers on Leave of Absence.

(a) A police officer who is on leave of absence for any period between 90 to 180 days will have the same maintenance training deadline as the date established prior to the officer's leave of absence date.

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(b) A police officer who is on leave of absence for more than 180 days, but less than one year will receive a one year extension from the maintenance training deadline established prior to the officer's leave.

(c) A police officer who is on leave of absence for more than one year, but less than 2 1/2 years will receive an extension of up to three years from the maintenance training deadline established prior to the officer's leave. The extension will be prorated, based on the duration of the officer's leave. Upon the officer's return to work, the officer must complete the mandatory eight hours of annual firearms/use of force maintenance training within 30 days of the officer's return to work, as follows:

(A) Qualification with the appropriate duty weapon(s); and

(B) Completion of sufficient additional firearms and use of force refresher training to total eight hours.

(d) Failure to meet the requirements of subsection (c) of this section will result in a warning notification or recall of a police officer's certification as described in subsection (4) or (5) of this section.

(8) Maintenance Training Requirements for Previously Certified Police Officers.

(a) Any police officer who has not been employed as a police officer for between one year and five years, or whose certification has lapsed following 2 1/2 years in a leave status, must complete the mandatory eight hours of annual firearms/use of force maintenance training within 30 days of the officer's return to work, as follows:

(A) Qualification with the appropriate duty weapon(s); and

(B) Completion of sufficient additional firearms and use of force refresher training to total eight hours.

Stat. Auth.: ORS 181.652, 181.653 & 181.667

Stats. Implemented: ORS 181.652, 181.653 & 181.667

Hist.: PS 1-1990, f. & cert. ef. 2-7-90; PS 2-1995, f. & cert. ef. 9-27-95; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 22-2002, f. & cert. ef. 11-18-02; BPSST 9-2003, f. & cert. ef. 4-22-03; DPSST 11-2006(Temp), f. & cert. ef. 8-15-06 thru 2-1-07; DPSST 13-2006, f. & cert. ef. 10-13-06; DPSST 3-2007, f. & cert. ef. 1-12-07

259-008-0085

Certification of Courses and Classes

(1) The Department will certify state mandated courses and classes deemed adequate to effectively teach one or more approved public safety subject(s) to public safety professionals.

(2) Certification will be based on the evaluation of course curriculum or subjects for instruction, instructor qualifications, facilities for instruction, and method of instruction. The Department may cause inspections to be made pursuant to ORS 181.640(2).

(3) Facilities and equipment used for certified training must be accessible to all interested and qualified individuals.

(4) The Department recognizes courses at two levels: Content and Topical.

(a) Content level courses require a student demonstration of acquired knowledge, skill, or ability. Agencies, organizations, or individuals requesting course certification at the content level must submit an Application for Certification of Course (DPSST Form F-20), accompanied by clearly-defined performance objectives, test questions or evaluation criteria, and evidence of instructor certification as provided in OAR 259-008-0080. Applications received later than thirty (30) calendar days prior to the start of the course, will not be certified at the content level.

(b) Topical courses are non-mandated courses that are informational in nature. The Department does not certify topical courses.

(5) The Department must certify courses of instruction prior to course completion, or may approve exceptions to this requirement under documented unique circumstances. Records of attendance for training must be maintained by the entity conducting the training.

(6) The Department will notify the requester, in writing, of the denial or approval of course certification.

(7) Course rosters must be completed, indicating the actual number of hours attended by each student. Course rosters must also indicate whether each student passed or failed. Rosters must be returned to the Department within thirty (30) calendar days of course completion; otherwise, the Department may decertify the course.

(8) It is the responsibility of the requesting agency, organization, or individual, to:

(a) Oversee the preparation of curriculum and to insure its compliance with the requirements of the Department;

(b) Obtain a facility and instructor(s) to be used for the course, and insure their compliance with the requirements of the Department;

(c) Develop rules and regulations governing the operation of the facility and the conduct of the trainees;

(d) Administer the course;

(e) Maintain an accurate record of attendance; and

(f) Maintain all forms required by the Department, forwarding them within the stipulated time period.

(9) Once a course is certified, it remains certified for unlimited delivery during that calendar year, unless there is a significant change in course content, number of hours or instructor(s); or unless it is decertified by the Department as provided in section (7) and (11) of this rule. The Department must be notified of significant changes.

(10) All course certification will expire on December 31 of each year. Agencies, organizations or individuals must request recertification to continue a course into a new calendar year.

(11) The Department may decertify a course whenever that course is deemed inadequate. The course may be recertified by the Department when satisfactory proof has been presented to the Department that the deficiencies have been corrected.

(12) Any law enforcement unit or public or private public safety agency, or any college, university, or academy may align their training or education programs with the standards set by the Department (OAR 259-008-0025) and apply for course certification in the manner described in section (4) of this rule.

(13) Unless written approval is granted otherwise, any course that has been declared mandatory by the Department shall require a minimum number of training hours in each specific subject that constitutes the course, as determined and modeled by the course being offered at the Oregon Public Safety Academy.

(14) Effective January 1, 2007, the department may not accredit any police training program provided by a public safety agency in Oregon or any educational program as equivalent to the minimum training provided by the Department and required for basic certification as a police officer.

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

Stat. Auth.: ORS 181.640 & 181.650

Stats. Implemented: ORS 181.640 & 181.650

Hist.: PS 12, f. & cert. ef. 12-19-77; PS 1-1983, f. & cert. ef. 12-15-83; Renumbered from 259-010-0065, PS 1-1990, f. & cert. 2-7-91; PS 2-1995, f. & cert. ef. 9-27-95; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 15-2001(Temp), f. & cert. ef. 10-26-01 thru 4-5-02; BPSST 9-2002, f. & cert. ef. 4-3-02; BPSST 22-2002, f. & cert. ef. 11-18-02; DPSST 3-2007, f. & cert. ef. 1-12-07

Department of Revenue Chapter 150

Rule Caption: Board of Property Tax Appeals petitions; tax deferral or special assessments; mining claims; manufactured structures.

Adm. Order No.: REV 9-2006

Filed with Sec. of State: 12-27-2006

Certified to be Effective: 1-1-07

Notice Publication Date: 11-1-06

Rules Adopted: 150-307.080

Rules Amended: 150-308.875-(A), 150-308A.253, 150-309.024, 150-309.026(2)-(A), 150-309.067(1)(b), 150-309.100(2)-(B), 150-309.100(3)(C), 150-311.672(1)(a), 150-311.708, 150-457.450

Rules Repealed: 150-334.400

Subject: 150-307.080 is adopted to clarify property that is subject to property tax on unpatented mining claims on federal lands.

150-308.875-(A) is amended to clarify and provide examples as to who qualifies as the "same owner" of both land and a manufactured structure for property tax purposes.

150-308A.253 clarifies when application must be made to qualify home sites associated with land that is zoned as farm or forestland and qualified for special assessment of property taxes.

150-309.024 describes the records required to be kept by the county clerk related to Board of Property Tax Appeals meetings.

150-309.026(2)-(A) allows a board to consider petitions requesting an increase in one component of a property's value, provided the net result of the board's action does not result in an increase in total value of a property.

150-309.067(1)(b) describes persons the county governing body may not appoint to the pool of nonoffice-holding residents that may

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be selected by the county clerk to serve on a board of property tax appeals.

150-309.100(2)-(B) describes the process for withdrawing a petition made to a Board of Property Tax Appeals (BOPTA).

150-309.100(3)-(C) describes who may petition the Board of Property Tax Appeals (BOPTA) and who may sign a petition or represent certain property owners.

150-311.672(1)(a) specifies the property tax description information that the county must supply to the Department on the property tax deferral application. Proposed amendments recognize a statutory change in who maintains certain information and how it is accessed.

150-311.708 specifies the property tax description information that the bonding district must supply to the department on the application for deferral of special assessment. Proposed amendments recognize a statutory change in who maintains certain information and how it is accessed.

150-457.450 clarifies how property taxes collected and excess urban renewal amounts are to be processed and distributed to comply with ORS 457.450 when an agency is required to notify the assessor to stop division of tax for a plan. The amendments being proposed update the rule to account for situations where multiple counties distribute taxes to an urban renewal agency for a plan.

150-334.400 is repealed following repeal of ORS 334.400.

Rules Coordinator: Debra L. Buchanan—(503) 945-8653

150-307.080

Taxation of Property Associated with Mining Claims on Federal Land

(1) A mining claim filed with the United States Bureau of Land Management (BLM) conveys a right of possession and right to extract minerals under conditions set forth by those agencies. BLM issues an identification number to recognize unpatented mining claims.

(2) An unpatented mining claim allows the claimant limited use of land owned by the United States government.

(a) The unpatented mining claim including the land and minerals is exempt from property tax as required by ORS 307.080. Land includes site developments that are so intertwined as to be inseparable from the land as defined in OAR 150-307.010(1) and roads as described in ORS 308.236.

(b) All rights and interests associated with an unpatented mining claim, including but not limited to the right to possess, use, or access the land, are exempt from property tax.

(c) Improvements, machinery and buildings on an unpatented mining claim are subject to property tax.

(d) Annual filing fees, maintenance payment fees, maintenance payment fee waiver certification (small miner's waiver), a notice of intent to hold, or assessment work notices (proof of labor) are also exempt from property tax unless such labor or fees increase the real market value of taxable improvements to the property.

(3) A patented mining claim issued by the United States government confers ownership, rights, privileges, immunities and appurtenances to the claimant. A patented mining claim is subject to property tax as described in ORS 308.115.

(4) Taxable personal property must be reported to the assessor in the county in which the property is located each year. This requirement is further described in ORS 307.190, 308.105, 308.210, 308.250, 308.285 and 308.290.

(a) Except as otherwise specifically provided, all taxable personal property must be reported for taxation in the county where it is located (situs) as of 1:00 am on the first day of January each year.

Example 1: A taxpayer resides in County A and has a mining claim in County B. The mining equipment is kept at taxpayer's residence when not in use on the claim during the winter months. It is located in the taxpayer's garage on January 1st at 1:00 am. The taxpayer must report the mining equipment in County A.

(b) The assessor will provide a Confidential Personal Property Return for purposes of reporting taxable personal property. The return is due in the office of the assessor by March 1 each year.

(c) Personal property may be assessed in the name of the owner or of any person having possession or control of the property.

(d) The assessor must cancel the personal property assessment for any taxpayer whose taxable personal property in the county has a total assessed value (AV) below a threshold value. The Department of Revenue recomputes the threshold value annually under ORS 308.250(4). Canceling the assessed tax in one year does not relieve the taxpayer from the annual filing requirement for any other tax year.

Example 2: A taxpayer garages movable machinery used on a mining claim at her residence in County A but leaves tools and small equipment in a shed at the mining claim located in County B. The value of taxable personal property in County A on January 1 is \$12,000 and the value of taxable personal property in County B is \$1,600. The taxpayer must report the personal property in both County A and County B. The Department calculated the threshold value at \$13,000 for this assessment year. The assessor in each county will cancel the tax owing for the year since the value of the property in the assessor's respective county is under the threshold value.

(e) Pursuant to ORS 307.190(1), personal property mining equipment owned or held by an individual solely for personal use, benefit, and enjoyment is exempt from taxation.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 307.080

Hist.: REV 9-2006, f. 12-27-06, cert. ef. 1-1-07

150-308.875-(A)

Manufactured Structure Classified as Real or Personal Property

(1) When the records in the assessor's office or the ownership document issued by Building Codes Division of the Department of Consumer and Business Services (DCBS) do not identify the same ownership for a manufactured structure as for the land upon which the structure is located, the assessor must classify the manufactured structure as personal property. However, if the taxpayer submits documentation establishing that the ownership of the manufactured structure and land upon which the structure is located is the same, the assessor must classify the manufactured structure as real property.

Example 1: The land is in the name of Pat Public, Inc., a corporation, and the manufactured structure is in the name of Pat Public. Because a corporation is a different legal entity than an individual, the ownership is not the same, so the manufactured structure must be classified as personal property.

Example 2: A husband and wife are owners of a parcel of land upon which a manufactured structure is located. The ownership document for the manufactured structure is in the husband's name only. The ownership is not the same and the manufactured structure must be classified as personal property.

Example 3: Pat Public owns a manufactured structure and is buying on contract the parcel of land upon which the structure is located. For purposes of ORS 308.875 the ownership is the same and the manufactured structure must be classified as real property.

(2) When the owner of a manufactured structure has a leasehold estate of 20 years or more, and the lease specifically permits the owner to record that lease in the county deed records, the owner may complete an application as prescribed by DCBS to have the home classified as real property. If the assessor determines that the manufactured structure qualifies for recording as required by ORS 446.626, and the lease has subsequently been recorded in the county deed records, the assessor must then classify the home as real property.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 308.875

Hist.: RD 11-1990, f. 12-20-90, cert. ef. 12-31-90; RD 6-1994, f. 12-15-94, cert. ef. 12-30-94; RD 5-1996, f. 12-23-96, cert. ef. 12-31-96; REV 9-2006, f. 12-27-06, cert. ef. 1-1-07

150-308A.253

Application for Specially Assessed Homesite

(1) An annual application must be filed with the assessor on or before April 15 of each year to receive the special assessment on a qualified homesite associated with a farm lot or parcel in a non-exclusive farm use (non-EFU) zone.

(2) An application is not required to receive the special assessment on a qualified homesite situated on:

(a) A farm use lot or parcel in an exclusive farm use (EFU) zone;

(b) A forestland lot or parcel in an EFU, forest use, or mixed farm and forest use zone and classified by the assessor as highest and best use forestland, designated forestland, or small tract forestland (STF); or

(c) A lot or parcel that is subject to a wildlife habitat special assessment.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 308A.253

Hist.: REV 11-2000, f. 12-29-00, cert. ef. 12-31-00; REV 9-2006, f. 12-27-06, cert. ef. 1-1-07

150-309.024

Record of Board of Property Tax Appeals Meetings

An administrative record of the proceedings of the board of property tax appeals must be kept by the county clerk.

(1) The record must be kept in a manner that meets the retention requirements of OAR chapter 166.

(a) The record of board proceedings may be either a written summary or audio recording.

(b) The records must be organized in a manner that facilitates retrieval of a particular proceeding such as by date of meeting, name of petitioner, or assigned number.

(c) The record may be maintained as a separate record called Board of Property Tax Appeals Proceedings.

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(2) The administrative record of the board must include, but is not limited to:

(a) A copy of the order appointing board members to the pools described in ORS 309.067 or a copy of the minutes of the meeting of the county governing body during which the pools were appointed;

(b) Oaths of office of members;

(c) Verification of training;

(d) Designation of legal counsel, if appropriate;

(e) Affidavit of publication of notice of session and copies of all published notices;

(f) Record of appointment of board appraiser, if applicable;

(g) Daily or weekly agendas; and

(h) Summary of actions required by OAR 150-309.360.

(3) The individual record of each meeting held during which the board makes a decision or obtains material that will be used in making a decision, must include, but is not limited to:

(a) The date of the meeting;

(b) A list of those present, including all members and any person who presents evidence;

(c) The substance of any discussion on any matter;

(d) All material presented as evidence;

(e) All motions and who made them;

(f) Results of all votes and how each member voted;

(g) Petitions, marked with date received and assigned number;

(h) Authorizations to represent or powers of attorney;

(i) Defective petition notices, if applicable;

(j) Hearing notices, if applicable;

(k) The board's order, which must contain the original or facsimile signatures, including orders issued pursuant to stipulations filed at or after the time the board convenes;

(L) Stipulations filed at or after the time the board convenes;

(m) Stipulations filed with the clerk of the board under ORS 308.242(3); and

(n) Requests to withdraw a petition. Publications: The publication referred to or incorporated by reference in this rule is available from the Department of Revenue pursuant to ORS 183.360(2) and 183.355(6).

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 309.024

RD 8-1992, f. 12-29-92, cert. ef. 12-31-92; RD 6-1993, f. 12-30-93, cert. ef. 12-31-93; RD 9-1997, f. & cert. ef. 12-31-02, Renumbered from OAR 150-309.012(5); REV 12-2004, f. 12-29-04, cert. ef. 12-31-04; REV 9-2006, f. 12-27-06, cert. ef. 1-1-07

150-309.026(2)-(A)

Limitations on Increase in Value by Board of Property Tax Appeals

(1) The jurisdiction of the board of property tax appeals, as an administrative body established by statute, is limited to those actions specifically granted by statute.

(2) The board's jurisdiction does not include appeals to increase the overall value of the property because the statute specifies that the board may only hear petitions to reduce the value of property. When the board receives petitions requesting increases in the value of property, the board must act on the petitions in the following manner:

(a) If the board receives a petition requesting an increase in the total value of property, the board must dismiss the petition for lack of jurisdiction.

(b) When a petition is filed that requests an increase in the land or improvement component, the board may increase that component provided the change does not result in an increase to the total value of the property.

(3) When the board receives petitions requesting decreases in the value of property as described below, the board must act on the petitions in the following manner:

(a) When a petition is filed requesting a reduction in total value without specifying a reduction in the value of either the land or the improvements component, the board may increase or decrease either component provided the net result sustains or reduces the total value of the property.

(b) When a petition is filed requesting a reduction in one component of the property's value and no change in the other component, the board may only act on the component for which the reduction is requested. If a component is not addressed in the petition, then the board must sustain the value for that component unless subsection (2)(a) of this rule applies.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 309.026

Hist.: RD 9-1989, f. 12-18-89, cert. ef. 12-31-89; RD 8-1992, f. 12-29-92, cert. ef. 12-31-92, Renumbered from 150-309.026(2)(e); RD 8-1992, f. 12-29-92, cert. ef. 12-31-92; RD 9-1997, f. & cert. ef. 12-31-97; Renumbered from 150-309.026(2), REV 5-2004, f. 7-30-04, cert. ef. 7-31-04; REV 9-2006, f. 12-27-06, cert. ef. 1-1-07

150-309.067(1)(b)

Appointees to Nonoffice-holding Pool for Board of Property Tax Appeals

A county governing body may not appoint any person to the pool described in ORS 309.067(1)(b) who is:

(1) A member of the county governing body;

(2) A member of the governing body of any taxing district within the county;

(3) An elected official within the county;

(4) A person employed in or hired by the county or any taxing district within the county;

(5) A former county assessor, or any appointee acting in the place of the assessor, that held the office or appointed position during the tax year subject to appeal to BOPTA; or

(6) A person previously employed in or hired by the office of the assessor during the tax year subject to appeal to BOPTA.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 309.067

Hist.: RD 6-1993, f. 12-30-93, cert. ef. 12-31-93; RD 6-1994, f. 12-15-94, cert. ef. 12-30-94, Renumbered from 150-309.010(1)-(d); RD 9-1997, f. & cert. ef. 12-31-97; REV 9-2006, f. 12-27-06, cert. ef. 1-1-07

150-309.100(2)-(B)

Withdrawing Petitions Filed with a Board of Property Tax Appeals

(1) For purposes of this rule, 'petitioner' and 'representative' have the meaning given in OAR 150-309.100(3)-(C).

(2) A petition filed with a board of property tax appeals may be withdrawn as described below for any reason prior to the time the board issues the order for the petition. A request for withdrawal must be in writing and filed with the clerk of the board.

(3) A petition signed by a petitioner may be withdrawn by:

(a) The petitioner; or

(b) A representative, if the representative provides written authorization signed by the petitioner after the date the petition was signed.

(4) A petition signed by a representative may be withdrawn by:

(a) The petitioner;

(b) The representative who signed the petition; or

(c) Another person representing the petitioner if that representative provides written authorization signed by the petitioner after the date the petition was signed by the original representative.

(5) The board must issue an order of dismissal for each petition for which a request for withdrawal has been submitted unless a stipulation has been filed under ORS 308.242(3) prior to the time the board convenes.

(6) The clerk of the board must keep the request for withdrawal and the board's order in the administrative record of the board described in OAR 150-309.024.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 309.100

Hist.: RD 9-1989, f. 12-18-89, cert. ef. 12-31-89; RD 8-1991, f. 12-30-91, cert. ef. 12-31-91; RD 9-1997, f. & cert. ef. 12-31-97; Renumbered from 150-309.100(1), REV 10-2002, f. & cert. ef. 12-31-02; REV 12-2004, f. 12-29-04, cert. ef. 12-31-04; REV 9-2006, f. 12-27-06, cert. ef. 1-1-07

150-309.100(3)-(C)

Those Authorized to Sign Petitions to the Board of Property Tax Appeals (BOPTA)

(1) For purposes of appeals filed with BOPTA,

(a) "Petitioner" means an owner of the property or person with an interest in the property that obligates the person to pay taxes imposed on the property.

(b) "Representative" means a person described in section (4) or (5) of this rule.

(2) If the petitioner is a business or other legal entity, a person who can legally bind the business or other legal entity may sign the petition. For example:

(a) For a corporation: officers such as president, vice-president, secretary, treasurer, CEO, or managing officer.

(b) For a limited liability company (LLC): a member or the manager of an LLC.

(c) For a church: a pastor, rector, deacon, president of the board, or senior board member.

(d) For an association: the president or managing officer.

(e) For a partnership: a general partner.

(f) For a sole proprietorship: the owner.

(g) For a trust: a trustee, managing member, or managing agent.

(h) For any business entity: an employee regularly employed in the tax matters of the business.

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(3) If the petitioner is a person who holds an interest in the property that obligates the person to pay the taxes imposed on the property, proof of the obligation must accompany the petition to the board. An interest that obligates the person to pay the taxes:

(a) Includes a contract, lease, or other intervening instrumentality; but,

(b) Does not include mortgage agreements in which the mortgagee (the company that holds the mortgage) agrees to pay the taxes.

(4) An attorney at law authorized to practice in Oregon may represent a petitioner. Written authorization to represent is not required. The attorney's assigned Oregon State Bar Association number must be included on the petition.

(5) The following persons may sign a petition and act as the petitioner's representative before BOPTA if they have written authorization from the petitioner or proper court appointment. The petition must be accompanied by a power of attorney, court appointment, or other signed authorization that specifically grants that person the authority to represent the petitioner in tax matters.

(a) Any relative of an owner of the property. For purposes of this rule, the term "relative" means any of the following:

(A) A spouse;

(B) A son, grandson, daughter, granddaughter, stepson or stepdaughter;

(C) A brother, brother-in-law, sister, sister-in-law, stepbrother, or step-sister;

(D) A father, mother, stepfather, stepmother, or grandparent;

(E) A nephew or niece; or

(F) A son-in-law, daughter-in-law, father-in-law or mother-in-law.

(b) A person duly qualified to practice as a certified public accountant or public accountant in the State of Oregon. The accountant's Oregon certificate or license number must be included on the petition.

(c) A legal guardian or conservator who is acting on behalf of an owner of the property.

(d) A real estate broker or principal real estate broker licensed under ORS 696.022.

(e) A state certified appraiser or state-licensed appraiser licensed under ORS 674.310 or an appraiser registered under ORS 308.010.

(f) The lessee of the property.

(g) A person who holds a general power of attorney signed by an owner of the property. The person filing the petition must provide a copy of the general power of attorney with the petition.

(6) A board must issue a formal order dismissing any petition it receives that is not signed by a person authorized under ORS 309.100 or this rule.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 309.100

Hist.: Hist.: RD 9-1984, f. 12-5-84, cert. ef. 12-31-84; RD 16-1987, f. 12-10-87, cert. ef. 12-31-87; RD 9-1989, f. 12-18-89, cert. ef. 12-31-89, Renumbered from 150-309.100(2)(c); RD 8-1991, f. 12-30-91, cert. ef. 12-31-91; RD 2-1992, f. 5-28-92, cert. ef. 6-1-92; RD 6-1993, f. 12-30-93, cert. ef. 12-31-93; RD 6-1994, f. 12-15-94, cert. ef. 12-30-94; RD 1-1995, f. 12-29-95, cert. ef. 12-31-95; RD 9-1997, f. & cert. ef. 12-31-97; REV 8-1998, f. 11-13-98, cert. ef. 12-31-98; REV 11-2000, f. 12-29-00, cert. ef. 12-31-00; Renumbered from 150-309.100(2)-(C), REV 10-2002, f. & cert. ef. 12-31-02; REV 6-2003, f. & cert. ef. 12-31-03; REV 9-2006, f. 12-27-06, cert. ef. 1-1-07

150-311.672(1)(a)

Data Requirements for Property Description on Tax Deferral Application

(1) The county assessor's office must complete the property description portion of the deferral application to include:

(a) The document or instrument number;

(b) Year recorded;

(c) Book and page number, if applicable;

(d) Assessor's account number;

(e) Code area and

(f) A description of the property as follows:

(A) For a property that is platted, the lot and block number and the addition name if the property is in a recorded subdivision;

(B) For a property that is unplatted a description that includes township, range, section and acres;

(C) For a manufactured structure, the model year, make, and home number assigned by the Building Codes Division of the Department of Consumer and Business Services.

(2) The county assessor must send the department a copy of the recorded deed if requested by the department.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 311.672

Hist.: f. 10-14-92, ef. 12-31-92; REV 2-2002, f. 6-26-02, cert. ef. 6-30-02; REV 6-2003, f. & cert. ef. 12-31-03; REV 9-2006, f. 12-27-06, cert. ef. 1-1-07

150-311.708

Data Requirements for Property Description on Special Assessments Application

(1) The bonding district's officer must complete the property description portion of the application to include:

(a) The document or instrument number;

(b) Year recorded;

(c) Book and page number, if applicable;

(d) Assessor's account number;

(e) Code area; and

(f) A description of the property as follows:

(A) For a property that is platted, the lot and block number and the addition name if the property is in a recorded subdivision;

(B) For a property that is unplatted, a description that includes township, range, section, and acres.

(C) For a manufactured structure, model year, make, and home number assigned by the Building Codes Division of the Department of Consumer and Business Services.

(2) The county assessor must send the department a copy of the recorded deed, if requested by the department.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 308.708

Hist.: 10-14-92; REV 2-2002, f. 6-26-02, cert. ef. 6-30-02; REV 6-2003, f. & cert. ef. 12-31-03; REV 9-2006, f. 12-27-06, cert. ef. 1-1-07

150-457.450

Distribution of Remaining Tax Increment Funds

(1) For purposes of this rule "taxing district" includes only those districts that have ad valorem taxes divided with an urban renewal agency pursuant to ORS 457.440.

(2) An urban renewal agency must give the notice required by ORS 457.450(2) to each county assessor that had calculated division of tax amounts for the agency. As soon as practicable, each assessor that is notified will:

(a) Discontinue calculating division of tax and urban renewal special levy amounts under ORS 457.440 and 457.435 for the plan area; and

(b) Notify the county treasurer in writing to discontinue any future distributions to the agency for this plan from any division of tax or urban renewal special levy.

(3) When unexpended moneys in the agency special fund for a plan must be turned over to the county treasurer under ORS 457.450(3), the agency must apportion the moneys between each county that had calculated division of tax amounts for the agency in proportion to the amount received from each county for the plan in the last fiscal year before the notice required by ORS 457.450(2). The agency must turn over each amount that was apportioned to a county to that county's treasurer.

(4) After the county treasurer is notified by the assessor under section (2) of this rule about a plan or the county treasurer receives money from an urban renewal agency under ORS 457.450(3) regarding a plan, the treasurer must:

(a) Discontinue any future distributions to the agency for that plan from the division of tax and any special levy;

(b) Prepare a schedule to allocate for each taxing district that levied within that plan area on the last tax roll any unexpended moneys returned by the agency under ORS 457.450(3) plus any future moneys that otherwise would be distributed for that plan. Allocation percentages must be in proportion to the amounts calculated to be raised from division of tax from each taxing district for that plan on the last tax roll;

(c) Distribute to the taxing districts based on the schedule prepared under subsection (4)(b) of this rule any money that otherwise would be distributed for that urban renewal plan, or that has been returned by the agency for the plan under ORS 457.450(3); and

(d) If a special levy for that plan was combined with special levies for other plans of the same agency and tax had been imposed through one special levy rate, allocate and distribute special levy collections for that plan as follows:

(A) Prepare a schedule to allocate the combined special levy collections for the plans that continue to receive distributions and the plan that will no longer receive distributions. Using the last tax roll on which that plan's special levy was combined with other special levies of the agency, determine the allocation percentage for that plan by dividing that plan's portion of the combined special levy amount by the total special levy amount for the agency. Apply this allocation percentage to allocate an amount for that plan from collections of special levy amounts for any years that the combined special levy included an amount for that plan.

(B) Distribute the special levy amount allocated for that plan to the taxing districts instead of to the urban renewal agency based on the sched-

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ule prepared under subsection (4)(b) of this rule. Distribute the remainder of the special levy moneys to the urban renewal agency. [Table & Examples not included. See ED. NOTE.]

(5) Nothing in this rule is intended to prevent the county from using a different allocation procedure if it results in the same distribution to the taxing districts.

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

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 457.450

Hist.: REV 6-2001, f. & cert. ef. 12-31-01; REV 9-2006, f. 12-27-06, cert. ef. 1-1-07

Rule Caption: Tax exempt fringe benefits, 2d barcode mandate; refunds; claim of right; housekeeping changes.

Adm. Order No.: REV 10-2006

Filed with Sec. of State: 12-27-2006

Certified to be Effective: 1-1-07

Notice Publication Date: 11-1-06

Rules Adopted: 150-316.153

Rules Amended: 150-305.230, 150-314.385(3), 150-314.415(5)(a), 150-315.068, 150-315.156, 150-316.007-(B)

Rules Repealed: 150-314.415(1)(a)

Rules Ren. & Amend: 150-314.415(1) to 150-314.415

Subject: 150-316.153 is adopted to clarify which costs are and are not an "actual cost of moving and setting up the mobile home" for the purpose of the credit.

150-305.230 is amended to include same-gender domestic partners in the list of people eligible to represent a taxpayer before the department.

150-314.385(3) is amended to require that 2-D barcode be printed on all software-generated personal income tax returns that the department supports. In addition, to allow software companies to not print the decimal and cents when rounding dollar amounts.

150-314.415(5)(a) is amended to update carryback and carryforward periods to reflect the federal changes for loss years beginning with tax year 2001 and forward. Also updating year references to more current dates; updating citation references; and updating to current legislative style.

150-315.068 is amended to clarify that, for purposes of the 'claim of right' provisions under ORS 315.068, both the state and federal returns need to be recalculated to determine the tax liability that would have been owed had the income not been included on the return.

150-315.156 is updated to provide that in addition to crop gleanings, donations of crops by growers to food banks or other charitable organizations may qualify for a tax credit under ORS 315.156.

150-316.007-(B) is amended to provide guidance on taxation of fringe benefits where the benefit is received by a same-gender domestic partner.

150-314.415(1)(a) is repealed and all language from this rule is transferred into 150-314.415.

150-314.415(1) is amended and renumbered to 150-314.415 and coordinates and cross-references language with 150-305.220 relating to interest start dates.

Rules Coordinator: Debra L. Buchanan—(503) 945-8653

150-305.230

Representation of Taxpayers before the Department of Revenue

(1) Application of ORS 305.230. The provisions of ORS 305.230 apply to all administrative proceedings before the Department of Revenue. Only those individuals who qualify under ORS 305.230 and this rule may represent the taxpayer.

(2) Individuals Authorized to Represent by Department Rule. The following individuals may represent the taxpayer before the department unless the individual is prohibited from representing the taxpayer by other Oregon law:

(a) An adult immediate family member of the taxpayer may represent the taxpayer.

(b) The taxpayer's domestic partner as defined in OAR 150-316.007-(B) may represent the taxpayer.

(c) A regular full-time employee of an individual employer may represent the employer.

(d) A general partner or a regular full-time employee of a partnership may represent the partnership. For general representation rules for partnerships see OAR 150-305.242(2) and 150-305.242(5).

(e) An officer or a regular full-time employee of a corporation (including a parent, subsidiary, or other affiliated corporation), association, or organized group may represent the corporation, association, or organized group.

(f) A regular full-time employee of a trust, receivership, guardianship, or estate may represent the trust, receivership, guardianship, or estate.

(g) An officer or a regular employee of a governmental unit, agency, or authority may represent the governmental unit, agency, or authority in the course of his or her official duties.

(h) An individual may represent any individual or entity that is outside the United States before department personnel when such representation takes place outside the United States.

(i) An individual who prepares and signs a taxpayer's tax return as the preparer, or who prepares a tax return but is not required (by the instructions to the tax return or by rule) to sign the tax return, may represent the taxpayer during an examination of the tax year or period covered by that tax return. This provision does not permit such individuals to represent taxpayers, regardless of the circumstances, before conference officers, revenue agents, legal counsel or similar department employees.

(j) A taxpayer's authorized agent may represent the taxpayer in proceedings relating to the property tax assessment of designated utilities and companies by the Oregon Department of Revenue under ORS 308.505 through 308.665 and 308.805 through 308.820. For purposes of this rule, an "authorized agent" means a person who is authorized by a company assessed under ORS 308.505 to 308.665 and 308.805 to 308.820 to transact all business related to the filing or processing of an annual statement filed as required by ORS 308.525 or all business related to the filing of a request for a director's conference under ORS 308.595.

(k) Persons authorized to represent in an ad valorem property tax conference or proceeding under ORS 305.230(1)(d), any person licensed by the Oregon State Board of Tax Practitioners, and consulting foresters may represent a taxpayer in any proceeding with respect to taxes imposed under ORS Chapter 321. For purposes of this rule, "consulting forester" means a person who is engaged by the taxpayer to render expert or professional advice in forest management related matters.

(1) The director may, subject to restrictions imposed under other Oregon law, authorize an individual who is not otherwise eligible under this rule to represent a taxpayer before the department. The sole fact that an individual does not qualify under another section of this rule is not an adequate reason to request special permission to represent a taxpayer.

(3) The department, in its discretion, may revoke the authority to represent a taxpayer granted under section (2) of this rule.

(4) Representation by an Oregon Tax Matters Shareholder.

(a) When the treatment of S corporation items on a shareholder's return is consistent with the treatment of that item on the S corporation return and results in a deficiency, a tax matters shareholder may be designated to represent the corporation before the Department of Revenue in any conference or proceeding with respect to the administration of any tax on or measured by net income.

(b) An S corporation that elects to designate a tax matters shareholder as its authorized representative in proceedings before the department for issues relating to the S corporation adjustments on a Notice of Deficiency must make the designation as provided in this rule.

(c) The tax matters shareholder designated for Oregon purposes may be the federal tax matters shareholder or may be another shareholder, and must be a shareholder who is:

(A) A shareholder in the S corporation at some time during the taxable year to which the Notice of Deficiency pertains; or

(B) A shareholder in the S corporation at the time the designation is made.

(d) Information required. The S corporation must designate a tax matters shareholder by filing a signed statement with the department. The statement must:

(A) Identify the shareholders making the designation by name, address, and social security number;

(B) Identify the S corporation and the designated shareholder by name, address, and taxpayer identification number;

(C) Declare that the statement is a designation of a tax matters shareholder for the taxable year to which the Notice of Deficiency relates; and

(D) Authorize the tax matters shareholder as a qualified representative under ORS 305.230 and identify the taxable year(s) of authorization. The S corporation may authorize the tax matters shareholder to represent the

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shareholders for issues other than S corporation issues only by making the election with this authorization.

(e) Only one tax matters shareholder may be designated and authorized to represent the corporation for each examination at the S corporation level which results in a Notice of Deficiency to the corporation or the shareholders for adjustments related to S corporation items.

(f) If a notice explaining the S corporation adjustments is mailed by the department to the tax matters shareholder with respect to any S corporation taxable year, the tax matters shareholder must supply the department with the name, address, ownership percentage and taxpayer identification number of each person who was a shareholder in the S corporation at any time during the taxable year, unless that information was provided in the S corporation return for that year.

(g) A timely request for a conference filed with the department by the tax matters shareholder will be considered as an appeal of the S corporation adjustment, and all issues regarding treatment of S corporation items will be resolved in a single conference.

(h) Shareholders who do not designate a tax matters shareholder as provided in this rule may appeal their Notice of Deficiency by following the administrative remedies under ORS 305.265 and the related rules.

(i) **Binding Actions of the Tax Matters Shareholder.** The tax matters shareholder for Oregon will bind all shareholders who have made the designation under this section to all actions of the tax matters shareholder with respect to the proceedings between the department and the shareholder whose tax liability is in dispute. When appealing on behalf of the S corporation, the tax matters shareholder may exercise any administrative remedy before the department allowed by Oregon law except that all electing shareholders are considered to have appealed under the same action. Any shareholder who has designated a tax matters shareholder may participate in any level of the administrative proceedings.

Example: Assume an S corporation with 10 shareholders has been examined and each shareholder receives a Notice of Deficiency. If 8 shareholders designate a tax matters shareholder, their appeal will be heard collectively. If the tax matters shareholder requests a conference, the conference decision will apply to all 8 shareholders (all 8 shareholders may participate). The other 2 shareholders may appeal their cases individually because they did not make the election to be represented by the tax matters shareholder.

(j) Other actions of the tax matters shareholder that are binding on the shareholders who have made the designation include, but are not limited to:

(A) Consent to the extension of the statute of limitations regarding S corporation items with respect to all electing shareholders.

(B) Making a settlement offer to the department.

(C) Acceptance of a closing agreement with the department.

(D) Consent to time and place of any appeals proceedings.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 305.230

Hist.: 12-31-88; RD 8-1983, f. 12-20-83, cert. ef. 12-31-83; RD 5-1986, f. & cert. ef. 12-31-86; RD 2-1988, f. 1-11-88, cert. ef. 1-15-88; RD 1-1997(Temp), f. 6-13-97, cert. ef. 7-4-97 thru 12-31-97; RD 5-1997, f. 12-12-97, cert. ef. 12-31-97; REV 3-2005, f. 12-30-05, cert. ef. 1-1-06; REV 10-2006, f. 12-27-06, cert. ef. 1-1-07

150-314.385(3)

Standards for Substitute Tax Forms; Treatment of Forms Not Meeting the Standards; Treatment of Payments Received With Forms Not Meeting the Standards

(1) Definitions. For purposes of this rule:

(a) **Official form.** An official form is any payroll, income, or excise tax form prepared, printed, and distributed by or on behalf of the department pursuant to Oregon Revised Statutes (ORS) Chapters 310, 314, 315, 316, 317, 318, Lane Transit District (LTD) Ordinance 38, and Tri-County Metropolitan Transportation District (TRIMET) Ordinance 92.

(b) **Substitute form.** A substitute form is any payroll, income, or excise tax form authorized under ORS Chapters 310, 314, 315, 316, 317, 318, LTD Ordinance 38, or TRIMET Ordinance 92 that is intended to replace the official form.

(c) **Tax Return.** A tax return is a payroll, income, or excise tax form filed with the department by or on behalf of a taxpayer under the provisions of ORS Chapter 310, 314, 315, 316, 317, 318, LTD Ordinance 38, or TRIMET Ordinance 92.

(2) A tax return must be made on the department-prescribed forms, which may be obtained upon request from the department. Such forms are widely distributed, but a failure to receive any forms does not relieve the taxpayer from the responsibility to file any return required by statute.

(3) The department may accept a substitute form filed in lieu of an official form if the substitute form meets the standards set forth in this rule. It is the intent of the department to follow the National Association of Computerized Tax Processors (NACTP) standards as closely as is practical.

(4) **Substitute form standards.** A substitute form with or without optical character readable (OCR) scan lines must be a duplicate of the official form unless the variation is within the exceptions listed in section (5) of this rule. The overall format of substitute forms must match the format of official forms. Overall format includes graphics, location of lines, boxes, data entry symbols, spacing, 2-D barcode placement, and OCR scan line.

(a) A substitute form must be on paper of the same overall dimension (size) and weight and of a quality equal to or better than that used for the official form.

(b) Substitute forms and the filled-in data must be legible and must not have extra text or marks that do not appear on the official forms.

(c) The social security number on substitute forms must be separated by hyphens after the third and fifth digits.

(d) If the substitute form has OCR scan lines, black nonreflective ink in OCR-A font must be used for printing the scan line.

(e) Substitute forms must contain a 2-D barcode for tax years beginning on or after January 1, 2006 if the substitute form is:

(A) Software generated; and

(B) Used for personal income tax purposes under ORS Chapters 314, 315, or 316.

(5) Exceptions. The substitute form may differ from the official form with respect to the exceptions listed in this section. However, the difference may delay processing of the tax return.

(a) Official forms that are printed on colored paper may be reproduced in black ink on white paper.

(b) Official forms that use both sides of the paper may be reproduced on one side only of two successive pages.

(c) Reproductions of the data entry symbols may vary in size from that of the data entry symbols on the official form if the symbols conform to the following specifications:

(A) The data entry dot must be a filled circle (•) at least 1/16 inch in diameter and no larger than 1/8 inch in diameter centered vertically on the text line;

(B) The data entry symbols must not obstruct or overlap line numbers or captions; and

(C) The data entry symbols must be printed on the substitute form in the same position relative to the information to be data-entered as on the official form.

(d) All text on the official form that is larger in size than 14 point print may be reproduced on the substitute form in 14 point print.

(e) The boxes (data entry areas) printed on the official form for entry of the filled-in data may be reproduced on the substitute form without a vertical line provided to divide the dollar amount from the cents amount. If rounding an amount to the whole dollar, the amount may be printed without a decimal point and cents.

(f) Substitute forms that the department does not support in 2-D barcode format may be printed without 2-D barcode.

(6) Photocopies of official forms may be filed if the official form does not contain OCR printing.

(7)(a) Substitute forms must be approved by the department prior to use. Substitute forms that do not meet the requirements of this rule may not be filed in lieu of the official forms. The department may reject and return to the taxpayer tax returns using substitute forms that do not meet the requirements of this rule.

(b) A tax return that has been rejected under this rule does not meet the filing requirement of the applicable program. The taxpayer must file a tax return using an official form or a substitute form that meets the requirements of this rule in order to meet the filing requirement under the provisions of the personal income tax, corporate income tax and corporate excise tax programs; the filing requirement under the TRIMET self-employment tax and LTD programs; the filing requirement under ORS 314.724 for partnership returns; or the filing requirement under the Elderly Rental Assistance program. If the return is rejected, the taxpayer may be assessed penalty for failure to file a tax return as provided under ORS 314.400, 314.724 or as otherwise provided under Oregon law.

(8) If the department receives payment with a substitute form that does not meet the requirements of this rule, the department will treat the payment as an estimated tax payment under the provisions of ORS Chapters 314 or 316.

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

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 314.385

Hist.: RD 9-1987(Temp), f. & cert. ef. 7-8-87; RD 11-1987, f. & cert. ef. 11-1-87; RD 4-1991, f. 12-30-91, cert. ef. 12-31-91; RD 3-1995, f. 12-29-95, cert. ef. 12-31-95; REV 1-2005, f. 6-27-05, cert. ef. 6-30-05; Renumbered from 150-314.385(1)-(D), Rev 4-2005, f. 12-30-05, cert. ef. 1-1-06; REV 7-2006(Temp), f. & cert. ef. 9-29-06 thru 12-31-06; REV 10-2006, f. 12-27-06, cert. ef. 1-1-07

ADMINISTRATIVE RULES

150-314.415

Refunds Generally

(1) Refund Limitations – Time and Amount.

(a) If the amount of the tax imposed by the statute is less than the amount paid by the taxpayer and the taxpayer does not then owe any other tax or liability to the State of Oregon, such overpayment must be refunded. A refund may be made under ORS 314.415 in compliance with a claim for refund filed by the taxpayer under ORS 305.270 or by correction of the return by the department. To issue a refund based on an audit examination, an auditor's report showing the amount of refund must be completed and approved prior to the expiration of the applicable period set forth in the following paragraph.

(b) Except as provided in subsections (3), (4), (5) and (6) of ORS 314.415, a refund or credit may not be granted unless a correction by the department is approved or a claim is filed within three years after the return is filed, or within two years after part or all of the tax is paid, whichever period expires later. Under ORS 316.417(1) and 317.504, a return filed before the due date is considered as having been filed on the due date.

(c) If there is an amount due from the taxpayer, the refund otherwise allowable will be applied to the balance due. An appeal from an additional assessment paid by the taxpayer to stop the running of interest cannot be classed as a "refund" claim. Except as provided in ORS 314.415(5), the amount refunded cannot exceed the amount of tax paid during the applicable period of limitation before a correction by the department is approved or the filing of the claim.

Example: A taxpayer files a 2002 return on April 15, 2003, showing a tax due in the amount of \$100 and pays that amount at the time the return is filed. On April 1, 2006, an additional tax of \$50 is assessed by the department on the 2002 return and is paid by the taxpayer on May 1, 2006. Within two years the taxpayer files a claim for refund based on items not previously adjusted on the 2002 return. The refund claim shows an overpayment of \$75 of the total \$150 paid. The refund claim is limited to \$50, the sum paid within the open period preceding the filing of the claim.

(2) Interest Starting Date.

(a) The interest starting date for a refund of individual income tax, corporate excise tax, or corporate income tax is 45 days after the date the tax was paid, 45 days after the return was due, or 45 days after the original return was filed, whichever is later.

(b) The interest starting date for a refund not described in subsection (2)(a) of this rule is 45 days after the return was due or 45 days after the tax was paid, whichever is later.

(c) See OAR 150-305.220(2) Interest on Refunds for information about interest periods and interest rates.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 314.415

Hist.: 1958-59; 12-19;75; 12-31-77; 12-31-82; RD 10-1986, f. & cert. ef. 12-31-86; RD 12-1990, f. 12-20-90, cert. ef. 12-31-90; Renumbered from 150-314.415(1), REV 10-2006, f. 12-27-06, cert. ef. 1-1-07

150-314.415(5)(a)

Refunds; Net Operating Loss and Net Capital Loss Carryback Claims

(1) Application. For purposes of this rule, provisions applying to individuals also apply to estates and trusts.

(2) Extended period for refund claim.

(a) A special period of limitations is provided under ORS 314.415(5)(a) to claim a refund or credit attributable to an individual net operating loss or corporation net capital loss carryback. A refund claim for an individual net operating loss or corporation net capital loss carryback year must be filed within three years from the due date (including extensions) of the taxable year of the net operating loss or net capital loss which results in the carryback.

Example 1: Edward filed his 1996, 1997, 1998, 1999, and 2000 returns by their respective due dates. On March 15, 2003, Edward filed his 2001 return on which he claimed a net operating loss. The refund claims for the carryback years (1996 through 2000) must be filed by April 15, 2004, three years after the due date of the 2001 net operating loss year return.

(b) The provision allowing refunds of tax within two years of the date of payment is not extended.

Example 2: Assume the same facts as in Example 1 except that the original 2001 return was not filed until March 15, 2005, was filed as a paid return and did not claim a net operating loss. On June 15, 2005, Edward filed an amended return (refund claim) for 2001 to claim an additional business expense. The amended return creates a net operating loss for 2001. Edward is allowed a refund for the 2001 taxes paid within the two years preceding his refund claim. Refund claims for the net operating loss carryback years (1996 through 2000) must have been filed by April 15, 2004, three years after the due date of the 2001 net operating loss year return. The date of filing of the net operating loss claim (June 15, 2005) does not extend the date of filing of the refund claims for the carryback years beyond the three-year period.

(3) Carryback periods for individuals. In the case of an individual taxpayer's net operating loss:

(a) For tax years beginning before August 6, 1997, the net operating loss carryback period is generally three years and the carryforward period is fifteen years.

(b) For tax years beginning on or after August 6, 1997, the carryback period is generally two years and the carryover period is twenty years.

(c) For tax years beginning on or after January 1, 1998, a five year carryback period is allowed to claim a refund or credit attributable to a net operating loss for a farming business.

(d) For tax years beginning on or after January 1, 2001, the carryback period is generally five years and the carryover period is twenty years.

(e) For tax years beginning on or after January 1, 2003, the carryback period is generally two years and the carryover period is twenty years.

(4) Limitations on credit or refund.

(a) If a claim for a credit or refund is based on an overpayment attributable to an individual net operating loss or corporation net capital loss carryback, the credit or refund may exceed the amount of tax paid within three years of when the return was filed or within two years immediately preceding the filing of the claim but only to the extent the overpayment is attributable to the net operating loss or net capital loss carryback.

Example 3: Jake amended his timely filed 2002 return November 1, 2006 to claim a refund for a carryback arising from a 2004 net operating loss. In addition to reducing income for the net operating loss carryback, Jake claimed a subtraction for U.S. government interest and an additional exemption credit. The refund claim is limited to the portion of the overpayment attributable to the net operating loss carryback. The subtraction for interest and the additional exemption credit are outlawed by the period of limitations under ORS 314.415(2).

(b) If a claim for a credit or refund is based not only on an overpayment attributable to an individual net operating loss or corporation net capital loss carryback, but also on other items, the credit or refund may not exceed the sum of:

(A) The amount of the overpayment attributable to the individual net operating loss or corporation net capital loss carryback, and

(B) The balance of such overpayment not to exceed the amount of taxes paid within the periods provided in ORS 314.415(2)(a).

Example 4: Assume the same facts as in Example 3 except that Jake paid additional tax for the 2002 taxable year on May 1, 2005. He may receive a refund for any overpayment of taxes attributable to the net operating loss carryback plus any remaining balance of overpayment, but not in excess of the amount of any taxes paid for 2002 during the two years immediately preceding November 1, 2006, the date the claim was filed.

(c) Delinquent returns. If a taxpayer filed an original return after the three-year period for requesting a refund provided in ORS 314.415(2)(a), but amends the same return for an individual net operating or corporation net capital loss carryback within the period allowed by ORS 314.415(5)(a), a refund will be allowed. The refund will be limited to the amount of net tax liability shown on the original return. Any additional refund requested on the amended return is barred by ORS 314.415(2)(a).

Example 5: Chuck files his 2002 return on September 30, 2006, more than three years beyond the original due date of the return. His return showed tax liability of \$500 and he requested a refund of \$300 for overpayment of estimated tax. The refund was denied based on ORS 314.415(2)(a). On October 15, 2006, Chuck filed an amended 2002 return carrying back a 2005 net operating loss. Chuck requests a refund of \$800 since he filed within the additional three-year period allowed by ORS 314.415(5)(a). Chuck will receive a refund of \$500 which is attributable to the net operating loss carryback. The additional \$300 refund is not allowable based on ORS 314.415(2)(a).

(5) Treatment of carryover amounts.

(a) Although refunds for NOL years, individual net operating loss, or corporation net capital loss carryback years may be closed or limited under ORS 314.415 and this rule, the balance of any individual NOL or corporation net capital loss carryover amounts not fully absorbed in carryback years may be used in the computation of Oregon taxable income for all applicable carryover years to the same extent includable for federal.

Example 6: Jay filed his original 1998 return showing a net operating loss of \$20,000 on July 1, 2006. Refunds for the carryback years 1996 and 1997 and the carryforward years of 1999, 2000, 2001, and 2002 are barred by the statute of limitations. However, any portion of the net operating loss deduction not fully absorbed in those years may be used to determine Oregon taxable income for 2003 and later years in accordance with ORS 316.014 and the related rules. The limitation of the refunds for the closed years will not limit the carryover amounts to be used in subsequent years.

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

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 314.415

Hist.: RD 7-1989, f. 12-18-89, cert. ef. 12-31-89; RD 7-1991, f. 12-30-91, cert. ef. 12-31-91; RD 9-1992, f. 12-29-92, cert. ef. 12-31-92; RD 7-1993, f. 12-30-93, cert. ef. 12-31-93; RD 3-1995, f. 12-29-95, cert. ef. 12-31-95; REV 9-1999, f. 12-30-99, cert. ef. 12-31-99; Renumbered from 150-314.415(4)(a), REV 4-2005, f. 12-30-05, cert. ef. 1-1-06; REV 10-2006, f. 12-27-06, cert. ef. 1-1-07

150-315.068

Claim of Right

(1) Definitions. For purposes of ORS 315.068 and this rule:

(a) "Oregon tax" means tax imposed on taxable income before all refundable and nonrefundable Oregon credits and withholding, estimated tax payments, and other prepayments of tax.

ADMINISTRATIVE RULES

(2) For tax years beginning after December 31, 1997, Oregon law provides for recovery of state taxes imposed under Chapters 316, 317, or 318 on income received in one year that is repaid in a later year.

(3) *Qualifications.* To claim a credit against state tax, the taxpayer must meet the requirements of Internal Revenue Code section 1341.

(4) Calculation. For Oregon purposes, federal adjusted gross income, federal taxable income, and federal tax must be recomputed under Internal Revenue Code section 1341 prior to recomputing Oregon tax. The recomputed federal amounts are then used to recompute the Oregon tax for purposes of determining the claim of right credit or subtraction on the Oregon return. Oregon tax for the year of repayment is the lesser amount determined under Method 1 or Method 2:

(a) Method 1: The Oregon tax for the year of repayment after claiming a deduction for the repaid amount; or

(b) Method 2: The difference in Oregon tax determined without deducting the repayment and the Oregon tax determined after deducting the repayment. The credit is determined as follows:

(A) Step 1. Determine the Oregon tax (adjusted for any deficiency assessments or amended returns, or both) for the year the income was taxed without deducting the repaid income.

(B) Step 2. Refigure the Oregon tax (adjusted for any deficiency assessments or amended returns, or both) from the earlier year after deducting from income the amount that was repaid.

(C) Step 3. Subtract the amount in Step 2 from the amount in Step 1. The result is the credit.

(c) If using Method 1 results in less tax, deduct the amount of the repayment as an "other subtraction" on the Oregon return. If using Method 2 results in less tax, claim the credit by following the Oregon tax form instructions.

Example 1: For 1997, Jerry, a single individual, reported Oregon taxable income of \$40,000, including \$30,000 of pension income. His Oregon tax for 1997 was \$3,441. In 1998, Jerry was required to repay \$10,000 of the pension income. Without taking into account the repayment, his Oregon taxable income for 1998 was \$15,000 and his Oregon tax was \$1,193.

Under Method 1, Jerry figures his Oregon tax for 1998 as follows:

1998 Taxable income without deduction: \$15,000

Amount repaid: (10,000)

Taxable income after deducting amount repaid: \$5,000

1998 Oregon tax under Method 1: \$308

Under Method 2, Jerry figures his 1998 Oregon tax as:

Step 1: Tax on \$15,000 (year of repayment without deducting the amount repaid) \$1,193

Step 2: Tax paid in 1997 on \$40,000 \$3,441

Step 3: Tax payable in 1997 on \$30,000 (2,541)

Step 4: Claim of right credit (step 2 minus step 3) (900)

1998 Oregon tax under Method 2: \$293 Jerry's 1998 Oregon tax is \$293; the lesser amount computed under Method 1 or Method 2.

(5) Decrease in Oregon tax due to repaid income is not limited by tax liability for the year of repayment. If the decrease in tax for the earlier year is greater than the tax liability for the year repayment is made, the amount of such excess is considered an overpayment of tax.

Example 2: Same facts as Example 1, except that in 1998 Jerry was required to repay all of the pension income of \$30,000. He makes the Oregon tax calculations as follows:

Under Method 1, Jerry figures his Oregon tax for 1998 as follows:

1998 Taxable income without deduction: \$15,000

Amount repaid: (30,000)

Taxable income after deducting amount repaid: \$ 0

1998 Oregon tax under Method 1: \$ 0

Under Method 2, Jerry figures his 1998 Oregon tax as:

Step 1: Tax on \$15,000 (year of repayment without deducting the amount repaid): \$1,193

Step 2: Tax paid in 1997 on \$40,000: \$3,441

Step 3: Tax payable in 1997 on \$10,000: (741)

Step 4: Claim of right credit (step 2 minus step 3): (2,700) 1998 Oregon tax under Method 2: \$(1,507) Jerry is entitled to a claim of right credit of \$2,700 on his 1998 Oregon return. Because the claim of right credit is refundable, the excess credit of \$1,507 is treated as an overpayment of tax and is refunded or applied in the same manner as other tax overpayments.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 315.104

Hist.: REV 9-1999, f. 12-30-99, cert. ef. 12-31-99; REV 5-2000, f. & cert. ef. 8-3-00; REV 8-2001, f. & cert. ef. 12-31-01; REV 10-2006, f. 12-27-06, cert. ef. 1-1-07

150-315.156

Crop Gleaning Credit: Information Required

(1) In addition to the items listed under ORS 315.156(2), the form may require:

(a) The social security number, federal employer identification number, or phone number of the grower;

(b) Name and address to identify the gleaning cooperative, food bank, or other charitable organization; or

(c) A signed statement that the grower has complied with the conditions set forth under ORS 315.154(5)(a)-(c).

(2) For tax years beginning on or after January 1, 1994. The form required by this section should not be attached to the tax return, but must be kept with the taxpayer's records. Upon audit or examination, the information must be made available to the department to verify any credit claimed under this section.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 315.156

Hist.: TC 15-1979(Temp), f. & cert. ef. 12-18-79; Hist.: TC 2-1980, f. & cert. ef. 5-20-80; RD 7-1993, f. 12-30-93, cert. ef. 12-31-93, Renumbered from 150-316.091; RD 3-1995, f. 12-29-95, cert. ef. 12-31-95; REV 8-2001, f. & cert. ef. 12-31-01; REV 10-2006, f. 12-27-06, cert. ef. 1-1-07

150-316.007-(B)

Policy — Application of Various Provisions of Tax Law to Domestic Partners

(1) The imputed value of certain fringe benefits provided by an employer to an employee's domestic partner are exempt from state income tax.

(2) As used in this rule, "domestic partner" means a person in a relationship with an employee, each of whom:

(a) Is under no legal disability to marry the other person, but for the fact that each is of the same sex;

(b) Desires a relationship of marriage under Oregon law and would enter into marriage with the other person, and only with the other person, if Oregon law permitted it;

(c) Is committed to the care and support of the other person;

(d) Is responsible for the needs of the other person;

(e) Is responsible for financial obligations to others equivalent to such financial obligations that arise within a marriage recognized under Oregon law; and

(f) Is not married and has no similar commitment and responsibility relative to any other individual.

(3) As used in this rule, "fringe benefits" means employee benefits provided to an employee's domestic partner that are tax exempt when provided to an employee's spouse.

(a) Fringe benefits typically include, but are not limited to:

(A) Health insurance;

(B) Tuition payments; and

(C) Tuition reduction programs.

(4) As used in this rule, "imputed value" means the amount included in federal taxable income of the employee because the fringe benefits are provided to the domestic partner rather than a spouse.

(5) The provisions of this rule apply to:

(a) Tax years beginning on or after January 1, 2000; and

(b) Any tax year for which an overpayment of tax may be refunded or a notice of deficiency may be issued under any law of this state applicable to personal income taxation.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 316.007

Hist.: REV 9-1999, f. 12-30-99, cert. ef. 12-31-99; REV 9-2000, f. 8-15-00, cert. ef. 9-1-00; REV 10-2006, f. 12-27-06, cert. ef. 1-1-07

150-316.153

Credit for Involuntary Move of a Mobile Home

(1) Definitions. For purposes of this rule: "MH" means "mobile home," "manufactured home," or "manufactured dwelling."

(2) "Actual costs of moving and setting up a mobile home" are reasonable and prudent expenses incurred by a qualified individual that include, but are not limited to:

(a) Costs to disassemble the MH and prepare it for moving;

(b) Costs of removing and reinstalling foundations, tie-downs, stairs, decks, awnings, skirting, carports or garages, storage units;

(c) Costs for disconnecting and reconnecting utilities, including related fees;

(d) Municipal fees or charges such as trip permit fees, public inspection fees, system development charges at the new site, building inspection fees, or installation permit fees;

(e) Costs to transport the MH including any wheels needed to go beneath the MH to make it movable on the road;

(f) Costs of storing the MH while preparing a space for the relocation of the MH;

(g) Costs for MH improvements required to meet destination space standards such as the foundation, drains, driveways, decks, landscaping, carports or garages, stairways, or to existing siding or skirting;

(h) Costs to reassemble the MH at the destination space including repairing carpet, drywall or walls, ceilings, touch-up paint, floors and roofs, and sealing the sections; or

(i) Costs to clean up the old site as required by the closing landlord.

ADMINISTRATIVE RULES

(3) "Actual costs of moving and setting up a mobile home" do not include:

(a) The purchase of land or the fees associated with the purchase of land;

(b) Costs for capital improvements to the property other than those listed in section (2) of this rule; or

(c) Amounts that are otherwise deductible under the Internal Revenue Code, such as interest expense, personal property taxes, or real property taxes.

(d) Costs for packing, transporting, storing, and unpacking contents of the mobile home and other personal belongings.

(e) Costs for temporary housing and meals.

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

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 316.153

Hist.: REV 6-2006(Temp), f. & cert. ef. 9-29-06 thru 12-31-06; REV 10-2006, f. 12-27-06, cert. ef. 1-1-07

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Rule Caption: Calculation of corporate income, tax, credits. Apportionment of intangibles; software; personal property. 9-1-1 Tax exemption.

Adm. Order No.: REV 11-2006

Filed with Sec. of State: 12-27-2006

Certified to be Effective: 1-1-07

Notice Publication Date: 11-1-06

Rules Adopted: 150-318.060, 150-314.665(3)

Rules Amended: 150-305.220(1), 150-305.220(2), 150-314.385(1)-(B), 150-314.665(4), 150-316.212, 150-317.090, 150-317.705(3)(a), 150-318.020(2)

Rules Repealed: 150-315.511(6)

Rules Ren. & Amend: 150-401.000 (Or. Laws 1981, Ch. 533)-(A) to 150-150-401.794

Subject: 150-318.060 is adopted to clearly identify the type of interest from U.S. Government obligations that is exempt from Oregon corporate income taxation.

150-314.665(3) provides clarification of how income from the sale of "off the shelf" and custom software, and database services are treated in the sales factor for corporate apportionment purposes.

150-305.220(1) provides the interest rate charged on tax deficiencies increases to 9 percent for interest periods beginning on or after January 1, 2007, as required by ORS 305.220.

150-305.220(2) provides that the interest rate paid on tax refunds increases to 9 percent for interest periods beginning January 1, 2007, as required by ORS 305.220. To clarify interest starting date.

150-314.385(1)-(B) is amended to provide that corporations requesting an Oregon-only extension are not required to file the extension prior to the due date of the return.

150-314.665(4) is amended to clarify that receipts from intangible personal property such as franchising and licensing agreements, located and used within Oregon, are Oregon receipts. Also provide guidance on costs not included in "direct costs", and provide guidance on when intangible personal property is located in Oregon. 150-316.212 is amended to specify the types of penalties that may be applied under the withholding tax program.

150-317.090 is amended to provide that the corporate minimum tax applies to each affiliate doing business in Oregon that is included in the filing of a consolidated tax return, effective for tax years beginning on or after January 1, 2006.

150-317.705(3)(a) is amended to provide guidance as to the criteria that must be met under ORS 317.705 in order for a "single trade or business" to exist.

150-318.020(2) is amended to delete duplicate language in (4)(a), remove unnecessary information about the excise tax from (4)(b), and to rearrange text.

150-315.511(6) is repealed due to sunset of the credit.

150-401.000 Note (Or. Laws 1981, Ch. 533)-(A) is renumbered to 150-401.794 and is clarified as to the types of governmental entities that are exempt from the telephone excise tax provided under ORS 401.794.

Rules Coordinator: Debra L. Buchanan—(503) 945-8653

150-305.220(1)

Computation of Interest on Deficiencies and Delinquencies

(1) Adjustment to statutory rate. For interest periods beginning on or after January 1, 2007, unless otherwise provided by law, every deficiency and delinquency arising under any law administered by the Department of Revenue will bear interest at the rate of .75 percent per month (9 percent annually). For a fraction of a month, interest will be computed at .0247 percent per day.

(2) Interest starting date. The interest starting date for deficiencies and delinquencies will be one day after the due date of the return, excluding extensions.

(3) Interest periods. An interest period is each full month starting with the interest starting date and ending one day before the corresponding date one month later. Interest will be computed on a daily basis for a fraction of a month. The daily rate is based on a 365-day year.

(4) Interest rates. The following table shows interest rates and interest periods used by the Oregon Department of Revenue to compute interest due from taxpayers on deficiencies and delinquencies. [Table not included. See ED. NOTE.]

(5) Decimal places used in computations. In all computations, the interest rate will consist of six decimal places. [Table not included. See ED. NOTE.]

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

Stat. Auth.: ORS 305.100; ORS 305.220

Stats. Implemented: ORS 305.220

Hist.: RD 2-1986, f. 7-2-86, cert. ef. 8-1-86; RD 8-1986, f. & cert. ef. 12-31-86; RD 14-1987, f. 12-18-87, cert. ef. 1-16-88; RD 11-1988, f. 12-19-88, cert. ef. 12-31-88; RD 12-1990, f. 12-20-90, cert. ef. 12-31-90; RD 7-1992, f. & cert. ef. 12-29-92; RD 5-1993, f. 12-30-93, cert. ef. 12-31-93; RD 7-1994, f. 12-15-94, cert. ef. 12-30-94; REV 7-1998, f. 11-13-98, cert. ef. 12-31-98; REV 12-2000, f. & cert. ef. 12-29-00, cert. ef. 12-31-00; REV 9-2001, f. 12-31-01, cert. ef. 2-1-02; REV 9-2002, f. 12-31-02, cert. ef. 1-31-03; REV 4-2003, f. & cert. ef. 12-31-03; REV 10-2004, f. 12-29-04 cert. ef. 12-31-04; REV 5-2005, f. 12-30-05, cert. ef. 1-1-06; REV 11-2006, f. 12-27-06, cert. ef. 1-1-07

150-305.220(2)

Interest on Refunds

(1) Adjustment to statutory rate. For interest periods beginning on or after January 1, 2007, unless specifically provided by statute or by rule, every refund arising under any law administered by the Department of Revenue will bear interest at the rate of .75 percent per month (9 percent annually). For a fraction of a month, interest will be computed at .0247 percent per day.

(2) Interest starting date.

(a) As provided in OAR 150-314.415, the interest starting date for refunds of individual income tax, corporate excise tax, or corporate income tax, is 45 days after the date the tax was paid, 45 days after the return was due or 45 days after the original return was filed, whichever is later.

(b) The interest starting date for refunds not described in (2)(a) is 45 days after the return was due or 45 days after the date the tax was paid, whichever is later.

(3) Interest periods. An interest period is each full month starting with the interest starting date and ending one day before the corresponding date one month later. Interest will be computed on a daily basis for a fraction of a month. The daily rate is based on a 365 day year.

(4) Interest rates. For interest periods beginning on or after June 1, 1983, the interest rate will be the same as the interest rate on deficiencies and delinquencies.

(5) Decimal places used in computations. In all computations, the interest rate will consist of six decimal places.

(6) The following table shows interest rates and interest periods used by the Oregon Department of Revenue to compute interest due to taxpayers on refunds. [Table not included. See ED. NOTE.]

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

Stat. Auth.: ORS 305.100, ORS 305.220

Stats. Implemented: ORS 305.220

Hist.: 5-5-82, 6-15-82; 12-31-82, Renumbered from Ch. 16, Or. Laws 1982 (2nd SS) to 150-314.415(1)(a); 12-31-85; 12-31-86; Renumbered from 150-314.415(1)(a); RD 15-1987, f. 12-10-87, cert. ef. 12-31-87, Renumbered from 305.220; RD 11-1988, f. 12-19-88, cert. ef. 12-31-88; RD 7-1989, f. 12-18-89, cert. ef. 12-31-89; RD 12-1990, f. 12-20-90, cert. ef. 12-31-90; RD 7-1991, f. 12-30-91, cert. ef. 12-31-91; RD 7-1992, f. & cert. ef. 12-29-92; RD 7-1993, f. 12-30-93, cert. ef. 12-31-93; RD 7-1994, f. 12-15-94, cert. ef. 12-30-94; REV 7-1998, f. 11-13-98, cert. ef. 12-31-98; REV 12-2000, f. & cert. ef. 12-29-00, cert. ef. 12-31-00; REV 9-2001, f. 12-31-01, cert. ef. 2-1-02; REV 9-2002, f. 12-31-02, cert. ef. 1-31-03; REV 4-2003, f. & cert. ef. 12-31-03; REV 10-2004, f. 12-29-04 cert. ef. 12-31-04; REV 5-2005, f. 12-30-05, cert. ef. 1-1-06; REV 11-2006, f. 12-27-06, cert. ef. 1-1-07

150-314.385(1)-(B)

Filing Returns of Income: Extensions, Chapters 316, 317 and 318

(1) If a taxpayer cannot file a return within the prescribed time, the department may grant the taxpayer an extension of time for filing but this does not extend the time for payment of the tax.

ADMINISTRATIVE RULES

(2) Procedure when a federal extension is granted.

(a) The department will grant extension of time to file an Oregon return if the taxpayer has obtained an extension to file the federal return from the Internal Revenue Service. The taxpayer does not need to request an Oregon extension. The taxpayer must attach a copy of an approved federal extension or a filed automatic federal extension request under Internal Revenue Code (IRC) section 6081(b) to the Oregon return in accordance with current tax return instructions to serve as evidence of an Oregon extension.

(b) An automatic extension of time for filing a return does not relieve the taxpayer of the responsibility to pay estimated tax or eliminate interest charges for failure to pay estimated tax. An extension also does not relieve the taxpayer of a late payment penalty provided under ORS 314.400, except when the requirements of section (3) of OAR 150-314.400(1) are met.

(c) The Oregon extension is for the same length of time as the federal extension. If the Internal Revenue Service denies the taxpayer's extension request, but grants the taxpayer a period of time from the date of the denial in which to file the return, the department will grant the taxpayer an equal period of time if a copy of the denied extension request is attached to the Oregon return at the time of filing.

(3) Procedure for requesting an extension for Oregon only.

(a) An individual may request an extension of time for Oregon only by completing and filing the appropriate Oregon form. The taxpayer must file the extension request and payment with the department on or before the original due date of the associated return.

(b) A corporation may request an extension of time for Oregon only by writing "For Oregon Only" on the top of a federal extension form, filling out the form with Oregon tax information, and attaching it to the Oregon return when it is filed. An extension payment must be sent to the department on or before the original due date of the return accompanied by the appropriate Oregon form.

(c) Insurance companies filing federal income tax returns on a fiscal year basis must request a separate extension for Oregon under subsection (b) of this section. The Oregon extension is for the same length of time that would be allowed if the insurance company filed a calendar year federal return and applied for a federal extension.

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

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 314.385

Hist.: 1958-59; 9-71; 11-73; 1-1-77; 12-31; 78; 12-31-80; 12-31-81; 12-31-82; 12-31-83; RD 10-1986, f. & cert. ef. 12-31-86; RD 15-1987, f. 12-10-87, cert. ef. 12-31-87; RD 11-1988, f. 12-19-88, cert. ef. 12-31-88; REV 7-1999, f. 12-1-99, cert. ef. 12-31-99; REV 8-2002, f. & cert. ef. 12-31-02; REV 11-2006, f. 12-27-06, cert. ef. 1-1-07

150-314.665(3)

Sales Factor; Sales of Software and Database Services

(1) The sale of commercial, off the shelf software (COTS) is considered to be the sale of tangible personal property. Include such sales in the sales factor as provided in OAR 150-314.665(2)-(A). For purposes of this rule, COTS is readily available to the general public, is subject to a nonexclusive license, and has not been substantially modified.

(2) The sale of customized software produced for a specific customer is considered to be the sale of a service. Include such sales in the sales factor as provided in OAR 150-314.665(4). If the taxpayer incurs the majority of the cost of performance for this service in Oregon, include the sale in the numerator and the denominator of the sales factor. If the company incurs the majority of the costs of performing this service (producing the software) outside of Oregon, include the sale in the denominator of the sales factor only.

Example 1: Software Inc., located in Texas, assigned two employees to design and program a new specialized inventory system for ABC Co., located in Oregon. The employees spent six weeks on the project. All of the work was done in Oregon. The payroll costs for the two employees were the entire direct cost of performance associated with the sale to ABC Co. The receipts from this project are included in the numerator and denominator of the Oregon sales factor.

Example 2: Use the same facts as in Example 1, except that the employees spent one week in Oregon reviewing ABC Co.'s needs. The other five weeks were spent in Texas designing and programming the specialized software. Since the majority of the work was performed outside of Oregon, the majority of the cost of performance was also incurred outside Oregon and the receipts are only included in the denominator of the Oregon sales factor.

(3) Database services have two different parts for purposes of the sales factor. The sale of the freestanding software that is needed to access on-line information is considered to be the sale of COTS. Include such sales in the sales factor as provided in section (1) of this rule. The on-line database service is treated as a service. Sales of the service are assigned to the state where the majority of cost of performance has occurred as provided in section (2) of this rule.

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

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 314.665

Hist.: REV 11-2006, f. 12-27-06, cert. ef. 1-1-07

150-314.665(4)

Sales Factor; Sales Other Than Sales of Tangible Personal Property in This State

(1) In General. ORS 314.665(4) provides for the inclusion in the numerator of the sales factor of gross receipts from transactions other than sales of tangible personal property (including transactions with the United States Government); under this section gross receipts are attributed to this state if the income producing activity that gave rise to the receipts is performed wholly within this state. Also, gross receipts are attributed to this state if, with respect to a particular item of income, the income producing activity is performed within and without this state but the greater proportion of the income producing activity is performed in this state, based on costs of performance.

(2) Income Producing Activity; Defined. The term "income producing activity" applies to each separate item of income and means the transactions and activity directly engaged in by the taxpayer in the regular course of its trade or business for the ultimate purpose of obtaining gains or profit. Except as provided otherwise in this rule, such activity does not include transactions and activities performed on behalf of a taxpayer, such as those conducted on its behalf by an independent contractor. Accordingly, income producing activity includes but is not limited to the following:

(a) The rendering of personal services by employees or the utilization of tangible and intangible property by the taxpayer in performing a service.

(b) The sale, rental, leasing, franchising, licensing or other use of real property.

(c) The rental, leasing, franchising, licensing or other use of tangible personal property.

(d) The sale, franchising, licensing or other use of intangible personal property. The mere holding of intangible personal property is not, of itself, an income producing activity.

(3)(a) Where the income producing activity in respect to business income from intangible personal property can be readily identified, such income is included in the denominator of the sales factor and, if the income producing activity occurs in this state, in the numerator of the sales factor as well. For example, usually the income producing activity can be readily identified in respect to interest income received on deferred payments on sales of tangible property (OAR 150-314.665(1)-(A)) and income from the sale, licensing or other use of intangible personal property.

(b) Where business income from intangible personal property cannot readily be attributed to any particular income producing activity of the taxpayer, such income cannot be assigned to the numerator of the sales factor for any state and must be excluded from the denominator of the sales factor. For example, where business income in the form of dividends received on stock, royalties received on patents or copyrights, or interest received on bonds, debentures or government securities results from the mere holding of the intangible personal property by the taxpayer, such dividends and interest must be excluded from the denominator of the sales factor.

(4) Costs of Performance; Defined. The term "costs of performance" means direct costs determined in a manner consistent with generally accepted accounting principles and in accordance with accepted conditions or practices in the trade or business of the taxpayer. For purposes of this rule, direct costs do not include costs that are not part of the income producing activity itself, such as accounting or billing expenses.

(5) Application.

(a) In General. Receipts (other than from sales of tangible personal property) in respect to a particular income producing activity performed by the taxpayer are in this state if:

(A) The income producing activity is performed wholly within this state; or

(B) The income producing activity is performed both in and outside this state and a greater proportion of the income producing activity is performed in this state than in any other state, based on costs of performance.

(b) Under the authority provided in ORS 314.670, paragraphs (A)-(C) of this subsection describe when receipts from certain income producing activities are in this state.

(A) Gross receipts from the sale, lease, rental, franchising, or licensing of real property are in this state if the real property is located in this state.

(B) Gross receipts from the rental, lease, franchising, or licensing of tangible or intangible personal property are in this state if the property is located in this state.

(i) The rental, lease, franchising, licensing or other use of tangible or intangible personal property in this state is a separate income producing activity from the rental, lease, licensing or other use of the same property while located in another state; consequently, if the property is within and

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without this state during the rental, lease, franchising or licensing period, gross receipts attributable to this state must be measured by the ratio that the time the property was physically present or was used in this state bears to the total time or use of the property everywhere during such period.

Example 1: Taxpayer is the owner of 10 railroad cars. During the year, the total of the days each railroad car was present in this state was 50 days. The receipts attributable to the use of the 10 railroad cars in this state are a separate item of income and are determined as follows: 10 cars x 50 days = 500 car days 10 cars x 365 days = 3,650 car days x Total Receipts = Receipts Attributable to this State

(ii) Intangible personal property is located in this state if the property is used in business activity in this state, whether such use is by the taxpayer, a third-party licensee, or another entity with the right to use the property. Intangible personal property may be used in more than one state at the same time. The use of intangible personal property in this state is a separate income producing activity from use of the same property in another state. Use is determined in each tax year.

(C) Gross receipts for the performance of personal services are attributable to this state to the extent such services are performed in this state. If services relating to a single item of income are performed partly within and partly without this state, the gross receipts for the performance of such services are attributable to this state only if a greater portion of the services were performed in this state, based on costs of performance. Usually where services are performed partly within and partly without this state the services performed in each state will constitute a separate income producing activity; in such case the gross receipts for the performance of services attributable to this state must be measured by the ratio which the time spent in performing such services in this state bears to the total time spent in performing such services everywhere. Time spent in performing services includes the amount of time expended in the performance of a contract or other obligation that gives rise to such gross receipts. Personal service not directly connected with the performance of the contract or other obligation, as for example, time expended in negotiating the contract, is excluded from the computations.

Example (2): Taxpayer, a road show, gave theatrical performances at various locations in State X and in this state during the tax period. All gross receipts from performances given in this state are attributed to this state.

Example (3): The taxpayer, a public opinion survey corporation, conducted a poll by its employees in State X and in this state for the sum of \$9,000. The project required 600 hours to obtain the basic data and prepare the survey report. Two hundred of the 600 hours were expended in this state. The receipts attributable to this state are \$3,000. 200 hours 600 hours x \$9,000

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 314.665, 314.670

Hist.: 12-70; 8-73; 12-31-85, Renumbered from 150-314.665(3); RD 5-1994, f. 12-15-94, cert. ef. 12-31-94; REV 11-2006, f. 12-27-06, cert. ef. 1-1-07

150-316.212

Withholding Penalties

See ORS 305.228, 305.990, 305.992, 314.400, 314.410, 314.440, 314.991, 316.992 and the corresponding rules for provisions regarding penalties, misdemeanors and jeopardy assessments applicable to withholding taxes and reports.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 316.212

Hist.: 1-69; RD 7-1992, f. & cert. ef. 12-29-92; REV 11-2006, f. 12-27-06, cert. ef. 1-1-07

150-317.090

Minimum Tax

(1)(a) For tax years beginning on or after January 1, 2006, the tax liability of an affiliated group of corporations filing a consolidated return may not be less than the \$10 minimum tax multiplied by the number of corporations in the group that are doing business in Oregon.

Example: Alpha Corporation and its only subsidiary, Beta Corporation, are doing business in Oregon and file a consolidated Oregon Excise Tax Return showing a net loss for the 2006 tax year. The Oregon minimum tax for the year is \$20.

(b) For consolidated returns filed for tax years beginning before January 1, 2006, the department determines that a \$10 minimum tax is due for the consolidated group and the \$10 minimum tax due for each affiliate included in the return doing business in Oregon is cancelled. This determination is made under authority of ORS 305.145(3).

Example: On July 1, 2006, Corporation A and Affiliates filed an amended tax return for 2005. The return included three affiliates doing business in Oregon and showed a net loss for the tax year. Although ORS 317.090 provides that each of the four corporations owes \$10 of minimum tax, the department will cancel the tax attributable to the affiliates and only one \$10 tax is owed by Corporation A and Affiliates.

(2) For tax years beginning on or after January 1, 1999, the excise tax is measured by the corporation's Oregon taxable income as computed in accordance with the provisions of the statute, but the tax cannot be less than the specified minimum. The minimum tax is due even though the corporation had a net loss and it must be paid in full even though the taxpayer was subject to the statute for only a part of the year, except that it may be appor-

tioned in the case of a change of accounting periods. A corporation with no business activity in Oregon is not subject to the \$10 minimum tax.

(3) For tax years beginning before January 1, 1999, the provisions of section (2) of this rule apply, except that a corporation qualified to do business in Oregon, but engaging in no business activity in the state, is subject to the \$10 minimum tax.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 317.097

Hist.: 1953; TC 19-1979, f. 12-20-79, cert. ef. 12-31-79; RD 7-1983, f. 12-20-83, cert. ef. 12-31-83; RD 15-1987, f. 12-10-87, cert. ef. 12-31-87; REV 12-1999, f. 12-30-99, cert. ef. 12-31-99; REV 8-2006(Temp), f. 11-20-06, cert. ef. 11-21-06 thru 12-31-06; REV 11-2006, f. 12-27-06, cert. ef. 1-1-07

150-317.705(3)(a)

Single Trade or Business

A corporation or group of corporations must be engaged in a "single trade or business" to be considered a unitary group. The presence of all of the factors described in ORS 317.705(3) will demonstrate that a single trade or business exists, but the presence of one or two such factors may also demonstrate the flow of value requisite for a single trade or business.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 317.705

Hist.: 10-7-85, 12-31-85, Renumbered from 150-317.705 to 150-317.705 (3)(a); RD 10-1986, f. & cert. ef. 12-31-86; RD 15-1987, f. 12-10-87, cert. ef. 12-31-87; REV 11-2006, f. 12-27-06, cert. ef. 1-1-07

150-318.020(2)

Income Subject to Tax Under ORS Chapter 318

(1) The Oregon Corporation Income Tax is imposed on corporations with income derived from sources within this state. The term "income derived from sources within this state" means income from activities in this state that are insufficient to constitute "doing business." "Doing business" is defined in ORS 317.010(4).

(2) Oregon's jurisdiction to tax is limited by the Due Process Clause of the U.S. Constitution, which requires the existence of some minimum connection between the state and the person, property or transaction it seeks to tax. This minimum connection, making income subject to the Oregon income tax, may be satisfied by:

(a) Maintaining tangible or intangible property in Oregon;

(b) Entering into franchising or licensing agreements for use of a franchise or license in Oregon;

(c) Receiving franchise fees or royalties from Oregon sources;

(d) Selling or otherwise disposing of a franchise or license used in Oregon;

(e) Selling or otherwise transferring tangible personal property pursuant to a franchise or license to a franchisee or licensee within the state; or

(f) An isolated sale of real property in this state.

(3) A corporation with receipts from royalties or franchise fees or the sale or transfer of tangible personal property pursuant to franchise or license agreements may be subject to the Corporation Excise Tax if the corporation engages in activities that rise to the level of doing business in Oregon. Such activities include inspection of the franchisees' businesses or records and providing training in Oregon to franchisees. Such a corporation is not subject to the Corporation Income Tax.

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

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 318.020

Hist.: 1955; 1-65; RD 7-1983, f. 12-20-83, cert. ef. 12-31-83; RD 7-1989, f. 12-18-89, cert. ef. 12-31-89; REV 7-1998, f. 11-13-98, cert. ef. 12-31-98; REV 2-2003, f. & cert. ef. 7-31-03; REV 11-2006, f. 12-27-06, cert. ef. 1-1-07

150-318.060

U.S. Government Obligations

According to Title 31, United States Code, section 3124, interest and dividend income from obligations of the federal government are exempt from state income tax. Oregon Administrative Rule 150-316.680(1)(a) identifies the types of income that qualify and do not qualify for a subtraction from Oregon taxable income.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 318.060

Hist.: REV 11-2006, f. 12-27-06, cert. ef. 1-1-07

150-401.794

Telephone Excise Tax — Definitions and Administrative Provisions

(1) The Oregon telephone excise tax does not apply to:

(a) Federal, state and municipal government bodies or public corporations as defined in section (2).

(b) Counties and political subdivisions.

(c) Certain federally chartered corporations specifically exempt from state excise taxes by federal law.

Examples: Federal Deposit Insurance Corp., Federal Savings and Loan Insurance

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Corp., federal banks and banking associations created under the Farm Credit System and exempt under Title 12, U.S. Code §§2023, 2077, 2098 or 2134.

(d) Federally recognized Native-American Tribes, and tribal members who live within federally recognized Indian country and are enrolled members of the tribe with sovereignty over that Indian country.

(e) Foreign government offices and representatives that are exempt from state taxation by treaty provisions.

(f) Regional housing authorities exempt from all state taxes and assessments by ORS 456.225.

(g) The connection between utilities that is used to provide service. This includes the connection between radio common carriers and the interexchange carrier as well as between two or more utilities.

(2) For purposes of this rule, "public corporation" means a corporation formed by a state or local government authority for the public's benefit or for a public purpose.

(3) Any other agency, organization or person claiming an exemption is required to identify the authority for its claim to a provider. If a provider is unable to determine the status of a subscriber the Department of Revenue will determine whether the subscriber is exempt.

(4) "Provider" means any corporation, individual or group of individuals providing telecommunication access to the 9-1-1 Emergency Reporting System.

(a) A radio common carrier that leases telephone exchange access lines from a wire telephone company is a provider if the carrier sells that access to its customers. Access for this purpose includes (but is not limited to) traditional telephone services ("POTS"), cellular telephone service, personal communications system service (PCS), personal communications network service (PCN), cable/broadband service, private branch exchanges (PBX), and mobile radio common carriers. A carrier that has access to the 9-1-1 Emergency Reporting System and does not resell the access is not considered to be a provider; instead it is considered to be a subscriber and must pay the tax.

(b) A cellular telephone service company is a provider that provides access to 9-1-1 services through various switching mechanisms between cellular radio sites and exchanges access services.

(5) The return required by ORS 401.792 must be signed by the taxpayer or an authorized agent and made under penalties for false swearing. Returns received after the due date are subject to delinquency charges as provided in ORS Chapter 305, 314 and 316 the same as if the tax were a tax imposed upon or measured by net income. Returns received by mail are accepted without imposition of such charges if postmarked before midnight of the due date.

(6) Related providers may request permission from the department to file one telephone excise tax return per quarter.

(7) Except as provided in subsection (b) of this section, if a provider elects to pay the tax based on the amount actually collected as payment for exchange access services during the quarter and the provider receives only a partial payment from a subscriber:

(a) The provider must apply the payment proportionately to the Oregon telephone excise tax and to all other charges appearing on the subscriber's bill.

(b) If the provider determines that the only unpaid portion of a subscriber's bill for all telephone services is in the amount of the Oregon telephone excise tax, the provider is not required to apportion the payment and may apply the payment first to all other charges appearing on the subscriber's bill.

(8) The provider must submit with its quarterly return to the department a list of all those subscribers that refuse to pay their Oregon telephone excise tax in whole or part. Such lists must include the name, address, telephone or service number of the subscriber, and the amount of Oregon excise tax owing. Any amount so reported to the department must be written off by the provider and the collection will be enforced by the department.

(9) When a provider proceeds to write off, charge off or cancel an uncollectible account, any amount of Oregon telephone excise tax unpaid on that account must be reported to the department as provided in section (8) of this rule.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 401.794

Hist.: 2-11-82(Temp); 5-5-82; 12-31-84, Renumbered from 150-401.000 Note (Or. Laws 1981, Ch. 533) to 150-401.000 Note (Or. Laws 1981, Ch. 533)-(A); 12-31-85; RD 7-1994, f. 12-15-94, cert. ef. 12-30-94; RD 5-1995, f. 12-29-95, cert. ef. 12-31-95, Renumbered from 150-401.000 Note (Or. Laws 1981, Ch. 533); Renumbered from 150-401.000 Note (OL 1981 Ch. 533)-(A), REV 11-2006, f. 12-27-06, cert. ef. 1-1-07

Economic and Community Development Department Chapter 123

Rule Caption: Rules make minor technical corrections or enhancements to the guidelines for enterprise zones.

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

Filed with Sec. of State: 1-8-2007

Certified to be Effective: 1-8-07 thru 7-6-07

Notice Publication Date:

Rules Adopted: 123-065-0057, 123-065-1060, 123-065-1070, 123-065-1080

Rules Amended: 123-065-0000, 123-065-0010, 123-065-0080, 123-065-0090, 123-065-0100, 123-065-0140, 123-065-0200, 123-065-0210, 123-065-0240, 123-065-0310, 123-065-0320, 123-065-0330, 123-065-0350, 123-065-1050, 123-065-1500, 123-065-1520, 123-065-1530, 123-065-1540, 123-065-1553, 123-065-1590, 123-065-1600, 123-065-1620, 123-065-1710, 123-065-1720, 123-065-1740, 123-065-2520, 123-065-2530, 123-065-2550, 123-065-3000, 123-065-3030, 123-065-3130, 123-065-3200, 123-065-3230, 123-065-3300, 123-065-3330, 123-065-3400, 123-065-3480, 123-065-3850, 123-065-4020, 123-065-4260, 123-065-4310, 123-065-4323, 123-065-4328, 123-065-4380, 123-065-4440, 123-065-4450, 123-065-4470, 123-065-4550, 123-065-4610, 123-065-4970, 123-065-4980, 123-065-4990, 123-065-7200, 123-065-7300, 123-065-7400, 123-065-7500, 123-065-8200, 123-065-8300, 123-065-8400

Rules Suspended: 123-065-0049

Subject: These rules make minor technical corrections or enhancements to the guidelines for enterprise zones, as well as implement legislative changes found in chapters 94, 595 and 704, Oregon Laws 2005, especially requisite consultations with local taxing districts by governments (now including ports) seeking zone designation.

Rules Coordinator: Paulina Layton—(503) 986-0036

123-065-0000

Definitions

As used in this division of administrative rules, unless the context indicates otherwise:

(1) **Census Statistical Unit** includes any standard geographic area, legal entity or administrative designation for which data is available through the most recent federal decennial census, such as the following: County, census county subdivision, incorporated place, census urbanized area, census designated (unincorporated) place, ZIP code, census tract, census block numbering area (BNA), census block group (BG) or census block.

(2) **Department** means the State of Oregon Economic and Community Development Department, as (re) organized and created under ORS 285A.070, unless specified otherwise.

(3) **Director** means the Director of the Department appointed under ORS 285A.070.

(4) **Preexisting Enterprise Zone** means an enterprise zone:

(a) Designated within three years of an enterprise zone's being Terminated by Statute;

(b) For which at least one-half of its cosponsors comprised a majority of the cosponsors of the enterprise zone Terminated by Statute; and

(c) Recognized as the continuation of the previous enterprise zone, even though it is technically and statutorily a new zone designation.

(5) **Terminated by Statute** means the automatic termination of an enterprise zone by operation of law after more than 10 years under ORS 285C.245(2) or after more than six years under ORS 285C.245(6).

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 2285C

Hist.: EDD 4-1994, f. & cert. ef. 2-24-94; EDD 10-1995, f. & cert. ef. 12-19-95; EDD 1-1997, f. & cert. ef. 1-7-97; EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98; EDD 9-2000, f. & cert. ef. 5-2-00; EDD 1-2005, f. & cert. ef. 2-25-05; EDD 1-2007(Temp), f. & cert. ef. 1-8-07 thru 7-6-07

123-065-0010

Local Government Enterprise Zone Sponsorship or Consent

An enterprise zone shall be sponsored by, and only by, the governing body of each city or county jurisdiction or port district in which it is located, with the following exceptions:

(1) A **port** need not cosponsor a zone, if:

(a) The zone is located inside the territory of a sponsoring city, county or two or more such jurisdictions; and

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(b) The port granted consent for the zone to exist in its territory through a resolution adopted by the port's governing body.

(2) A **county** need not cosponsor a zone, if:

(a) The zone is located completely in the incorporated territory of a city/cities that/each of which sponsors the zone;

(b) The county has consented to the zone in its territory for sponsorship by a port through a resolution adopted by the governing body of the county; or

(c) The county granted consent for the zone in its unincorporated territory through a resolution adopted by the governing body of the county and the only such unincorporated territory inside the zone lies within the urban growth area between the corporate limits and the urban growth boundary of a city that sponsors the zone.

(3) A **city** need not cosponsor a zone, if:

(a) The zone is located inside the territory of a sponsoring county or of a sponsoring port with county consent;

(b) The city granted consent for the zone to exist in its territory through a resolution adopted by the city's governing body; and

(c) Less than the zone's entire area lies within less than the entire incorporated territory of the city.

(4) As otherwise consistent with sections (1) to (3) of this rule, city/county/port sponsorship or consent is permissible:

(a) In combinations not specifically described by this rule; or

(b) For an enterprise zone designation under ORS 285C.050 to 285C.250 that encompasses tribal lands in addition to non-tribal lands inside sponsor territory.

(5) Except as provided under ORS 285C.115(3), a city, port or county does not need to sponsor a reservation enterprise zone designated under ORS 285C.306. The same is also true for an amendment to such a zone that adds land:

(a) Held in trust by the U.S. for the benefit of the Indian Tribe, for which the tribal government is the zone sponsor; and

(b) Over which the non-sponsoring city, port or county government does not effectively have jurisdictional control.

Stat. Auth.: ORS 285A.075(5), 285A.110 & 285B.668(1)

Stats. Implemented: ORS 285C.050, 285C.065, 285C.115, 285C.250, 285C.306 & 285C.320

Hist.: EDD 4-1994, f. & cert. ef. 2-24-94; EDD 10-1995, f. & cert. ef. 12-19-95; EDD 1-1997, f. & cert. ef. 1-7-97; EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98; EDD 1-2005, f. & cert. ef. 2-25-05; EDD 1-2007(Temp), f. & cert. ef. 1-8-07 thru 7-6-07

123-065-0049

Maximum Number of Enterprise Zones

(1) The maximum number of enterprise zones that may be designated is 49, plus:

(a) Any designation based on a Federal Enterprise Zone under ORS 285C.085; and

(b) Any designation of a reservation enterprise zone under ORS 285C.306. (Currently, Warm Springs Indian Reservation is the only place so allowed based on the most recent decennial census data)

(2) At the time of the last amendment of this rule, 49 enterprise zones are in existence by designation of the Director (or tribal government), as follows:

(a) Fourteen under ORS 285C.080;

(b) One under ORS 285C.085;

(c) Thirty-three under ORS 285C.250; and

(d) One under ORS 285C.306.

(3): This rule neither affects nor is it necessarily affected by the designation of any Federal Enterprise Zone (see OAR 123-065-1710).

Stat. Auth.: ORS 285A.075(5), 285A.110910 & 285B.668(1)

Stats. Implemented: ORS 285C.050, 285C.065, 285C.115, 285C.250, 285C.306 & 285C.320

Hist.: EDD 14-1999, f. 10-22-99, cert. ef. 10-23-99; EDD 9-2000, f. & cert. ef. 5-2-00; Renumbered from 123-065-0048, EDD 1-2005, f. & cert. ef. 2-25-05; Suspended by EDD 1-2007(Temp), f. & cert. ef. 1-8-07 thru 7-6-07

123-065-0057

Maximum Number of Enterprise Zones

(1) The maximum number of enterprise zones that may be designated is 57, plus:

(a) Any designation based on a Federal Enterprise Zone under ORS 285C.085 (see OAR 123-065-1700 to 123-065-1799), as well as re-designations of such an enterprise zone; and

(b) Any designation of a reservation enterprise zone under ORS 285C.306.

(2) At the time of the last amendment of this rule (by way of example and to establish matters for the record), 55 enterprise zones are in existence by designation of the Director (or tribal government):

(a) Sixteen under ORS 285C.065 and 285C.080 (under which four more may be designated);

(b) Thirty-seven under ORS 285C.065 and 285C.250;

(c) One under ORS 285C.085; and

(d) One under ORS 285C.306.

(3) This rule neither affects nor is it necessarily affected by the designation of any Federal Enterprise Zone.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.050, 285C.065, 285C.115, 285C.250, 285C.306 & 285C.320

Hist.: EDD 1-2007(Temp), f. & cert. ef. 1-8-07 thru 7-6-07

123-065-0080

Boundaries and Dimensions

For purposes of an enterprise zone designation or boundary change:

(1) Except as allowed in OAR 123-065-0090, the straight-line distance between any two points within the zone may not exceed 12 miles.

(2) The total area of the zone may not exceed 12 square miles, not including:

(a) Areas below the ordinary high water mark of navigable bodies of water; and

(b) Roads, tracks, transmission lines or right of ways that nominally connect separate areas of the zone.

(3) Except as allowed in OAR 123-065-0090, a separate area of the zone must be five or fewer miles of straight-line distance away from another area of the zone as measured between the two closest points of each area.

(4) No part of the zone may be inside the boundaries of another enterprise zone.

(5) No part of this rule (or OAR 123-065-0090) shall be interpreted to exclude an enterprise zone designated or amended under federal law.

(6) Other than section (4), no part of this rule (or OAR 123-065-0090) shall be interpreted to exclude an enterprise zone designated or amended under ORS 285C.085 or 285C.306.

(7) Consistent with subsection (2)(a) of this rule, the zone boundary may encompass areas below the ordinary high water mark; such areas are:

(a) Naturally limited to the borders/territory of this state respective to the zone sponsor's jurisdiction, including but not limited to areas of the ocean up to three nautical miles directly from shore; and

(b) Simply ignored for purposes of the 12-square-mile maximum.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.065 & 285C.090

Hist.: EDD 1-1997, f. & cert. ef. 1-7-97; EDD 13-1997, f. & cert. ef. 11-10-97; EDD 1-2005, f. & cert. ef. 2-25-05; EDD 1-2007(Temp), f. & cert. ef. 1-8-07 thru 7-6-07

123-065-0090

Extended Distances in Rural Zones

For purposes of ORS 285C.050(18) and 285C.090(4):

(1) This rule applies only to rural enterprise zones.

(2) The maximum distance allowed in OAR 123-065-0080(1) is increased from 12 to:

(a) Twenty-five lineal miles, if no area of the zone is in a county listed in section (5) of this rule; or

(b) Twenty lineal miles, if some but not all of the area of the zone lies in a county listed in section (5) of this rule.

(3) The maximum distance allowed in OAR 123-065-0080(3) is increased from 5 to 15 lineal miles if none of the separate area is in a county listed in section (5) of this rule.

(4) In accordance with ORS 285C.120(2), the Director may waive a limitation in section (2) or (3) of this rule, to allow even greater distance for a particular enterprise zone designation or boundary change:

(a) As specifically requested in resolutions adopted by the applicant for designation or the current zone sponsor and any proposed cosponsor;

(b) Such that the waiver is part of the Director's order designating or changing the boundary of the enterprise zone boundary; and

(c) If evidence or indications as evaluated by the Department satisfy points described in OAR 123-065-0095.

(5) The counties of this state that are too densely populated for purposes of this rule include:

(a) Any county for which a shrinkage of its area, growth in its population or combination thereof results in a population density for the county in excess of 100 persons per square mile (In this case, ORS 285C.120(1) would govern an enterprise zone, the dimensions of which had otherwise been allowed as described in this rule);

(b) Any future, new county for which the actual population and area correspond to a population density for the county in excess of 100 persons per square mile; and

(c) The following existing counties (unless there is a change in the county's circumstances contrariwise to subsection (a) of this section):

(A) Benton County;

(B) Clackamas County;

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- (C) Marion County;
- (D) Multnomah County;
- (E) Washington County; and
- (F) Yamhill County.

(6) For purposes of section (5) of this rule, the population density of a county is computed by dividing the latest estimate for the county's total population by the current area of the county in terms of square miles.

(7) Nothing in this rule affects the restriction of up to but not more than 12 square miles for total enterprise zone area, as described in OAR 123-065-0080.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)
Stats. Implemented: ORS 285C.050, 285C.065, 285C.090, 285C.120, 285C.350
Hist.: EDD 13-1997, f. & cert. ef. 11-10-97; EDD 9-2000, f. & cert. ef. 5-2-00; EDD 1-2005, f. & cert. ef. 2-25-05; EDD 1-2007(Temp), f. & cert. ef. 1-8-07 thru 7-6-07

123-065-0100

Nonurban and Urban Zones

(1) "Enterprise zone" means an area designated, as defined in ORS 285C.050(8), and categorized as either "rural" or "urban" under ORS 285C.050(17) or (21).

(2) As used in ORS 285C.050(21), "regional or metropolitan urban growth boundary" means:

- (a) The Metro/Portland-area regional urban growth boundary; or
- (b) The urban growth boundary encompassing:
 - (A) Bend;
 - (B) Corvallis;
 - (C) Eugene and Springfield;
 - (D) Medford; or
 - (E) Salem and Keizer.

(3) For the purposes of ORS 285C.050(21), "inside" means that an enterprise zone may be neither designated nor amended, such that the zone includes areas both inside and outside of a regional or metropolitan urban growth boundary as defined in section (2) of this rule, except for a (rural) reservation enterprise zone.

(4) If a new or newly modified regional or metropolitan urban growth boundary intersects an existing enterprise zone, the zone's categorization as either rural or urban shall remain unchanged. If a (subsequent) modification to the regional or metropolitan urban growth boundary (or to the definition thereof) situates the zone entirely outside or inside of that boundary, then the zone's categorization as rural or urban shall be reversed accordingly.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285B.668(1)
Stats. Implemented: ORS 285C.050 - 285C.250
Hist.: EDD 3-1996, f. & cert. ef. 4-2-96; EDD 13-1997, f. & cert. ef. 11-10-97; EDD 1-2005, f. & cert. ef. 2-25-05; EDD 1-2007(Temp), f. & cert. ef. 1-8-07 thru 7-6-07

123-065-0140

The Sponsor of an Enterprise Zone

As defined under ORS 285C.050(19), described in OAR 123-065-0010, and used in ORS 285C.050 to 285C.250 and in this division of administrative rules:

(1) "Sponsor" or "zone sponsor" means:

(a) The single city, port or county (or tribal government) that applied for the most recent designation of the enterprise zone; or

(b) Collectively, the city or cities, port or ports, county or counties and/or any combination thereof (and/or tribal government) that:

- (A) Applied for the most recent designation of the enterprise zone; or
- (B) Joined the zone since designation as part of a change to the zone boundary under ORS 285C.115(7) (or under ORS 285C.068 in the case of a port).

(2) Depending on the particular context, "a sponsor" or "a zone sponsor" may refer to a single sponsoring entity or cosponsor of the enterprise zone included in subsection (1)(b) of this rule, although no such reference shall be construed as superseding or interfering with ORS 285C.105(2), which compels all cosponsors to act jointly in fulfilling the duties of the zone sponsor and in taking any action with respect to the zone, except for:

- (a) Restriction on hotel/resort eligibility by a city or county; or
- (b) Local incentives as described in OAR 123-065-0240.

(3) The zone sponsor does not include and is not any city, port or county that simply consented to having part of its territory contained in the zone as described in OAR 123-065-0010.

Stat. Auth.: ORS 285A.075(5), 285A.110 & 285C.660(1)
Stats. Implemented: ORS 285C.050 - 285C.250 & 285C.320
Hist.: EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98; EDD 1-2005, f. & cert. ef. 2-25-05; EDD 1-2007(Temp), f. & cert. ef. 1-8-07 thru 7-6-07

123-065-0200

Local Zone Manager

For purposes of ORS 285C.105(1)(a):

(1) The appointment of a local zone manager by the sponsor of an enterprise zone shall be accomplished through action of each cosponsor or by all of them in some collective fashion.

(2) The enterprise zone sponsor or a particular cosponsor may delegate the authority to appoint the local zone manager to a person or body including but not limited to the current local zone manager.

(3) The local zone manager may be specified as an established position at a local agency or organization, whether public or private, as opposed to a named person.

(4) The enterprise zone sponsor may appoint up to but not more than two persons to serve as local co-managers of the zone.

(5) Except as explicitly proscribed by the zone sponsor, the local zone manager shall act as the agent and representative of the enterprise zone in regard to any and all ministerial, intergovernmental, technical or promotional functions of the zone sponsor.

(6) The local zone manager may be empowered by and on behalf of the sponsor or of a cosponsor of the enterprise zone to make discretionary decisions that do not specifically require adoption of a resolution by the sponsor's governing body or bodies under ORS 285C.050 to 285C.250 or as described in this division of administrative rules.

(7) Whenever a local zone manager is appointed or a new person fills the appointed position, written notice of such shall be provided to the Department, the Department of Revenue and the county assessor soon afterwards.

Stat. Auth.: ORS 285A.075(5), 285A.110 & 285C.660(1)
Stats. Implemented: ORS 285C.105
Hist.: EDD 3-1996, f. & cert. ef. 4-2-96; EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98; EDD 1-2005, f. & cert. ef. 2-25-05; EDD 1-2007(Temp), f. & cert. ef. 1-8-07 thru 7-6-07

123-065-0210

Reporting by the Enterprise Zone Sponsor

(1) Within six months after designation of any enterprise zone, the sponsor of the zone shall provide to the Department, the Department of Revenue, the county assessor, the contact agency for first-source hiring agreements and local institutions involved in marketing the zone the following information (even if contained in the application for designation):

(a) A description and examples of marketing plans, efforts or materials for the zone;

(b) A final inventory and references to associated enabling instruments (such as local ordinances) for any local incentive proposed as binding in the application;

(c) A list, map or other information necessary for identifying publicly owned land or buildings that are available for lease or purchase by an eligible business firm within the zone under ORS 285C.110 (see OAR 123-065-0255);

(d) For an urban zone, indices identifying all land within the zone (specific tax lots or street addresses needed only for property at which eligible development may occur);

(e) Description of any policies, conditions or reasonable requirements that have been adopted or that the sponsor would seek to implement and enforce under ORS 285C.150, 285C.155 or 285C.160 with respect to authorized business firms;

(f) Documentation of final arrangements or agreements pursuant to OAR 123-065-1080;

(g) Confirmation/appointment of local zone manager as described in OAR 123-065-0200; and

(h) The final form of election to allow hotel, motel or destination resorts as eligible business firms in all or certain city or county jurisdictions of the enterprise zones, for which newly adopted resolution(s) are necessary to effectively change an election made by resolution(s) adopted for purposes of the application.

(2) Each year by November 1, the zone sponsor shall provide to the Department, the Department of Revenue, the county assessor, the contact agency for first-source hiring agreements and local institutions involved in marketing the enterprise zone:

(a) A list of all outstanding investments proposed by business firms that have been and remain actively authorized in the zone, but that are not yet qualified for (most of) the investment, along with any updated estimate of expected new jobs or the cost of proposed qualified property;

(b) Commentary on efforts to assist authorized and qualified business firms or the county assessor with new or ongoing enterprise zone exemptions; and

(c) Updated information or recently revised materials pertaining to:

(A) What is listed in section (1) of this rule; and

(B) Such matters as the zone boundary, public outreach, available industrial land within the zone, and local training and education resources.

Stat. Auth.: ORS 285A.075(5), 285A.110 & 285C.660(1)

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Stats. Implemented: ORS 285C.065, 285C.070, 285C.105 & 285C.110
Hist.: EDD 3-1996, f. & cert. ef. 4-2-96; EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98; EDD 1-2005, f. & cert. ef. 2-25-05; EDD 1-2007(Temp), f. & cert. ef. 1-8-07 thru 7-6-07

123-065-0240

Enhanced Public Services and Other Local Incentives

For purposes of local incentives inside an enterprise zone within the applicable city, port or county jurisdiction or service territory under ORS 285C.105(1)(b):

(1) Such local incentives include but are not limited to:

(a) Enhanced availability or efficiency of local public services, such as utilities, transportation access and public safety protection;

(b) Waivers, discounts or credits for local fees, charges, business/license taxes and so forth; or

(c) Regulatory flexibility, expedited/simplified permitting, special zoning designations, exceptions from ordinances, or the like that do not significantly undermine regulations pertaining to health & safety.

(2) Unless described as discretionary, any such incentive is binding on the city, port or county sponsoring the zone and must be implemented and made available no later than six months after the effective date of the designation or boundary change, as proposed in the resolution, by which the city, port or county:

(a) Applied for designation of the zone, as described in OAR 123-065-1520(5); or

(b) Requested to be added as a cosponsor of the zone in conjunction with a request to change the boundary of the zone under ORS 285C.115(7).

(3) Within six months of the relevant effective date in section (2) of this rule, a city, port or county may formally declare and implement one or more such incentives that are in addition to and, if so indicated in the declaration, are as binding on the city or county for the life of the zone as previously proposed incentives.

(4) Except as provided in section (5) of this rule, any such incentive shall be available or provided to no fewer than all authorized business firms that qualify under ORS 285C.200 on an equal basis within that portion of the enterprise zone exclusive to the relevant jurisdiction or service territory.

(5) A city or county cosponsor may formally differentiate the incentives available to business firms operated as a hotel, motel or destination resort (if eligible in that part of the zone).

(6) For purposes of ORS 285C.245(5), in the case where the zone sponsor proposes one or more new incentives to replace an incentive or incentives that are binding according to this rule:

(a) "Comparable value" means that the new incentives or incentives, as a whole, shall be measured relative to what they would collectively replace, in terms of not only direct financial benefits to business firms, but also non-dollar factors such as convenience.

(b) In determining whether "reasonable corrections of shortcomings in existing local incentives" are being made, the Department may consider and take into account the extent to which an existing incentive significantly impairs or is reasonably expected to jeopardize the ability to provide services and incentives to eligible business firms in general, because it excessively:

(A) Benefits some or all authorized or qualified firms; or

(B) Strains local budgetary resources or utility capacity.

(7) That such an incentive is generally used by and available to other business firms within the enterprise zone or elsewhere in the cosponsor's political or service territory does not affect its status as binding for purposes of the zone.

(8) A local incentive offered or binding in one cosponsor's jurisdiction or territory has no bearing on the incentives of any other cosponsor.

(9) In accordance with applicable state or local laws, charters, ordinances or conventions, a city, port or county that sponsors an enterprise zone may offer to authorized or qualified business firms other incentives that are not binding, although the Department shall not formally recognize such discretionary incentives in the context of:

(a) Benefits customarily offered to an eligible business firm investing in the enterprise zone for purposes of marketing and related efforts to retain, expand, start or recruit such firms; and

(b) Awarding points for competitive criteria that influence designation of the proposed zone (OAR 123-065-1570).

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.660(1)

Stats. Implemented: ORS 285C.065, 285C.105, 285C.115 & 285C.245

Hist.: EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98; EDD 1-2005, f. & cert. ef. 2-25-05; EDD 1-2007(Temp), f. & cert. ef. 1-8-07 thru 7-6-07

123-065-0310

Boundary Change Request by Zone Sponsor

The request by the sponsor of an enterprise zone for a change to the zone boundary under ORS 285C.115 must provide a summary (memo) and documents that include or address each of the following:

(1) Resolutions lately and duly adopted by the governing body of each of the sponsor's existing and proposed members.

(2) Change or retention of the zone's official name.

(3) Definition of enterprise zone boundary in accordance with OAR 123-065-1000.

(4) Consideration of economic hardship conditions in or near any area to be added to the zone, relative to economic hardship for the original enterprise zone and local areas associated with it, consistent with OAR 123-065-0365.

(5) Adherence to OAR 123-065-0320 and 123-065-0330, including but not limited to commentary about the following:

(a) Usability of land to be added or removed;

(b) Location of new areas to be added respective to urban growth boundaries; and

(c) Actions and documentation of appropriate or necessary public involvement.

(6) Conformity with:

(a) Mandatory city/county/port sponsorship or consent as described in OAR 123-065-0010, such that previous consent by resolution of a city, port or county governing body, does not preclude the need for further consent for any (subsequent) boundary change that adds area inside the government's territory, unless the previous resolution expressly granted such open-ended consent;

(b) Spatial parameters for an enterprise zone, as delineated in OAR 123-065-0080 or 123-065-0090; and

(c) Requirements of ORS 285C.115(2)(b) and (d) for retaining:

(A) Sites of all current, actively authorized business firms; and

(B) At least half of the land originally in the zone.

(7) For a proposed new cosponsor, as desired and contained in its resolution:

(a) Binding proposals to provide local incentives under ORS 285C.115(7)(a) (consistent with OAR 123-065-0240) to authorized or qualified business firms locating or expanding in parts of the proposed zone exclusive to that jurisdiction or port district; or

(b) A restriction in the case of a city or county under ORS 285C.115(7)(b) from hotel, motel or destination resort businesses being eligible in the enterprise zone exclusive to that city or county jurisdiction (but only if such businesses are eligible elsewhere in the existing zone under ORS 285C.070 or section 56(1), chapter 662, Oregon Laws 2003).

(8) Request for a needed waiver of maximum rural distances per OAR 123-065-0090(4).

(9) Explain, as appropriate, why the change to the zone boundary complements the zone's Strategic Plan or marketing efforts as formulated in or since the application for designation of the zone.

(10) Describe any immediate justification, as appropriate, for the change to the zone boundary, including but not limited to one or more of the following:

(a) The ability to immediately site and authorize a prospective investment by an eligible business firm that will result in:

(A) Significant new employment;

(B) Preservation of local full-time jobs that would otherwise be lost;

(C) Notable worker compensation levels;

(D) Valuable new training opportunities for local workers; or

(E) Diversification of the local economy;

(b) The opportunity to exploit recent changes in local land use designations and ordinances consistent with the purpose of an enterprise zone under ORS 285C.050 to 285C.250;

(c) The extension of enterprise zone benefits to a city, port or county that is not sponsoring a current enterprise zone; or

(d) Other compelling reasons of the zone sponsor.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1) & 285C.115(6)

Stats. Implemented: ORS 285C.060 & 285C.115

Hist.: EDD 3-1996, f. & cert. ef. 4-2-96; EDD 5-1996, f. & cert. ef. 6-24-96; EDD 1-997, f. & cert. ef. 1-17-97; EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98; EDD 9-2000, f. & cert. ef. 5-2-00; EDD 1-2005, f. & cert. ef. 2-25-05; EDD 1-2007(Temp), f. & cert. ef. 1-8-07 thru 7-6-07

123-065-0320

Limitations on Boundary Changes

Approval by the Director or the Director's designee of a change in an enterprise zone's boundary as requested by the zone sponsor is restricted as follows:

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(1) A boundary change may be approved, only if land as described in section (2) of this rule is represented by:

(a) Not less than 20 percent of the land to be added (except as specially allowed by the Department); and
(b) None of what is to be removed.

(2) Useable land for purposes of section (1) of this rule (which does not include residential or agricultural property) is as follows:

(a) Zoned outright for uses germane to eligible business firms consistent with an acknowledged comprehensive land use plan;

(b) Free of serious impediments to development and use by eligible business firms, due to cultural or environmental concerns/regulations;

(c) Provided with or can be effectively provided with infrastructure, road access, utilities and public services that are adequate for eligible business operations; and

(d) Vacant or available for substantial new occupancy, expansions or improvements by one or more eligible business firms.

(3) In order for the boundary of a rural enterprise zone to be modified, such that it contains new or expanded areas outside of any urban growth boundary, the request for the boundary change must indicate and explain as described in OAR 123-065-0310(10) to the satisfaction of the Department that there is significant justification for the change.

(4) A boundary change shall not be approved if:

(a) It adds any area that is:

(A) Outside a regional or metropolitan urban growth boundary, to an urban enterprise zone; or

(B) Inside such a boundary, to a rural zone;

(b) It adds area within another current enterprise zone; or

(c) A new cosponsor to be added under ORS 285C.115(7) is a city or port that had sponsored an enterprise zone terminated under ORS 285C.245(4) or (5).

(5) Neither a boundary change nor any comparable procedure allows a city, port or county government:

(a) To make hotel/resort businesses eligible unless such firms are eligible in the zone already under ORS 285C.070 or section 56(1), chapter 662, Oregon Laws 2003; or

(b) To renounce, rescind or terminate its existing sponsorship and inclusion in the zone, which is possible only by termination of the entire zone under ORS 285C.245 or by dissolution of the jurisdiction.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1), 285C.066, 285C.115(6)

Stats. Implemented: ORS 285C.065 & 285C.115

Hist.: EDD 3-1996, f. & cert. ef. 4-2-96; EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98; EDD 1-2005, f. & cert. ef. 2-25-05; EDD 1-2007(Temp), f. & cert. ef. 1-8-07 thru 7-6-07

123-065-0330

Public Involvement with Boundary Change

In order for a requested change to an enterprise zone's boundary to be approved, the zone sponsor must solicit public involvement that:

(1) Occurs prior to the approval of resolutions as described in OAR 123-065-0310(1) or prior to the submission of a revised request for the boundary change under ORS 285C.115(8);

(2) Is commensurate with the scale and potential impact of the requested boundary change on members of the public, subject to the sponsor's judgment and a case-specific review by the Department, which shall recognize, for example, that a minor addition of land within an urban growth boundary will generally necessitate little or no public involvement;

(3) Potentially includes but is not necessarily dependent on such activities as: Public notice, period of public comment, dissemination of information or public meeting/hearing; and

(4) Conforms with and includes documentation stipulated in OAR 123-065-1050 for timely communication with local taxing districts, including but not limited to:

(a) Districts with territory that is already in the enterprise zone; and

(b) Special consultation if a new cosponsor or extensive area is to be added.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1) & 285C.115(6)

Stats. Implemented: ORS 285C.115

Hist.: EDD 3-1996, f. & cert. ef. 4-2-96; EDD 5-1996, f. & cert. ef. 6-24-96; EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98; EDD 9-2000, f. & cert. ef. 5-2-00; EDD 1-2005, f. & cert. ef. 2-25-05; EDD 1-2007(Temp), f. & cert. ef. 1-8-07 thru 7-6-07

123-065-0350

Special Cases for Boundary Changes

(1) If modifications in local, state or federal designations cause a rural enterprise zone to be intersected by a previously existing regional or metropolitan urban growth boundary, a change to the boundary may not add areas within the regional or metropolitan urban growth boundary, as it existed prior to any such intersection of the zone.

(2) If a city annexes into its jurisdiction an area of an enterprise zone, of which the city is not a sponsor, or to which the city did not consent under ORS 285C.065(1):

(a) The tax exemptions of authorized or qualified business firms in the annexed area shall not be affected;

(b) An eligible business firm proposing an investment in qualified property at a location in the annexed area of the zone may be authorized contingent on an amendment to the zone's sponsorship as provided in subsection (c) of this section; and

(c) An eligible business firm authorized consistent with subsection (b) of this section may not qualify nor receive an enterprise zone exemption for the investment unless and until such time as the Director or the Director's designee approves a request by resolutions of the zone sponsor and the city, such that either:

(A) The city becomes a new cosponsor of the zone under ORS 285C.115(7); or

(B) The city consents consistent with ORS 285C.065(1) that the zone may contain area within the city's jurisdiction.

(3) For purposes of chapter 704, Oregon Laws 2005:

(a) A port's joining an existing enterprise zone under ORS 285C.068 is equivalent to a boundary change, except that no area is being added or removed and other specific provisions of ORS 285C.115 are inapplicable.

(b) Port sponsorship or consent is required for any boundary change request that proposes to add area inside the territory of the port to any enterprise zone.

(c) If new areas to be added to an enterprise zone are outside of any port district, the zone may be expanded without port sponsorship or consent, even if the zone already contains port territory.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1) & 285C.066)

Stats. Implemented: ORS 285C.065, 285C.068 & 285C.115

Hist.: EDD 3-1996, f. & cert. ef. 4-2-96; EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98; EDD 9-2000, f. & cert. ef. 5-2-00; EDD 1-2005, f. & cert. ef. 2-25-05; EDD 1-2007(Temp), f. & cert. ef. 1-8-07 thru 7-6-07

123-065-1050

Notice to Local Taxing Districts

An application or local proposal to designate an enterprise zone or rural renewable energy development zone or to change an existing enterprise zone boundary shall entail prior notice to and consultation with local taxing districts:

(1) The applicant or zone sponsor must send notice to each taxing district (including but not limited to any municipal corporation or service district listed under ORS 198.010 and 198.180) that levies or has authority to levy ad valorem taxes on property within the proposed area of zone designation or of inclusion by the boundary change. Notice need not be given to any taxing district that is:

(a) A city, port or county government applying for or sponsoring the zone; or

(b) A service district, urban renewal district, or the like with effectively the same governing body as such a city, port or county.

(2) In the case of an application for enterprise zone designation under ORS 285C.080 or 285C.250, the notice must be sent at least 21 calendar days before the meeting described in OAR 123-065-1060 and must include but is not necessarily limited to:

(a) An invitation for representation from each district;

(b) An established meeting place, date and time conducive to such representation (The applicant is urged to coordinate scheduling with district officials who are known to be interested in relevant issues);

(c) A preliminary agenda for the meeting; and

(d) Brief background about the reasons for seeking an enterprise zone.

(3) In the case of an application or request for designation under ORS 285C.085 or 285C.353 or for a boundary change under ORS 285C.115, the notice must be sent at least 21 calendar days before adoption of the requisite resolution by the governing body of the applicant/sponsoring county, or if there is no county applicant/sponsor, then before adoption of a requisite resolution by any applicant/sponsoring city or port.

(4) The notice as described in section (2) or (3) of this rule must also be sent to the county assessor, and it must:

(a) Describe the probable schedule for consideration of city/port/county resolutions to apply for designation or to request the boundary change;

(b) Explain the limited-duration exemption(s) from taxes on potential property to be newly invested inside the zone boundary by businesses subject to hiring requirements;

(c) Invite comments on the proposed zone or boundary change, to be directed at some or all of the sponsoring city/port/county governments; and

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(d) Give contact details for submitting such comments or for receiving further information.

(5) The applicant or zone sponsor must furnish the Department with the following as part of the application or boundary change request:

(a) A list of contact names and mailing addresses for all applicable taxing districts;

(b) A copy of the notice directed at such taxing districts;

(c) Any final document, materials or meeting minutes associated with consultative activities as described in OAR 123-065-1060 to 123-065-1080; and

(d) A statement signed by the authorized preparer of the application or request attesting that the notification was sent by regular mail to each listed district on a specified date.

(6) For all written comments received in response to the notice from any relevant taxing district, the applicant or zone sponsor shall give them due consideration and shall send copies to the Department no later than 15 calendar days following receipt or the application deadline, and as feasible, before the Director orders the designation or boundary change.

(7) A taxing district's objection to or lack of support for the proposed zone designation or boundary change has no bearing on the zone's operation or on exemptions granted to business firms.

(8) Failure to materially perform any task stipulated by this rule or by OAR 123-065-1060 to 123-065-1080 may result in the Department rescinding and reversing a relevant order of designation or boundary change, or terminating a zone consistent with provisions under ORS 285C.245(5).

(9) The tasks stipulated in this rule are in no way intended to discourage or replace other local efforts and actions to provide/ elicit public information, commentary or involvement, as circumstantially appropriate, or as required by local law, policy, custom or practice.

(10) Copies of items listed in subsections (5)(a) and (b) of this rule shall also be furnished to the Special Districts Association of Oregon (Attn: Government Affairs) by the applicant or zone sponsor.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1), 285C.065(3), 285C.250(4), 285C.353(2) & 285C.370

Stats. Implemented: ORS 285C.060, 285C.065, 285C.075, 285C.085, 285C.090, 285C.115, 285C.120, 285C.250 & 285C.353

Hist.: EDD 1-2005, f. & cert. ef. 2-25-05; EDD 1-2007(Temp), f. & cert. ef. 1-8-07 thru 7-6-07

123-065-1060

Consultation Meeting for Enterprise Zone Applications

For purposes of ORS 285C.067 and active consultation with local taxing districts by a city/port/county applicant for designation of an enterprise zone under ORS 285C.065 and either 285C.080 or 285C.250, the applicant shall conduct a public meeting:

(1) That occurs not less than 14 days prior to the adoption of a resolution of application by the governing body of any sponsoring city, port or county.

(2) To which the applicant sends staff and community partners, who are directly involved with the application and knowledgeable about potential business development in the proposed zone, and elected or executive officials of the governments as feasible and appropriate.

(3) At which the applicant provides a final meeting agenda, and:

(a) Makes available and reviews copies of a map of the proposed zone boundary and other such materials related to the application;

(b) Recognizes for the record any written commentary received from a district;

(c) May allot time for opening statements by each district in attendance; and

(d) Sees that the proceedings are transcribed or recorded in some manner.

(4) That involves open discussion and the exchange of ideas and information, such as:

(a) Perceived benefits, usefulness and so forth of receiving the designation;

(b) Probable effects — immediate, deferred and continuing -- on property tax revenue and the cost of public services arising from potential development, including but not limited to those of represented districts;

(c) The nature of relevant service capacity, at the present time, for emergency preparedness, public safety, rescue, fire suppression, emergency medical services, transportation infrastructure, public utilities and so forth; and

(d) Impacts of potential new development, including but not limited to large workforce or particular structures, industrial materials or other risk factors, on the need for capital improvements or equipment, or special devices, protective gear, supplies or training for first responders.

(5) That addresses follow-up steps for analysis or further consultation (see OAR 123-065-1070) or for any arrangement or agreement (per OAR 123-065-1080), as well as plans for submitting the enterprise zone application and for holding public hearings to adopt resolutions.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1), 285C.065(3), 285C.067(2) & 285C.250(4)

Stats. Implemented: ORS 285C.060, 285C.065, 285C.067, 285C.075 & 285C.250

Hist.: EDD 1-2007(Temp), f. & cert. ef. 1-8-07 thru 7-6-07

123-065-1070

Additional Consultations with Taxing Districts

In anticipation of or subsequent to the meeting described in OAR 123-054-1060, the city/port/county applicant for enterprise zone designation:

(1) May communicate, confer or interact with one or more local taxing districts in other ways, including but not limited to additional public or nonpublic meetings or special means of eliciting feedback and dialogue with districts.

(2) Shall respond within 10 business days to a local taxing district's formal request, and make good faith efforts to fulfill such a request, for a special (one-on-one) meeting or for written comments or answers to specific questions.

(3) Shall endeavor to assist one or more districts, as requested, to estimate or better understand short/long-term public revenues and service demands under particular assumptions or potentialities about enterprise zone development or (types of) business projects, and as feasible, to generally quantify such benefits and costs over time (at least 10 years).

(4) May explore how permitting procedures and development standards affecting eligible business firms in the zone (including but not related to design review, conditional use permits, comprehensive land use planning or zoning ordinances) can or do serve to effectively resolve relevant, outstanding issues.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1), 285C.065(3), 285C.067(2) & 285C.250(4)

Stats. Implemented: ORS 285C.060, 285C.065, 285C.067, 285C.075 & 285C.250

Hist.: EDD 1-2007(Temp), f. & cert. ef. 1-8-07 thru 7-6-07

123-065-1080

Results of Taxing District Consultations

As a consequence of the consultation procedures described in OAR 123-065-1060 or 123-065-1070, the city/port/county applicant may establish arrangements or agreements with one or more districts, as mutually suitable, and contingent on actual designation of the enterprise zone:

(1) Documentation for inclusion in the application shall fully identify follow-up steps, timelines or outstanding points, inasmuch as any such arrangement or agreement remains subject to further development or finalization.

(2) Although the applicant is certainly advised to formally execute and document these arrangements or agreements, verbal pledges or understandings may be described in or as part of the application, but any such description does not in and of itself create or represent any binding obligation on or for the applicant.

(3) These arrangements or agreements may consist, for example, of:

(a) Regularly scheduled (for example, annual) meetings or updates regarding business activity in the zone;

(b) Ensuring ongoing notification and communication about or by business firms as part of the authorization process, in lieu of OAR 123-065-4323(4)(b) or 123-065-4328(4)(e);

(c) Undertaking or continuing benefit/cost estimations or other studies regarding actual or prospective activity in the zone or the review and enhancement of problem-solving through development regulations, as described in OAR 123-065-1070;

(d) Incorporating into zone policies or negotiations, as applicable and consistent with OAR 123-065-0230 and 123-065-2500 to 123-065-2599, additional, reasonable conditions or requirements on a business firm that address relevant circumstances arising from a proposed investment; or

(e) Engaging in other collaborative efforts that enhance economic development and community services for the public.

(4) This rule does not create any authority over property tax collection, and any arrangement or agreement as described in this rule will not necessarily obligate or burden the county assessor.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1), 285C.065(3), 285C.067(2) & 285C.250(4)

Stats. Implemented: ORS 285C.060, 285C.065, 285C.067, 285C.075 & 285C.250

Hist.: EDD 1-2007(Temp), f. & cert. ef. 1-8-07 thru 7-6-07

ADMINISTRATIVE RULES

123-065-1500

Definitions

In addition to terms defined in OAR 123-065-0000, the following definitions apply to applications for designation of an enterprise zone (OAR 123-065-1500 to 123-065-1599):

(1) "Applicant" means the Sponsoring Government or Governments submitting the application for an enterprise zone designation.

(2) "Basis Point" equals one one-hundredth of a unit of a percentage rate or 1 percent of a Percentage Point.

(3) "Enterprise Zone Population" means:

(a) For rural enterprise zones, the total population of incorporated cities in which any part of the zone is located, plus the estimated population of unincorporated territory that is within the boundary of the zone; or

(b) For urban enterprise zones, the estimated population within the boundaries of the zone, plus the estimated population of any Target Community that is used for purposes of OAR 123-065-1630.

(4) "Percentage Point" equals one unit of a percentage rate. (For example, an 8.5-percent unemployment rate is two Percentage Points higher than a 6.5-percent unemployment rate)

(5) "Round of Designation" is defined as the period of time, not less than 90 days, beginning when one set of enterprise zones is designated, and ending when the next set of zones is designated.

(6) "Sponsoring Government" means a county, port or city participating as an Applicant in proposing an enterprise zone (or a district that has effectively the same governing body as the county, port or city, and that contains all Sponsoring Government territory inside the proposed zone).

(7) "Strategic Plan" or "Strategic Planning" means any documentation or descriptions, as submitted with an application for designation of an enterprise zone, as described in OAR 123-065-1650.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1), 285C.065(3) & 285C.250(4)

Stats. Implemented: ORS 285C.065, 285C.075 & 285C.250

Hist.: EDD 1-1997, f. & cert. ef. 1-7-97; EDD 1-1999, f. & cert. ef. 1-26-99; EDD 1-2005, f. & cert. ef. 2-25-05; EDD 1-2007(Temp), f. & cert. ef. 1-8-07 thru 7-6-07

123-065-1520

Enterprise Zone Application

The application for designation of an enterprise zone:

(1) Shall be accepted by the Department only if submitted pursuant to an announced Round of Designation, and if on or before the date of the application deadline specified by OAR 123-065-1550(1):

(a) It is sent, as indicated by a postmark or the receipt of a commercial deliverer; or

(b) It is received at the Department's Salem office by 5 p.m. that day if directly delivered by the Applicant.

(2) Shall include all items and information specified in OAR 123-065-1530.

(3) Shall be accepted by the Department from any city, port or county or combination of cities, ports or counties in accordance with OAR 123-065-0010, except that:

(a) A city or port may be a Sponsoring Government for only one application per Round of Designation;

(b) A city with less than 100,000 population may not be a Sponsoring Government, if it is a sponsor of a current enterprise zone, unless that current enterprise zone is to be Terminated by Statute at the conclusion of the Round of Designation, or as allowed by the Director respective to near-term terminations and re-applications; and

(c) An Applicant is not eligible, if it includes a majority of the cities or ports that had sponsored an enterprise zone that was terminated by order of the Director under ORS 285C.245(4) or (5).

(4) Shall specify a name for the proposed zone corresponding to place names or common geographic or jurisdictional terms. (For entirely official purposes, a Preexisting Enterprise Zone using the same name would use the suffix "II")

(5) May contain binding proposals by each Sponsoring Government (as indicated in its resolution) to provide local incentives under ORS 285C.065(4) to (6) (consistent with OAR 123-065-0240) to authorized or qualified business firms locating or expanding in parts of the proposed zone exclusive to that government's political or service territory.

(6) Serves as an opportunity for a Preexisting Enterprise Zone to revise any existing policy.

(7) Is the only chance for cities or counties to establish whether a business operating a hotel, motel or destination resort will be eligible under ORS 285C.135(5)(c) in the newly designated enterprise zone, and whether this eligibility pertains only to some parts of the zone exclusive to the city or county jurisdiction of one or more Sponsoring Governments, under ORS 285C.070, such that:

(a) Any such election or restriction may be made only by resolution(s) (jointly) adopted by the city and county Sponsoring Government(s).

(b) An election, restriction or lack thereof may be revised, regardless of what is indicated with the application, by resolution(s) (jointly) adopted up to but not more than six months after the date of designation.

(c) For a Preexisting Enterprise Zone with an existing election under ORS 285C.070 or section 56(1), chapter 662, Oregon Laws 2003, hotel/resort eligibility will NOT automatically carry over (causing future hotel/resorts to be ineligible throughout the new zone, unless a positive election is made with or after the application as described in this section).

(d) Any restriction of hotel/resort eligibility must be collectively provided for by resolution of city and county Sponsoring Governments.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1), 285C.065(3), 285C.250(4)

Stats. Implemented: ORS 285C.065, 285C.070, 285C.075 & 285C.250

Hist.: EDD 4-1994, f. & cert. ef. 2-24-94; EDD 10-1995, f. & cert. ef. 12-19-95; EDD 1-1997, f. & cert. ef. 1-7-97, Renumbered from 123-065-0020; EDD 1-1999, f. & cert. ef. 1-26-99; EDD 1-2005, f. & cert. ef. 2-25-05; EDD 1-2007(Temp), f. & cert. ef. 1-8-07 thru 7-6-07

123-065-1530

Required Elements of Application

An application proposing designation of an enterprise zone must contain:

(1) A form as prescribed by and available from the Department that the Applicant fills out and includes with the information described in this rule, notwithstanding other information that the Applicant wishes to submit.

(2) A resolution consistent with OAR 123-065-1540 from each Sponsoring Government, duly approved by a majority of its governing body (relative to its charter, by-laws or ordinance) not more than 90 days before the application is submitted to the Department for that Round of Designation.

(3) A description of the boundary and surface area of the proposed zone as described in OAR 123-065-1000.

(4) Information sufficient to verify satisfaction of the mandatory qualifications described in OAR 123-065-1510 by including:

(a) Data for social and economic conditions as described in OAR 123-065-1600 to 123-065-1630, which also serve the competitive criteria in OAR 123-065-1560; and

(b) Evidence about the readiness of land for development, including but not limited to an enterprise zone map highlighting critical sites and other materials consistent with OAR 123-065-1670.

(5) Documentation as stipulated in OAR 123-065-1050 to 123-065-1080.

(6) A resolution of consent from any applicable city, port or county as described in OAR 123-065-0010.

(7) Failure to have adequately or accurately performed the tasks described in this rule may result in the termination of the proposed enterprise zone after it has been designated, consistent with ORS 285C.245(5).

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1), 285C.065(3), 285C.066,

285C.067(2) & 285C.250(4)

Stats. Implemented: ORS 285C.065, 285C.075, 285C.090 & 285C.250

Hist.: EDD 1-1997, f. & cert. ef. 1-7-97; EDD 1-1999, f. & cert. ef. 1-26-99; EDD 5-1999(Temp), f. & cert. ef. 8-20-99 thru 10-23-99; EDD 14-1999, f. 10-22-99, cert. ef. 10-23-99; EDD 1-2005, f. & cert. ef. 2-25-05; EDD 1-2007(Temp), f. & cert. ef. 1-8-07 thru 7-6-07

123-065-1540

Local Resolutions Requesting Designation

The resolutions of Sponsoring Governments for purposes of OAR 123-065-1530(2), proposing and requesting designation of an enterprise zone, shall:

(1) State the Applicant's principal reasons for an enterprise zone, as appropriate.

(2) Acknowledge other participants in a joint application, if any.

(3) Confirm that the Applicant will give priority to the use in a designated zone of any economic development or job training funds received directly or indirectly from the federal government.

(4) Declare that the Applicant will fulfill its duties under ORS 285C.050 to 285C.250 and comply with ORS 285C.105, as described in this division of administrative rules, if the proposed zone is designated, including but not limited to a commitment to:

(a) Appoint a local zone manager within 90 days of designation, if one is not already appointed through the application; and

(b) Fully implement within six months of designation:

(A) Any proposal in the application for local incentives under ORS 285C.065(4) to (6) (consistent with OAR 123-065-0240); and

(B) Duties of the sponsor as described in OAR 123-065-0210 and 123-065-0255.

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(5) Attest to actions taken for purposes of public involvement, including but not limited to the nature and outcome of the consultations as described in OAR 123-065-1060 to 123-065-1080 and documented per OAR 123-065-1530(5).

(6) Highlight other characteristics of the application or the proposed zone as deemed appropriate by the Sponsoring Government.

(7) Address applicable elections or restrictions for hotel/resort eligibility (see OAR 123-065-1520) or similar matters.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1), 285C.065(3), 285C.067(2) & 285C.250(4)

Stats. Implemented: ORS 285C.065, 285C.067, 285C.070, 285C.095, 285C.105, 285C.110
Hist.: EDD 1-1997, f. & cert. ef. 1-7-97; EDD 1-1999, f. & cert. ef. 1-26-99; EDD 5-1999(Temp), f. & cert. ef. 8-20-99 thru 10-23-99; EDD 14-1999, f. 10-22-99, cert. ef. 10-23-99; EDD 1-2005, f. & cert. ef. 2-25-05; EDD 1-2007(Temp), f. & cert. ef. 1-8-07 thru 7-6-07

123-065-1553

Director's Determination

For purposes of designating enterprise zones:

(1) After receiving the staff report indicated in OAR 123-065-1550, the Director shall initiate appropriate deliberations and steps to make one or more designation.

(2) The Director shall take the results of the Department's review as contained in the staff report under advisement, but in reaching a final decision the Director may also:

(a) Give special weight to certain matters addressed in the applications, such as the quality, depth and meaningfulness of documented arrangements or agreements arising from consultation with local taxing districts as described in OAR 123-065-1080, or the opportunity to induce immediate investment and employment as described in OAR 123-065-1580;

(b) Assess data or input from other sources;

(c) Consult with any party, inside or outside state government, with potentially useful information; or

(d) Engage in similar forms of consideration.

(3) For a given Round of Designation:

(a) All zones available for designation under ORS 285C.250(1) to replace zones that are Terminated by Statute shall be designated insofar as there are qualified Applicants;

(b) The Director may determine not to designate a zone available under another provision, despite qualified Applicants (beyond any minimum number of designations if so specified in the public notice); and

(c) Any zone remaining undesignated shall be made available in a future Round of Designation to be determined by the Director.

(4) No enterprise zone shall be designated if any such designation would cause the total number of enterprise zones in existence to exceed the maximum number as described in OAR 123-065-0057.

(5) The decision of the Director as to which qualified Applicant(s) to designate (or deny):

(a) May not be appealed; and

(b) Depends ultimately (subject to sections (1) to (4) of this rule) on the Director's determination of which Applicant/proposed enterprise zone represents the best chance to fulfill the public purposes of the **Enterprise Zone Act** if designated.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1) & 285C.250(4)

Stats. Implemented: ORS 285C.055, 285C.060, 285C.067, 285C.075, 285C.080, 285C.250 & 285C.260

Hist.: EDD 1-2005, f. & cert. ef. 2-25-05; EDD 1-2007(Temp), f. & cert. ef. 1-8-07 thru 7-6-07

123-065-1590

Competitive Criteria: Miscellaneous

The following criteria relate to how well the proposed enterprise zone can be expected to operate and to achieve the economic development goals of the state as a whole. Responses may be made at the Applicant's discretion and may consolidate two or more criteria:

(1) A plan for managing the proposed zone, including but not limited to the appointment of a local enterprise zone manager or co-managers through provisions in the application or approved actions by the Sponsoring Governments.

(2) Existing or proposed arrangements for coordinating actions among the Sponsoring Governments, county assessor and other key participants in the proposed zone, including but not limited to the creation or naming of a Zone Association that is or will be empowered and constituted by resolutions/agreement among the Sponsoring Governments.

(3) Evidence of broad-based public awareness or support for the proposed zone by the local community, including but not limited to:

(a) A record of formal public discussion and involvement in the decisions to make application and to define the area for the zone; and

(b) Resolutions or letters of support for the zone from local organizations, institutions or property tax districts received by the Department within 30 calendar days of the application deadline specified in OAR 123-065-1550(1).

(4) For a proposed urban enterprise zone, the absence within the metropolitan statistical area of any other urban zone that will not be Terminated by Statute before the zone is designated (maximum of 150 points).

(5) The distance between a proposed rural enterprise zone and the nearest current enterprise zone that will not be Terminated by Statute before the zone is designated (2.5 points for every mile of the shortest distance over paved roadways, up to a maximum of 250 points).

(6) Number of cities, ports or counties participating in the proposed zone (40 points for each Sponsoring Government in excess of two).

(7) The quality, depth and meaningfulness of documented arrangements or agreements arising from consultation with local taxing districts as described in OAR 123-065-1080.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1), 285C.065(3) & 285C.250(4)

Stats. Implemented: ORS 285C.055, 285C.075, 285C.105 & 285C.250

Hist.: EDD 1-1997, f. & cert. ef. 1-7-97; EDD 1-1999, f. & cert. ef. 1-26-99; EDD 9-2000, f. & cert. ef. 5-2-00; EDD 1-2005, f. & cert. ef. 2-25-05; EDD 1-2007(Temp), f. & cert. ef. 1-8-07 thru 7-6-07

123-065-1600

Definitions

In addition to terms defined in OAR 123-065-0000 and 123-065-1500, the following definitions apply to OAR 123-065-1600 to 123-065-1699:

(1) "Magnet Enterprise Zone" means a rural enterprise zone that has:

(a) A Sponsoring Government that is the most populous city of the county or counties in which the zone is located; and

(b) An Enterprise Zone Population equal to or greater than 25 percent of the population of the county or one of the counties in which the zone is located.

(2) "Population" as used in ORS 285C.090 means the number of inhabitants as determined by the most recently available data from the federal Bureau of Census or the Center for Population Research and Census (CPRC) at Portland State University.

(3) "Poverty level" as used in ORS 285C.090 is as defined by the U.S. Bureau of Labor Statistics of the U.S. Department of Labor.

(4) "Regional academic institution" as used in ORS 285C.090 means a nonprofit or not-for-profit center or institute that is engaged in demographic, economic, social or related studies and is associated with an accredited college or university, including but not limited to extension services offices.

(5) "Target Community" means an extensive residential area or group of such areas that:

(a) Is proximate to the proposed enterprise zone boundary;

(b) Dominates much of the proposed zone's immediate vicinity; and

(c) Encompasses the populace that the proposed zone is intended by the Applicant to help through employment opportunities or through relevant public or private activities that would make the Target Community economically stronger and more vital.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1), 285C.065(3) & 285C.250(4)

Stats. Implemented: ORS 285C.065, 285C.075, 285C.090 & 285C.250

Hist.: EDD 1-1997, f. & cert. ef. 1-7-97; EDD 1-1999, f. & cert. ef. 1-26-99; EDD 1-2005, f. & cert. ef. 2-25-05; EDD 1-2007(Temp), f. & cert. ef. 1-8-07 thru 7-6-07

123-065-1620

Correlation with Proposed Zone

For purposes of OAR 123-065-1510, 123-065-1560 and 123-065-1610:

(1) The Applicant of any proposed enterprise zone that is located entirely within a metropolitan statistical area may use equivalent data for the metropolitan statistical area instead of statewide data, regardless of whether the equivalent data represents only the in-state portion of the metropolitan statistical area.

(2) Unless otherwise stipulated, economic measures and statistics for a proposed enterprise zone may be based entirely on:

(a) Zone-specific data, in that the figures are weighted by the population of (for example) respective Census Statistical Units, and they approximate economic conditions within the proposed boundaries and the immediate vicinity of the zone;

(b) Citywide data that is averaged and weighted by city population, but only if no less than 75 percent of the inhabitants residing within the proposed boundaries of the zone also reside inside the incorporated area of the same city or cities;

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(c) Countywide data, but only if the zone is a Magnet Enterprise Zone; or

(d) Metropolitan statistical area data, but only for a proposed urban zone.

(3) An Applicant proposing an enterprise zone designation may exercise the following latitude in developing zone-specific economic measures based on or derived from published income, employment, population and other data for Census Statistical Units:

(a) Special studies or documented analyses may be used to estimate or infer the actual population, employment or income levels for the relevant parts of Census Statistical Units that are divided by the proposed enterprise zone boundary;

(b) The Applicant may ignore the available data for Census Statistical Units that are divided by the proposed enterprise zone boundary, if no more than 25 percent of the inhabitants inside the zone boundary also reside within all ignored Census Statistical Units;

(c) The Applicant must utilize the available data for Census Statistical Units that are divided by the proposed enterprise zone boundary, if 75 percent or more of the inhabitants in any utilized Census Statistical Unit also reside within the zone boundary;

(d) The requisite percentages in subsections (b) and (c) of this section must be verified in writing; and

(e) Notwithstanding the specific parameters of subsections (b), (c) and (d) of this section, the Applicant for designation of a proposed urban enterprise zone may use a Target Community that the Applicant identifies and demonstrates as conforming with OAR 123-065-1600(5) to the satisfaction of the Department (not applicable to rural zones).

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1), 285C.065(3), 285C.250(4)

Stats. Implemented: ORS 285C.065, 285C.075, 285C.090 & 285C.250

Hist.: EDD 1-1997, f. & cert. ef. 1-7-97; EDD 1-1999, f. & cert. ef. 1-26-99; EDD 1-2005, f. & cert. ef. 2-25-05; EDD 1-2007(Temp), f. & cert. ef. 1-8-07 thru 7-6-07

123-065-1710

Definitions

For purposes of this division of administrative rules:

(1) As used in ORS 285C.085(4)(b), “all areas within both the federal enterprise zone and the city, county or port are included in a state enterprise zone” means that the state enterprise zone, pursuant to designation or to a boundary change, must encompass any and all area contained by the Federal Enterprise Zone that is also inside territory of the city, port or county that does or would sponsor the zone:

(a) Even if such area is in a city, port or county that does not sponsor or even consent to the zone, notwithstanding OAR 123-065-0010; but

(b) Except for such area that overlaps with another existing state enterprise zone.

(2) “**Federal Enterprise Zone**” for purpose of ORS 285C.085 means any designation as defined under ORS 285C.050(9) by an agency of the federal government, provided that it is:

(a) Not terminated;

(b) Located at least partially in this state;

(c) Delimited by formal boundaries and an established period of existence of at least five years from the time of the federal designation;

(d) Intended at least in part to create or improve economic opportunities and development within the local community;

(e) Provided for by federal law that includes congressionally authorized benefits for purposes of subsection (d) of this section;

(f) Qualified based on federal guidelines, including but not limited to criteria for a level of economic hardship, generally comparable to that indicated under ORS 285C.090; and

(g) Subject to a significant degree of national selectivity and uniqueness, in relation to subsection (f) of this section, such that having more than five of any designation type awarded to this state would be highly unlikely, as an example.

(3) For purposes of its “lead agency” role for a “federal enterprise zone program” under ORS 285C.085(1), the Department may delegate responsibility to and coordinate with other state agencies in undertaking official activities for application, designation or operation of a Federal Enterprise Zone or benefits exclusive to the designation, as appropriate or required under state policies or federal guidelines.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.050 & 285C.085

Hist.: EDD 5-1999(Temp), f. & cert. ef. 8-20-99 thru 10-23-99; EDD 14-1999, f. 10-22-99, cert. ef. 10-23-99; EDD 1-2005, f. & cert. ef. 2-25-05; EDD 1-2007(Temp), f. & cert. ef. 1-8-07 thru 7-6-07

123-065-1720

Designation Based on Federal Enterprise Zone Status

For purposes of a local request for designation of an enterprise zone under ORS 285C.085(2):

(1) City, port or county governments may apply (in a manner generally consistent with the provisions of OAR 123-065-1520 to 123-065-1540) for designation of a zone corresponding to the boundary of a single Federal Enterprise Zone located in the government’s territory, such that:

(a) Application may occur at any time without regard to deadlines, a Round of Designation or an application form;

(b) Besides a map and legal description of the proposed enterprise zone, the application must document the Federal Enterprise Zone’s official existence, location and satisfaction of OAR 123-065-1710(2), except to the extent that the Department is already fully aware of such satisfaction;

(c) Information related to local economic hardship, land use/zoning or estimated surface area is not necessary;

(d) The governments must engage in timely communication in accordance OAR 123-065-1050 and are encouraged to pursue further consultation with local taxing districts;

(e) Any cosponsor of a zone terminated by order of the Director under ORS 285C.245(4) or (5) is not excluded from applying;

(f) Application may include a request by a city or county for hotels, motels or destination resorts to be eligible business firms in the zone under ORS 285C.070;

(g) Proposals by a cosponsor for local incentives shall not be binding; and

(h) The designation may not serve as the re-designation of a Preexisting Enterprise Zone.

(2) The designation of the zone may be made without regard to any limitation on the:

(a) Number or location of enterprise zones as authorized by state law; or

(b) Size or dimensions of an enterprise zone as described in OAR 123-065-0080 and 123-065-0090.

(3) The zone must still conform to the requirements for:

(a) Being either urban or rural as described in OAR 123-065-0100, except for a special waiver and determination, at the Director’s discretion, as to the more suitable categorization; and

(b) Inclusion of all area in each cosponsor that is inside the Federal Enterprise Zone as described in OAR 123-065-1710(1).

(4) The Director’s order of designation shall essentially follow OAR 123-065-1557.

(5) A cosponsor of an existing enterprise zone may not seek designation of another zone as described in this rule, whenever:

(a) The Federal Enterprise Zone overlaps with a portion of the existing enterprise zone; or

(b) The cosponsor is a city with less than 100,000 in population.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.050, 285C.080, 285C.085 & 285C.090

Hist.: EDD 5-1999(Temp), f. & cert. ef. 8-20-99 thru 10-23-99; EDD 14-1999, f. 10-22-99, cert. ef. 10-23-99; EDD 1-2005, f. & cert. ef. 2-25-05; EDD 1-2007(Temp), f. & cert. ef. 1-8-07 thru 7-6-07

123-065-1740

Further Changes to Enterprise Zones under this Subdivision

Once an enterprise zone has been designated as described in OAR 123-065-1720 or its boundary changed as in 123-065-1730, a change in the boundary of the zone may be requested and done under ORS 285C.115, as otherwise allowed by applicable provisions, with the following clarifications:

(1) If the total area of the enterprise zone equals or exceeds 12 square miles, additional areas may be included, pursuant to OAR 123-065-1730, only if those areas are located:

(a) In parts of the Federal Enterprise Zone within a city, port or county requesting to become a cosponsor of the zone with the boundary change;

(b) In new parts of the Federal Enterprise Zone, as amended by authority of the federal government; or

(c) In another Federal Enterprise Zone that is located in a city, port or county that sponsors the zone.

(2) If the zone exceeds the maximum overall allowed distance applicable to the zone, additional areas may be included in one of the following ways:

(a) Consistent with section (1) of this rule, whenever total area of the zone will or already does equal or exceed 12 square miles;

(b) Where such areas do not increase the overall distance within the zone consistent with ORS 285C.120(1)(b) and (c); or

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(c) By virtue of a waiver under ORS 285C.120(2) (see OAR 123-065-0095).

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)
Stats. Implemented: ORS 285C.085 & 285C.115
Hist.: EDD 14-1999, f. 10-22-99, cert. ef. 10-23-99; EDD 1-2005, f. & cert. ef. 2-25-05; EDD 1-2007(Temp), f. & cert. ef. 1-8-07 thru 7-6-07

123-065-2520

Basic Parameters

For the additional requirements of an enterprise zone sponsor:

(1) They shall apply to actions and achievements of the qualified business firm only:

(a) With respect to operations inside (or nearby and affected by operations in) the enterprise zone; and

(b) Between:

(A) The time of authorization (certification in the case of the long-term rural tax incentives); and

(B) The end of the last tax year of the overall enterprise zone exemption period. Nevertheless, a sponsor may require a contractual agreement by the firm, as otherwise permissible by law, whereby for example, if the business firm later discontinued eligible operations in the zone, it would be obligated to pay the sponsor an amount equal to some of the tax benefit, relative to how soon permanent discontinuation occurred after expiration of the exemption.

(2) Notwithstanding section (1) of this rule, the zone sponsor and the business firm may mutually agree, subject to possibly certain contingencies, to automatically apply current requirements or provisions of an agreement to identified future situations as described in OAR 123-065-2510.

(3) They shall not require that the eligible business firm's hiring, recruitment, promotion, training, compensation or treatment of its actual or potential employees, suppliers, contractors or customers be based on:

(a) Those persons' or businesses' residency or geographic location, consistent with OP-8236, Oregon Attorney General (April 20, 1995); or

(b) Other legally impermissible criteria.

(4) They may be offered by the zone sponsor as multiple options from which the eligible business firm freely selects, so long as:

(a) Each optional requirement conforms with OAR 123-065-2500 to 123-065-2599; and

(b) The firm's selection, and thus what the firm is required to satisfy or not satisfy among the options, is specified in the agreement between the firm and the zone sponsor, in resolutions or in other applicable documentation.

(5) Failure by a qualified business firm to satisfy an additional requirement need not result in disqualification or loss of the tax benefits or the exemption on property, if as specifically allowed:

(a) The firm's continuing qualification does not depend on compliance with that requirement; or

(b) The firm may fulfill an alternative requirement to avoid disqualification. (An alternative requirement shall not preclude the firm's disqualification, if the firm later fails to adequately fulfill the alternative requirement or any other requirement)

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)
Stats. Implemented: ORS 285C.105, 285C.150, 285C.155, 285C.160 & 285C.403
Hist.: EDD 9-2000, f. & cert. ef. 5-2-00; EDD 1-2005, f. & cert. ef. 2-25-05; EDD 1-2007(Temp), f. & cert. ef. 1-8-07 thru 7-6-07

123-065-2530

Additional to Statutory Provisions

Requirements imposed on a business firm by an enterprise zone sponsor are in addition to what is provided under applicable statutes or state laws, and shall neither alter nor undermine their effect or intent, such that:

(1) With respect to the following, as established by relevant state provisions, the requirements may in no way:

(a) Affect the basic eligibility or ineligibility of certain business activities or uses of relevant property;

(b) Modify any specified minimum level of investment by the firm; or

(c) Alter the coverage, extent, period or any other aspect of the tax benefit itself, although:

(A) Other forms of financial remuneration by the firm are possible; and

(B) The sponsor shall set the total period of tax benefit as provided by the relevant law or statute.

(2) The requirements may neither modify nor in any way effectively decrease or increase the stringency of state requirements for hiring, general employment levels or average pay/compensation associated with jobs or persons employed by the firm, and they shall not even address such issues, except for local requirements that:

(a) Govern employees that are not affected or covered by the relevant state requirement (for example, construction or temporary workers, or employee remuneration in a Portland-area urban zone);

(b) Set an alternative employment level under ORS 285C.155;

(c) Specify extra demands within the context of a first-source hiring agreement that the firm is otherwise required to enter into; or

(d) Obligate the firm in a reasonable manner with respect to the following: workforce development, hiring/retention from certain sources or groups, the general nature of benefits, or other employment-related matters categorically different from actual requirements under ORS 285C.050 to 285C.250 or 285C.412.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)
Stats. Implemented: ORS 285C.105, 285C.150, 285C.155, 285C.160 & 285C.403
Hist.: EDD 9-2000, f. & cert. ef. 5-2-00; EDD 1-2005, f. & cert. ef. 2-25-05; EDD 1-2007(Temp), f. & cert. ef. 1-8-07 thru 7-6-07

123-065-2550

Zone Sponsor Policies & Approval of Agreements

(1) In imposing or setting additional requirements on business firms, an enterprise zone sponsor shall consider a policy-making approach to maintain consistency and rationality, especially in view of the following:

(a) Constitutional and other legal protections for business firms; and

(b) General principles of fairness and clarity regarding public purposes and intent.

(2) Such a policy may apply uniformly to the situations as described in OAR 123-065-2510, or it may pertain to only certain situations

(3) Such a policy is relevant to the sponsor's basic elections in granting or refusing special benefits or waivers, as well as the additional requirements imposed or sought when granting the benefit or waiver to a business firm.

(4) Except for conditions imposed by an urban enterprise zone under ORS 285C.150, such a policy for purposes of OAR 123-065-2500 to 123-065-2599 does not need to be prospectively adopted, nor does it need to be based on formal documentation, and it may reflect the cumulative effect of the sponsor's relevant past actions. A formal, explicit and prospective policy is recommended, however, whenever the following or comparable circumstances arise:

(a) Relevant requests by business firms are common or expected to become increasingly frequent;

(b) Sponsor's basic decision to grant or refuse a special benefit or waiver, or to impose additional requirements, is differentiated in terms of business or investment size or other factors;

(c) The requirements imposed are numerous, complicated or otherwise entail various contingencies or matters of judgment suggest the need for definite standards; or

(d) The sponsor departs from a general pattern in terms of granting a special benefit or waiver or imposing certain corresponding requirements.

(5) In an urban enterprise zone that has adopted a policy under ORS 285C.150, any additional requirements imposed for other situations as described in OAR 123-065-2510(2) must:

(a) Formally relate to the policy and standards adopted by the zone sponsor; and

(b) Be in addition to and not replace any condition normally imposed by the sponsor.

(6) A city, port or county government that sponsors two or more enterprise zones is free to have different policies or seek different local additional requirements among those zones.

(7) In an enterprise zone sponsored by more than one city, port or county, the cosponsors must all jointly:

(a) Adopt the same policy, standards, established local conditions and so forth under equivalent authority or method for purposes of this rule and the enterprise zone; and

(b) Approve the same requisite written agreement.

(8) The sponsoring city, port or county governments of an enterprise zone may authorize the written agreement in the case of OAR 123-065-2510(1) or (2)(a) through a number of approaches, which may differ among the cosponsors, including but not limited to the following examples:

(a) Approval by an official empowered to enter into such an agreement under the laws, charters, ordinances and conventions of the cosponsor;

(b) Approval by the specific person or persons formally recognized to conclude such an agreement with the eligible business firm, pursuant to a previous understanding between the firm and the sponsor;

(c) A specific resolution that is approved by the governing body of the cosponsor and that sanctions a draft written agreement proposed by the eligible business firm;

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(d) A specific resolution that is approved by the governing body of the cosponsor and that authorizes an agent to conclude such an agreement with the eligible business firm; or

(e) A standing policy adopted by the cosponsor that empowers a particular agent to negotiate such an agreement with all or some eligible business firms on behalf of the cosponsor (for example, the local zone manager).

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)
Stats. Implemented: ORS 285C.105, 285C.150, 285C.155, 285C.160 & 285C.403
Hist.: EDD 9-2000, f. & cert. ef. 5-2-00; EDD 1-2005, f. & cert. ef. 2-25-05; EDD 1-2007(Temp), f. & cert. ef. 1-8-07 thru 7-6-07

123-065-3000

Purpose and Scope

OAR 123-065-3000 to 123-065-3999 specify the effect of provisions under ORS 285C.400 to 285C.420 and 317.124 to 317.131. As such, these administrative rules address determinations, procedures and requirements of the “up-to” 15 years of exemption from property taxes and corporate excise tax credits on a qualifying investment inside a rural enterprise zone (including but not limited to a reservation enterprise zone under ORS 285C.300 to 285C.320) in a county experiencing particular economic hardship. These administrative rules do not control fiscal parameters of actual implementation by the county assessor or the Department of Revenue, and they are not intended to supersede administrative rules in OAR chapter 150 for any such purpose.

Stat. Auth.: ORS 285A.075(5) & 285A.110(1)
Stats. Implemented: ORS 285C.400 - 285C.420, 317.124 - 317.131
Hist.: EDD 7-1998(Temp), f. & cert. ef. 4-30-98 thru 8-31-98; EDD 14-1998, f. 8-31-98, cert. ef. 9-1-98; EDD 15-2002(Temp), f. & cert. ef. 7-8-02 thru 1-3-03; EDD 3-2003, f. 3-20-03, cert. ef. 3-21-03; EDD 1-2005, f. & cert. ef. 2-25-05; EDD 1-2007(Temp), f. & cert. ef. 1-8-07 thru 7-6-07

123-065-3030

Relationship to Rest of Division

OAR 123-065-3000 to 123-065-3999 do not affect the administrative rules elsewhere in this division that administer ORS 285C.050 to 285C.250, and unless the context or specific references demand otherwise, such other parts of this division of administrative rules likewise do not apply to OAR 123-065-3000 to 123-065-3999. Fundamental matters as the existence and attributes of an enterprise zone or the overall enterprise zone system are excepted.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1)
Stats. Implemented: ORS 285B.781 - 285B.796 & 317.124 - 317.131
Hist.: EDD 7-1998(Temp), f. & cert. ef. 4-30-98 thru 8-31-98; EDD 14-1998, f. 8-31-98, cert. ef. 9-1-98; EDD 15-2002(Temp), f. & cert. ef. 7-8-02 thru 1-3-03; EDD 3-2003, f. 3-20-03, cert. ef. 3-21-03; EDD 1-2005, f. & cert. ef. 2-25-05; EDD 1-2007(Temp), f. & cert. ef. 1-8-07 thru 7-6-07

123-065-3130

Definition of Facility

As used in ORS 285C.400 to 285C.420 and 317.124 to 317.131, “facility” or “facility site” has the meaning given in ORS 285C.400(4) and includes all of the following:

(1) A building or structure or group of two or more associated buildings and/or structures that are newly constructed beginning after the application for certification and are located at a common site or proximately adjacent sites entirely inside the boundary of a single rural enterprise zone.

(2) New additions or modifications occurring entirely after the application for certification to any previously constructed or occupied building or structure as otherwise described in section (1) of this rule.

(3) All of the real or personal property located at the site, whether or not it is inside or on a building or structure, as described in section (1) or (2) of this rule:

(a) If newly installed after the application for certification.

(b) Except for any vehicle, as well as device pulled, pushed or carried by a vehicle, that is designed to hold and transport people, goods or property on highways, waterways or railways beyond the zone boundary, including but not limited to aircraft, barges, carriages, railcars, trailers, trucks or ships.

(4) Any property leased by the business firm certified to receive the exemption under ORS 285C.409 and otherwise described in this rule, but only:

(a) For the exemption from property taxes, and not for the corporate excise or income tax credit under ORS 317.124, in which case only personal property may be leased; and

(b) If the firm is fully responsible for and pays all applicable ad valorem taxes potentially levied on such leased property through explicit provisions of the lease agreement.

(5) In first claiming the exemption under ORS 285C.409(1)(a) or (c) with the county assessor, the certified business firm may formally and irreversibly exclude all property as described and categorized in section (1), (2), (3) or (4) of this rule, as might be indicated in the agreement under ORS 285C.403(3)(c). In such a case, that entire category of property is subject henceforth to normal taxation for the entire exemption period.

Stat. Auth.: ORS 285A.075(5) & 285A.110(1)
Stats. Implemented: ORS 285C.400 - 285C.420 & 317.124 - 317.131
Hist.: EDD 7-1998(Temp), f. & cert. ef. 4-30-98 thru 8-31-98; EDD 14-1998, f. 8-31-98, cert. ef. 9-1-98; EDD 15-2002(Temp), f. & cert. ef. 7-8-02 thru 1-3-03; EDD 3-2003, f. 3-20-03, cert. ef. 3-21-03; EDD 1-2005, f. & cert. ef. 2-25-05; EDD 1-2007(Temp), f. & cert. ef. 1-8-07 thru 7-6-07

123-065-3200

Determining Eligible Rural Enterprise Zones

In determining if a county conforms to the definition of ORS 285C.400(3) of a ‘county with chronically low income or chronic unemployment’:

(1) Typically in the spring, with the formal release, publication and availability of benchmarked annual unemployment rates for the previous year and other relevant data, the Department shall analyze these data, along with the most recently revised data available for other relevant prior years, and ascertain which counties in the state satisfy the definition.

(2) The Department shall identify any existing rural enterprise zone in those counties, preparing maps or other such information as feasible and appropriate for use by the general public and business firms, as well as respective local zone managers and county assessors.

(3) The official determination as described in this rule shall first take effect on July 1 next following formal availability of the latest relevant annual data and shall apply until and including June 30 of the next calendar year, pending:

(a) Revisions, if any, as described in OAR 123-065-3230; or

(b) The next annual determination.

(4) Conformance with the definition shall be achieved if OAR 123-065-3110(4), (5) or (6) is true.

Stat. Auth.: ORS 285A.075(5) & 285A.110(1)
Stats. Implemented: ORS 285C.400 & 285C.403
Hist.: EDD 7-1998(Temp), f. & cert. ef. 4-30-98 thru 8-31-98; EDD 14-1998, f. 8-31-98, cert. ef. 9-1-98; EDD 15-2002(Temp), f. & cert. ef. 7-8-02 thru 1-3-03; EDD 3-2003, f. 3-20-03, cert. ef. 3-21-03; EDD 1-2005, f. & cert. ef. 2-25-05; EDD 1-2007(Temp), f. & cert. ef. 1-8-07 thru 7-6-07

123-065-3230

Revisions to Currently Eligible Rural Enterprise Zones

To ensure that the counties currently deemed as conforming with ORS 285C.400(3) accurately reflect the most recently revised annual data available for the nation and county, following a determination as described in OAR 123-065-3200:

(1) During the course of the year from July 1 to June 30, the Department may obtain an officially and publicly made revision or correction to relevant annual data.

(2) The Department shall review such revised data to determine whether it would alter the status of any county.

(3) Pursuant to section (2) of this rule, if any county is to be thus removed or added to the counties currently identified by OAR 123-065-3200:

(a) The effective date of any such change shall be the first day of the second month following the month in which the revised or corrected data was formally released or published; and

(b) The Department shall notify the county assessor and local zone manager of any rural enterprise zone in such a county and revise and reissue relevant lists, maps and other materials, as appropriate.

(4) A correct, prior determination in accordance with OAR 123-065-3200 or this rule may not be retroactively altered.

Stat. Auth.: ORS 285A.075(5) & 285A.110(1)
Stats. Implemented: ORS 285C.400 & 285C.403
Hist.: EDD 7-1998(Temp), f. & cert. ef. 4-30-98 thru 8-31-98; EDD 14-1998, f. 8-31-98, cert. ef. 9-1-98; EDD 15-2002(Temp), f. & cert. ef. 7-8-02 thru 1-3-03; EDD 3-2003, f. 3-20-03, cert. ef. 3-21-03; EDD 1-2005, f. & cert. ef. 2-25-05; EDD 1-2007(Temp), f. & cert. ef. 1-8-07 thru 7-6-07

123-065-3300

Written Agreement with Zone Sponsor

For purposes of the written agreement between a business firm and the sponsor of the rural enterprise zone under ORS 285C.403(3)(c) and (d):

(1) The agreement shall consist at a minimum of the following:

ADMINISTRATIVE RULES

(a) Acknowledgment of the planned or pending application for certification under ORS 285C.403(1) and (2);

(b) Concise description of the firm's proposed investments, facility and workforce;

(c) Specification of the obligations that the proposed investments, facility and workforce must satisfy under ORS 285C.412, which are in no way superseded by the agreement;

(d) Identification of all the parties to the agreement and their representatives;

(e) Zone sponsor's explicit approval for the firm to receive the exemption under ORS 285C.409 on its qualifying facility;

(f) The sponsor's statement as to the number of consecutive tax years that will comprise the period of exemption beginning after the facility is placed in service, such that this period is only seven such years, if nothing to the contrary is stated about it being eight or more years (up to the maximum of 15 years); and

(g) With respect to additional conditions or requirements by the zone sponsor under ORS 285C.403(2)(e) and (3)(c):

(A) Indication that no such condition or requirement is imposed or requested; or

(B) Specification of any such condition or requirement, in accordance with OAR 123-065-2500 to 123-065-2599, including, at a minimum:

(i) Methods for demonstrating satisfaction of the condition or requirement; and

(ii) Explicit consequences for failure to satisfy the condition or requirement.

(2) The agreement may be:

(a) Part of a broader accord involving parties other than the firm and the sponsor, insofar as such an accord contains and cites the elements listed in section (1) of this rule.

(b) Preauthorized, directly sanctioned by resolution or approved by other means of the zone sponsor or of each cosponsor as described in OAR 123-065-2550.

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

Stats. Implemented: ORS 285C.403 & 285C.409

Hist.: EDD 7-1998(Temp), f. & cert. ef. 4-30-98 thru 8-31-98; EDD 14-1998, f. 8-31-98, cert. ef. 9-1-98; EDD 15-2002(Temp), f. & cert. ef. 7-8-02 thru 1-3-03; EDD 3-2003, f. 3-20-03, cert. ef. 3-21-03; EDD 1-2005, f. & cert. ef. 2-25-05; EDD 1-2007(Temp), f. & cert. ef. 1-8-07 thru 7-6-07

123-065-3330

Timing of Written Agreement

For purposes of the requisite written agreement under ORS 285C.403(3)(c) and (d) between a business firm and the sponsor of a rural enterprise zone:

(1) The agreement must be concluded, signed and dated by an authorized representative or representatives of the firm and of the zone sponsor or of each cosponsor:

(a) On or after the effective date on which:

(A) The zone is designated or the facility site is amended into the zone through a change in the boundary of the zone; and

(B) The county containing the facility site is officially determined to conform with the definition of ORS 285C.400(3), pursuant to OAR 123-065-3200 or 123-065-3230; and

(b) Before the corresponding effective date on which:

(A) The zone is terminated; and

(B) The county is not subject to a positive official determination as described in paragraph (a)(B) of this section.

(2) The sponsor shall provide a copy of the concluded, signed and dated written agreement to the Department, which shall review the agreement and, if the following are accurate, issue a letter to be attached to the written agreement confirming that:

(a) As of the date of the agreement's execution, the county containing the facility site is officially determined to conform with the definition of ORS 285C.400(3), as described in OAR 123-065-3200 or 123-065-3230, and one party to the agreement is the sponsor of the rural enterprise zone; and

(b) The agreement satisfies applicable provisions of OAR 123-065-3300.

(3) Following the certification of the business firm as described in OAR 123-065-3430 or an effective date in subsection (1)(b) of this rule, the agreement may not be substantially modified, replaced, amended, supplemented or terminated, except as:

(a) Explicitly provided in the original version of the agreement; and

(b) Mutually accepted and documented by all parties to the agreement.

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

Stats. Implemented: ORS 285C.403 & 285C.406

Hist.: EDD 7-1998(Temp), f. & cert. ef. 4-30-98 thru 8-31-98; EDD 14-1998, f. 8-31-98, cert. ef. 9-1-98; EDD 15-2002(Temp), f. & cert. ef. 7-8-02 thru 1-3-03; EDD 3-2003, f. 3-20-03, cert. ef. 3-21-03; EDD 1-2005, f. & cert. ef. 2-25-05; EDD 1-2007(Temp), f. & cert. ef. 1-8-07 thru 7-6-07

123-065-3400

Applying for Certification

For purposes of the application for certification under ORS 285C.403(1) and (2):

(1) In order for a business firm to receive the exemption on its facility under ORS 285C.409:

(a) The firm must do the following before hiring new employees to work at the proposed facility and before commencing any physical work on the facility, such as construction, reconstruction, additions, modifications or installations of any qualifying property or improvements:

(A) Fill out the latest revision of the Department of Revenue form 150-310-073, Certification Application: Long-Term Rural Oregon Tax Incentive, as completely as the firm is capable of doing;

(B) Have the form signed and dated by the owner or authorized representative of the firm;

(C) Submit a signed original of the form to either the local zone manager representing the sponsor of the enterprise zone or the county assessor of the county in which the facility is located; and

(D) Submit an executed copy of the form to either the local zone manager or the county assessor, whichever one does not receive the signed original.

(b) Submission of the application form as described in subsection (a) of this section must occur, with respect to the rural enterprise zone:

(A) On or after the effective date of the zone's designation or of a change to the zone boundary adding the facility site; and

(B) Before the effective date of the zone's termination.

(2) Submission of the application form may occur before or after any relevant resolution, commitment, written agreement or effective date of official determination of rural enterprise zone eligibility in the county.

(3) Estimated numbers, anticipated dates or other expectations indicated in the application form are to be based on the best and most current information available to the business firm and shall not be construed as binding in and of themselves. The business firm shall inform the local zone manager and county assessor in writing of any significant changes to such expectations.

(4) The commitments made by the business firm (as required in the application form or otherwise during the certification process) shall be accepted at face value for purposes of certifying the firm, but such a commitment shall not relieve the firm of actually needing to meet an applicable requirement under ORS 285C.400 to 285C.420 and 307.124 to 307.131.

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

Stats. Implemented: ORS 285C.403

Hist.: EDD 7-1998(Temp), f. & cert. ef. 4-30-98 thru 8-31-98; EDD 14-1998, f. 8-31-98, cert. ef. 9-1-98; EDD 15-2002(Temp), f. & cert. ef. 7-8-02 thru 1-3-03; EDD 3-2003, f. 3-20-03, cert. ef. 3-21-03; EDD 1-2005, f. & cert. ef. 2-25-05; EDD 1-2007(Temp), f. & cert. ef. 1-8-07 thru 7-6-07

123-065-3480

Subsequent Investments

For purposes of real or personal property as described in OAR 123-065-3130 but newly located, completed and placed in service at the facility site on or after the January 1 "assessment date" cited in ORS 285C.409(1)(c):

(1) Any such property is subject to exemption from property taxes under ORS 285C.409 for the remainder of the 7 to 15 tax years available.

(2) Neither additional operations nor the introduction of such property at the facility shall lengthen or add to the exemption period on that or any property.

(3) A certified business firm may receive another (potentially overlapping) period of exemption affecting additional property at the same facility only if the firm, in accordance with ORS 285C.403, again:

(a) Applies for certification;

(b) Meets relevant criteria and is approved for certification;

(c) Satisfies the applicable requirements to qualify for the exemption under ORS 285C.412; and

(d) Undertakes additional operations at the facility.

(4) The firm or the applicable facility must accomplish the items in section (3) of this rule entirely independent of and in addition to the respective actions and investments pertaining to the certification or qualification for any previously granted exemption under ORS 285C.409.

ADMINISTRATIVE RULES

(5)(a) Additional property of a business firm, certified for purposes of sections (3) and (4) of this rule, shall be subject to exemption as described in sections (1) and (2) of this rule until such time as the earlier occurs:

(A) Final notice under ORS 285C.415 to the county assessor, such that all applicable requirements under ORS 285C.412 have been met; or

(B) The underlying/preexisting exemption concludes (as of June 30), but the certified business firm has not previously notified the assessor in writing to conclude the exemption on the additional property, at that time, too.

(b) Upon fulfillment of either paragraph (a)(A) or (B) of this section, the additional property is subject to (the remainder) of its own period of exemption and to the operation of ORS 285C.420 (disqualification for failure to meet or maintain an applicable requirement).

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)
Stats. Implemented: ORS 285C.403, 285C.409 & 285C.412
Hist.: EDD 7-1998(Temp), f. & cert. ef. 4-30-98 thru 8-31-98; EDD 14-1998, f. 8-31-98, cert. ef. 9-1-98; EDD 15-2002(Temp), f. & cert. ef. 7-8-02 thru 1-3-03; EDD 3-2003, f. 3-20-03, cert. ef. 3-21-03; EDD 1-2005, f. & cert. ef. 2-25-05; EDD 1-2007(Temp), f. & cert. ef. 1-8-07 thru 7-6-07

123-065-3850

Revenue Distribution to Local Zone Sponsor

(1) Consistent with OAR 123-065-2700(2)(c), the sponsor of an enterprise zone containing the facility of a corporation that claims the tax credit under ORS 317.124 may receive funds through the Department of Revenue from the Long Term Enterprise Zone Fund established under ORS 317.127.

(2) The sponsor's receipt of such funds depends on:

(a) The qualifying taxpayer's having claimed the credit;

(b) The taxpayer's making applicable tax payments; and

(c) The depositing of amounts from such payments for distribution under ORS 317.129 and 317.131.

(3)(a) If the amount to be distributed exceeds the property taxes otherwise due to the relevant (special service) taxing districts — but for exemption on the facility under ORS 285C.409 — respective to the property tax year corresponding to the state government fiscal year in which the funds are distributed, then the remaining amount is distributed to the zone sponsor.

(b) If there is no relevant exemption under ORS 285C.409 for the property tax year, then the entire amount is distributed to the zone sponsor.

(4) For purposes of section (3) of this rule, the zone sponsor is responsible for making timely arrangements, so that:

(a) The sponsor can receive distributed funds in a way that effectively ensures the Department of Revenue of having made payment to the zone sponsor (including but not limited to a joint mechanism for all cosponsors, or through a deposit account administered by a single cosponsor on behalf of the entire zone sponsorship); and

(b) The applicable provisions of ORS Chapter 294 and other state or local laws are satisfied with regard to collecting, holding and using such funds.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)
Stats. Implemented: ORS 317.131
Hist.: EDD 3-2003, f. 3-20-03, cert. ef. 3-21-03; EDD 1-2005, f. & cert. ef. 2-25-05; EDD 1-2007(Temp), f. & cert. ef. 1-8-07 thru 7-6-07

123-065-4020

Organization of Subsequent Rules and the Process for Businesses Seeking Exemption

The Oregon Enterprise Zone Act (ORS 285C.125 et seq.) provides for an exemption from taxation on property that lasts at least three years, starting when a business firm and the property first qualify, and based on the following elements of OAR 123-065-4000 to 123-065-4999:

(1) The usual three-year exemption period may be extended to four or five consecutive years of tax abatement in total, subject to particular processes, requirements and local approval before authorization (OAR 123-065-4100 to 123-065-4199).

(2) The firm must be an eligible business firm engaged in eligible activities, as determined with authorization (OAR 123-065-4200 to 123-065-4299).

(3) The eligible business firm must be authorized (OAR 123-065-4300 to 123-065-4399) by:

(a) Submitting an application form generally prior to beginning any work on the proposed investment; and

(b) Being ministerially approved by the local zone manager and the county assessor after special consultation.

(4) The business firm must satisfy certain employment and hiring requirements to initially qualify and must maintain related requirements

during the exemption period to remain qualified (OAR 123-065-4400 to 123-065-4499, and see division 070 of this chapter of administrative rules).

(5) The exemption is available (OAR 123-065-4500 to 123-065-4599) only for:

(a) An authorized business firm that timely files with the county assessor to claim the exemption; and

(b) Certain kinds of property based on a number of attributes, one of the most fundamental of which is the property's newness for use and occupancy in the zone, as well as the definition of "qualified property" under ORS 285C.050(16).

(6) OAR 123-065-4600 to 123-065-4999 address other special matters.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)
Stats. Implemented: ORS 285C.050 - 285C.250 & 285C.260
Hist.: EDD 9-2000, f. & cert. ef. 5-2-00; EDD 1-2005, f. & cert. ef. 2-25-05; EDD 1-2007(Temp), f. & cert. ef. 1-8-07 thru 7-6-07

123-065-4260

Local Option for Hotels, Motels and Destination Resorts

(1) For purposes of eligibility under ORS 285C.135(5)(c) for an exemption under ORS 285C.175 (but not ORS 285C.170) on qualified property owned or leased and operated by a business firm as a hotel, motel or destination resort inside an enterprise zone, the firm and the property must:

(a) Satisfy all applicable requirements; and

(b) Be located in a zone where such firms are eligible under ORS 285C.070 (or section 56(1), chapter 662, Oregon Laws 2003), as described in section (2) or (3) of this rule, exclusive of jurisdictionally restricted areas associated with future zone boundary changes or re/designations.

(2) For subsection (1)(b) of this rule, allowable zones include at the time of the last amendment of this rule (subject to later revocation):

(a) The entire area of any one of the following 32 Enterprise Zones: Baker City/County, Bay Area, Cascade Locks/Hood River, CTUIR Tribal, Coquille Valley, Cottage Grove/Southern Lane County, Forest Grove, Fossil, Grant County, Grants Pass Area, Grande Ronde, Harney County/Burns/Hines, Harrisburg, Huntington, Josephine Champion, Klamath Falls/Klamath County, Lakeview, Lower Columbia Maritime, Lower Umpqua, Malheur County, Molalla, Prineville/Crook County, Roberts Creek, St. Helens/Columbia City, Sherman County, South Douglas County, South Santiam, Sutherlin/Oakland, Sweet Home, The Dalles/Wasco County, Tillamook or Willow Creek Valley;

(b) The Dallas/Independence/Monmouth Enterprise Zone, except for any unincorporated area of Polk County outside city limits;

(c) The Jefferson County Enterprise Zone, except for areas in the incorporated territory of the City of Madras; and

(d) The Lincoln County Enterprise Zone, except for areas in the incorporated territory of the cities of Depoe Bay and Lincoln City.

(3) For subsection (1)(b) of this rule, an allowable zone includes but is not limited to a future enterprise zone that is acknowledged by Director in the order of designation as having opted to exempt such qualified property under ORS 285C.070 as described in OAR 123-065-1520(7).

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)
Stats. Implemented: ORS 285C.070, 285C.135 & 285C.185
Hist.: EDD 9-2000, f. & cert. ef. 5-2-00; EDD 1-2005, f. & cert. ef. 2-25-05; EDD 1-2007(Temp), f. & cert. ef. 1-8-07 thru 7-6-07

123-065-4310

Applying for Authorization

For purposes of ORS 285C.140(1):

(1) In applying for authorization with the sponsor of an enterprise zone and the county assessor, the Firm/applicant shall:

(a) Fill out the Application as completely as the Firm/applicant is capable of doing;

(b) Have the Application signed and dated by an owner, executive officer or legally authorized representative of such an owner or officer of the Firm/applicant; and

(c) Submit the Application by mail or otherwise to the local zone manager.

(2) In order for the Application of the Firm/applicant to be accepted for approval, all of the actions described in section (1) of this rule must be accomplished before:

(a) The Firm/applicant's hiring of any eligible employee to qualify under ORS 285C.200; and

(b) Any physical work, such as construction or reconstruction of a building or structure, construction of an addition or modifications to an existing building or structure, or installation of machinery or equipment,

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comprising all or part of the qualified property, for which the Firm/applicant proposes to claim the exemption under ORS 285C.175.

(3) Physical work for purposes of subsection (2)(b) of this rule includes site preparation that leads directly to construction, modification or installation of qualified property, such as fill, grading or leveling on raw land or the installation of underground utilities and utility connections, and as such the following are not included:

(a) Offsite development; or

(b) On-site preparations that are incidental or unrelated to the subsequent work on qualified property, such as prior improvements to the land, for example, in order to:

(A) Ready it for sale or for another project that is cancelled in place of the proposed investment for which authorization is being sought;

(B) Prevent erosion or otherwise maintain the land in good condition; or

(C) Accommodate or comply with regulatory or public improvement programs.

(4) A faxed, e-mailed or similarly furnished copy of the Application may be used in lieu of subsection (1)(c) of this rule, if the copy is:

(a) Received by the zone sponsor prior to the time described in section (2) of this rule;

(b) Promptly followed up by a hard-copy, signed original to the local zone manager; and

(c) Executed, or accompanied by evidence that the Firm/applicant stands behind it.

(5) Conformity with this rule may be verified, as necessary, by:

(a) Final documents for transfer of ownership, sale closing or execution of a lease;

(b) Building permit or contract;

(c) Written statement/affidavit from someone other than an owner or employee of the Firm/applicant; or

(d) Similar forms of written and independently substantiated proof.

(6) The Firm/applicant shall pay an authorization filing fee, if directed to do so by the local zone manager, as described in OAR 123-065-0220.

(7) If an Application is not timely received by the local zone manager as described in this rule, but the Firm/applicant produces dated evidence to the satisfaction of the zone manager and assessor that the Application was sent in a timely manner, then the Application may be accepted.

(8) In the event that an Application is appropriately replaced under ORS 285C.140(3) or otherwise, the original submission date of the previously completed Application may be used to satisfy sections (1) and (2) of this rule if the originally proposed investment would have served comparable business purposes.

(9) Exceptions to section (2) of this rule are listed in OAR 123-065-4313.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1), 285C.140(1)(c) & (12)(a)

Stats. Implemented: ORS 285C.140 & 285C.145

Hist.: EDD 4-1994, f. & cert. ef. 2-24-94; EDD 3-1996, f. & cert. ef. 4-2-96, Renumbered from OAR 123-065-0060; EDD 5-1997, f. 4-14-97, cert. ef. 4-15-97; EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98; EDD 9-2000, f. & cert. ef. 5-2-00, Renumbered from 123-065-0710; EDD 1-2005, f. & cert. ef. 2-25-05; EDD 1-2007(Temp), f. & cert. ef. 1-8-07 thru 7-6-07

123-065-4323

Pre-Approval Consultations

The preauthorization consultation under ORS 285C.140(4) is a trouble-shooting exercise to increase the certainty of a Firm/applicant's compliance with enterprise zone requirements through anticipatory issue-identification and preparations for verification:

(1) The consultation must occur after:

(a) A substantially complete Application is available for review; and

(b) Providing notice and reasonable opportunity for the county assessor's office to participate, according to local practices and understandings.

(2) The consultation may be:

(a) Conducted informally, by conference call and so forth for purposes of convenience and expediency;

(b) Handled by an assistant or designee of the local zone manager;

(c) Accomplished without actual representation by the county assessor; or

(d) Undertaken (and summarized) in the same context and more or less simultaneously with the completion and submission of the Application and subsequent processing of the Approval Form.

(3) Besides concerns about the Firm/applicant's eligibility or ability to be authorized, the consultation shall address matters affecting future qualification, including but not limited to the following:

(a) Request for extended abatement or other special cases as described in OAR 123-065-4328(2) or (3) or 123-065-4340(4) or (5), if germane;

(b) Confirmation of the computed annual average employment prior to the Application's submission;

(c) Level of confidence that new hiring (and compensation if applicable) will satisfy minimum requirements for employment of the firm in the zone:

(A) To initially qualify; and

(B) Throughout the exemption period;

(d) Arrangements for Firm/applicant to enter into a first-source hiring agreement under ORS 285C.215 as described in division 070 of these administrative rules;

(e) Adequacy of descriptions of proposed qualified property for purposes of OAR 123-065-4355(1) to (3);

(f) Specific, relevant restrictions for what comprises 'qualified property' that may be exempt, such as cost minima or required lease provisions; and

(g) Submissions or filings under ORS 285C.165, 285C.170, 285C.220 and 285C.225 to:

(A) Renew unused authorization after two years;

(B) Exempt qualified property assessed while in the process of construction/installation (see OAR 123-065-4800); and

(C) Claim exemption once the qualified property is placed in service.

(4) The local zone manager/designee shall also contact and consult with:

(a) The Department, if any of the following (potential) problems surface:

(A) The investment in the zone could relate to employment being reduced at or transferred from another place in this state outside that zone;

(B) Firm/applicant might wish/need to delay or avoid entering into a first-source hiring agreement;

(C) Exemption is jeopardized by untimely designation or termination of the zone;

(D) Site is outside current zone boundary, whether or not a boundary change is possible or pending; or

(E) An especially unusual situation.

(b) Any local provider of emergency or other services, other than an agency of a sponsoring government, for which the Firm/applicant's proposed investment in qualified property is reasonably expected (based on readily apparent information) to engender special needs, safety factors or other such circumstances. (This subsection is superseded by arrangements pursuant to OAR 123-065-1080)

(5) If the Firm/applicant's proposed qualified property will be subject to central assessment as 'utility property,' the local zone manager or assessor shall contact the Department of Revenue and advise the Firm/applicant that no exemption applies while construction is underway.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.140, 285C.150, 285C.155, 285C.160, 285C.180, 285C.185, 285C.200, 285C.210, 285C.215, 285C.220, 285C.225 & 285C.230

Hist.: EDD 1-2005, f. & cert. ef. 2-25-05; EDD 1-2007(Temp), f. & cert. ef. 1-8-07 thru 7-6-07

123-065-4328

Approval by Local Zone Manager

After the preauthorization consultation and the attachment of the written summary:

(1) The local zone manager shall approve the Application in order to authorize the Firm/applicant under ORS 285C.140(6), unless determining to deny it as described in OAR 123-065-4320(2) and (3).

(2) For any special case of eligibility, the local zone manager shall address relevant matters as described in OAR 123-065-4240 or shall attach to the Application any finding or explanation needed for OAR 123-065-4250, 123-065-4270 or 123-065-4280.

(3) If the Firm/applicant's proposed investment in qualified property will be located in an urban enterprise zone that imposes additional conditions under ORS 285C.150 in effect at the time of authorization, the local zone manager shall:

(a) Approve the Firm/applicant for authorization, only if the Firm/applicant has made acceptable commitments to satisfy such conditions; and

(b) Include a standardized attachment to the Application documenting the commitments of the Firm/applicant as described in OAR 123-065-0230.

(4) Within five business days of approval, the local zone manager shall:

(a) Fill out and sign the Approval Form except for the section pertaining to the county assessor;

(b) See that the county assessor is furnished with the Approval Form and a copy of the Application (with all current attachments);

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(c) Notify the Firm/applicant of the status of the Application, as appropriate;

(d) Inform the local contact agency for the first-source hiring agreement as described in division 070 of this chapter of administrative rules; and

(e) Send a standardized advisory to all local taxing districts that levy taxes on property within the zone and to the Special Districts Association of Oregon (Attn: Government Affairs), providing a basic description of the proposed project's location, size and other relevant attributes. This advisory may also include but not limited to any readily available and existing data that could serve to foster better understanding about approximate economic and revenue impacts over the long term. (This subsection is superseded by arrangements pursuant to OAR 123-065-1080).

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.135, 285C.140, 285C.150 & 285C.215

Hist.: EDD 1-2005, f. & cert. ef. 2-25-05; EDD 1-2007(Temp), f. & cert. ef. 1-8-07 thru 7-6-07

123-065-4380

Selling or Leasing of Property by Authorized Firms

(1) If ownership of an authorized business firm changes hands, the relevant rights and requirements of authorization may be automatically transferred along with ownership of the firm, regardless of a change in the name or mailing address of the firm.

(2) Subject to amendment of the Application, an eligible business firm that purchases or leases qualified property that was owned or leased by an actively authorized business firm may claim the exemption under ORS 285C.220 and 285C.225.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.140, 285C.175, 285C.220 & 285C.225

Hist.: EDD 5-1997, f. 4-14-97, cert. ef. 4-15-97; EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98; EDD 9-2000, f. & cert. ef. 5-2-00, Renumbered from 123-065-0780; EDD 1-2005, f. & cert. ef. 2-25-05; EDD 1-2007(Temp), f. & cert. ef. 1-8-07 thru 7-6-07

123-065-4440

Diminishing Employment outside the Zone

Under ORS 285C.200(1)(d), (4) and (5), an authorized business firm seeking an exemption in any enterprise zone may not qualify or remain qualified if the firm transferred operations into the enterprise zone in association with closures, curtailment of operations, downsizing, employment reductions, layoffs or job losses anywhere else in this state, unless:

(1) Any such originating location is 30 miles or less from the boundary of the zone in which the business firm is seeking the exemption, and the requirements of ORS 285C.200(5) and 285C.210(2)(c) are met, as described in OAR 123-065-4420(5) and 123-065-4430(5).

(2) It is demonstrated by the firm, with or without the assistance of the zone sponsor, to the satisfaction of the county assessor or the Department that any closure/job losses more than 30 miles from the zone:

(a) Occurred entirely prior to the time of application for authorization;

(b) Occur entirely after the first assessment year of exemption on qualified property;

(c) Will not be permanent, such that the jobs are reasonably anticipated to be restored, and this does in fact happen on or before December 31 of the first initial year of exemption;

(d) Pertain to business operations that are in no way controlled by the firm through common ownership, corporate affiliation or contracts governing relevant operations or through other comparable intra/inter-firm relationships;

(e) Are completely unrelated to investments in the zone, such that the curtailed operations or jobs are not being transferred into the zone and would have occurred anyway; or

(f) Have only *de minimis* impact on the local economy, in that the job losses are less than one-tenth of 1 percent (0.1%) of the most recently available figure from this state's Employment Department for annual average covered employment of the county containing the lost employment.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.200, 285C.210 & 285C.240

Hist.: EDD 14-1997, f. & cert. ef. 12-4-97; EDD 9-2000, f. & cert. ef. 5-2-00, Renumbered from 123-065-0840; EDD 1-2005, f. & cert. ef. 2-25-05; EDD 1-2007(Temp), f. & cert. ef. 1-8-07 thru 7-6-07

123-065-4450

Local Waiver of Employment Increase Inside Zone

For purposes of ORS 285C.155, 285C.200(2) and 285C.205, in which the local enterprise zone sponsor waives the required increase in the employment of the firm, in order for an eligible business firm to qualify:

(1) The requirements as described in OAR 123-065-4420(1) or 123-065-4430(1) do not apply, but those related to not decreasing employment

outside the zone still do, consistent with OAR 123-065-4420(5), 123-065-4430(5) and 123-065-4440, if relevant.

(2) To use the provisions of either ORS 285C.200(2)(b)(A) or (B), a majority of each governing body of the sponsor, as stipulated in the respective government charter, by-laws or ordinance, must each approve a resolution, such that the resolution or resolutions:

(a) Are adopted before the eligible business firm is authorized;

(b) Stipulate the minimum employment level to be maintained during the exemption as described in section (4) of this rule; and

(c) Identify any other reasonable condition that is:

(A) Jointly agreed to among the cosponsors;

(B) Implemented according to the same, commonly adopted language for standards, verification and so forth; and

(C) Subject to the applicable provisions of OAR 123-065-2500 to 123-065-2599.

(3) The resolution(s) described in section (2) of this rule shall incorporate:

(a) The minimum investment cost under ORS 285C.200(2)(b)(A) to be satisfied by qualified property that is placed in service and contained in property schedules over as many as three successive years, as otherwise allowed pursuant to authorization (... or to two or more authorizations for concurrent investments at different locations inside the same zone); or

(b) For purposes of ORS 285C.200(2)(b)(B), the zone sponsor's specifications and methods for managing, measuring and enforcing the requirements under ORS 285C.205, to increase productivity by 10 percent, and to dedicate 25 percent of the property tax savings to employee training.

(4) The minimum employment as stipulated in the resolution(s):

(a) Is a single, stated number of employees;

(b) May be determined, as indicated in the resolution(s), by way of either Annual Employment or Claim Employment; and

(c) Relative to Existing Employment:

(A) May be lower for purposes of ORS 285C.200(2)(b)(A); or

(B) Shall be at least the same under ORS 285C.200(2)(b)(B).

(5) Final processing and distribution of the authorization application shall be delayed until final approval of the resolution or resolutions in section (2) of this rule, copies of which shall be included with materials distributed, as described in OAR 123-065-4340(5)(b).

(6) Prior to July 1 of the first tax year of the exemption, the sponsor may (jointly) modify its resolution in accordance with sections (2) to (4) of this rule, but only if so requested by the firm.

(7) Failure to satisfy the minimums, requirements or conditions, as described in this rule, shall result in the exemption's denial or disqualification consistent with OAR 123-065-4430(2) to (4), although the county assessor is in no way obligated to consider compliance with any requirement arising under ORS 285C.155 or 285C.205 without formal communication from the zone sponsor.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.155, 285C.200, 285C.205, 285C.230, 285C.240

Hist.: EDD 14-1997, f. & cert. ef. 12-4-97; EDD 9-2000, f. & cert. ef. 5-2-00, Renumbered from 123-065-0850; EDD 1-2005, f. & cert. ef. 2-25-05; EDD 1-2007(Temp), f. & cert. ef. 1-8-07 thru 7-6-07

123-065-4470

Sale or Leasing of Exempted Property

For purposes of ORS 285C.175(2)(c):

(1) A qualified business firm as defined in ORS 285C.050(15) may sell or lease qualified property without triggering disqualification on such property under 285C.240, such that the exemption continues for the remainder of its normal period.

(2) Section (2) of this rule depends on all of the following:

(a) The qualified property continues to be located and eligibly used inside the enterprise zone.

(b) The purchaser or lessee is an eligible business firm under ORS 285C.050(6).

(c) The requirements under ORS 285C.210 as described in OAR 123-065-4430 are met, such that:

(A) The combined Annual Employment of the purchaser/lessee and the originally qualified business firm equals or exceeds what it otherwise would be, plus 100 percent of the annual average employment of the purchaser/lessee in the zone (as computed consistent with OAR 123-065-4410) immediately prior to the change in ownership/lease; and

(B) The combined Claim Employment shall be compared to previous Claim Employment, to which is added the total employment of the purchaser/lessee in the zone at the time of the change in ownership/lease.

(d) That the purchaser/lessee and the qualified property comply with all other applicable requirements of ORS 285C.050 to 285C.250.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

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Stats. Implemented: ORS 285C.050, 285C.175, 285C.210 & 285C.240
Hist.: EDD 14-1997, f. & cert. ef. 12-4-97; EDD 9-2000, f. & cert. ef. 5-2-00, Renumbered from 123-065-0870; EDD 1-2005, f. & cert. ef. 2-25-05; EDD 1-2007(Temp), f. & cert. ef. 1-8-07 thru 7-6-07

123-065-4550

Obligations for All Leases, Lessors and Lessees

(1) Qualified property that is not owned by the authorized business firm is exempt in an enterprise zone under ORS 285C.185(3) subject to all other applicable requirements, if used, occupied or operated by the firm under a lease agreement executed no later than July 1 of the first tax year of exemption under ORS 285C.175. The term of the lease must also extend until the end of the final tax year of exemption, unless the qualified business firm will or does assume ownership of the property by such time.

(2) The owner of leased qualified property may be any person or corporation, including but not limited to a governmental body or an owner of the firm.

(3) The lease agreement must effectively operate as a net lease, inasmuch as:

(a) All *ad valorem taxes* assessed against any property covered by the lease agreement are directly paid by or collected from the firm/lessee; or

(b) The owner of the property is or will be compensated in full for such property taxes in addition to rent or other costs throughout the period of the lease.

(4) The stipulation of a net lease is irrelevant if the owner and lessee are commonly owned and treated as a single eligible business firm according to OAR 123-065-4460.

(5) The owner of any such qualified property (even machinery or equipment) must join the firm in filing the property schedule as an attachment to the exemption claim form under ORS 285C.225(4)(d) for the first exemption year, such that the owner or the owner's authorized legal agent signs one of the following:

(a) The same property schedule that has the original signature of the firm's representative; or

(b) An attachment to the schedule that provides for equivalent acknowledgment by the owner.

(6) For purposes of this rule, the "owner" may be substituted by a lessee that sub-leases property to the firm.

(7) The owner has the same right as the firm to timely notify the county assessor and the zone sponsor under ORS 285C.240(1) if a requirement is not met, in order to avoid penalties under ORS 285C.240(4).

(8) A copy of the lease agreement is not required with the authorization application or the exemption claim, except as described in OAR 123-065-4315, or as requested by the county assessor.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)
Stats. Implemented: ORS 285C.170, 285C.175, 285C.180 & 285C.220
Hist.: EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98; EDD 9-2000, f. & cert. ef. 5-2-00, Renumbered from 123-065-0950; EDD 1-2005, f. & cert. ef. 2-25-05; EDD 1-2007(Temp), f. & cert. ef. 1-8-07 thru 7-6-07

123-065-4610

Authorization

For purposes of claiming and being granted the enterprise zone exemption under ORS 285C.175:

(1) An eligible business firm is authorized if:

(a) Before the effective date of the zone's termination, the local zone manager receives the application for authorization; and

(b) It is subsequently approved by the zone sponsor and the county assessor under ORS 285C.140.

(2) Likewise, termination of the zone does not affect a previously authorized eligible business firm if its authorization is still active when the zone terminates, except as specified in this rule or OAR 123-065-4640.

(3) Following termination, for an authorized business firm described in section (1) or (2) of this rule:

(a) ORS 285C.165 (active status of authorization) is irrelevant for qualified property remaining outside of a current enterprise zone;

(b) The firm may not effectively reapply for authorization for a proposed investment under ORS 285C.245(1)(b) at the same site, unless it is also qualified in the terminated zone, and the requirements listed in OAR 123-065-4620 are met; and

(c) The authorization expires on January 1 directly after the 30th month of the zone's termination, such that the firm:

(A) No longer remains authorized under ORS 285C.245(1)(a)(B)(ii); and

(B) May receive exemption only on qualified property placed in service before that date.

(4) An authorized business firm described in section (1) of this rule may not apply for authorization at any site in the terminated zone under

ORS 285C.245(1)(b), with the same exception as described in subsection (3)(b) of this rule.

(5) Consistent with OAR 123-065-4590(2)(a), an authorization is automatically assigned to a newly designated zone, if:

(a) The zone encompasses the site of the authorized business firm's proposed investment; and

(b) The authorization is:

(A) Active under ORS 285C.165; and

(B) Not expired as described in subsection (3)(c) of this rule.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.140, 285C.175 & 285C.245

Hist.: EDD 5-1997, f. 4-14-97, cert. ef. 4-15-97; EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98; EDD 9-2000, f. & cert. ef. 5-2-00, Renumbered from 123-065-0790; Renumbered from 123-065-4390, EDD 1-2005, f. & cert. ef. 2-25-05; EDD 1-2007(Temp), f. & cert. ef. 1-8-07 thru 7-6-07

123-065-4970

Payment of Tax Savings

For purposes of the payment by a qualified business firm as described in OAR 123-065-4960(5):

(1) The firm shall pay to the sponsor of the enterprise zone an amount equal to the additional taxes due, as the county assessor computed under ORS 285C.175(7), on all of the qualified property receiving the exemption in:

(a) The year in which the failure occurred; or

(b) The fourth year of exemption, consistent with OAR 123-065-4960(5)(b).

(2) The sponsor of the enterprise zone is responsible for enabling the firm to make the payment, by doing the following in a timely manner:

(a) Issuing an invoice for such payment to the firm (as necessary);

(b) Receiving such moneys; and

(c) Issuing a receipt or equivalent evidence of the amount paid by the firm.

(3) In collecting, invoicing, holding or spending any money paid by the firm, the zone sponsor shall establish the necessary accounts, special funds, procedures or documentation in accordance with ORS chapter 294 and applicable local laws.

(4) If the county assessor is not provided with proof that sufficient and timely payment has been made by the firm, the firm shall be disqualified for the exemption or exemptions covered by the requirement as described in OAR 123-065-4960(1), as normally provided under ORS 285C.240.

(5) If the firm is disqualified for an overall exemption, such that the firm owes taxes on the formerly exempt property, then such back taxes shall be reduced by any amount previously paid to retain the same exemption under ORS 285C.240(6), in accordance with this rule.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.240

Hist.: EDD 9-2000, f. & cert. ef. 5-2-00; EDD 1-2005, f. & cert. ef. 2-25-05; EDD 1-2007(Temp), f. & cert. ef. 1-8-07 thru 7-6-07

123-065-4980

Distribution of Payment Among Cosponsors

In the case of an enterprise zone sponsor comprising two or more city or county governments or port districts:

(1) Any cosponsor may act as the initial depository for collecting the qualified business firm's payment as described in OAR 123-065-4970 and providing the firm with the requisite proof of payment, but at least one cosponsor must do so.

(2) The cosponsors may create joint mechanisms and arrangements to receive, hold or use such payments.

(3) The cosponsors may distribute the amount of any such payment among themselves through any mutually agreed method or formula.

(4) If distribution is not effected within six months of receipt of payment, unless pending a joint effort among the cosponsors as described in OAR 123-065-4990, the full amount of the payment shall be distributed in equal portions to each city, port or county government that sponsors the zone. A government or entity holding such funds shall disburse the portions to the cosponsors without assessing any administrative fee.

(5) A zone sponsor is in no way obligated to maintain or repeat for future payments any of the elections and methods utilized in accordance with this rule for a given payment.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.240

Hist.: EDD 9-2000, f. & cert. ef. 5-2-00; EDD 1-2005, f. & cert. ef. 2-25-05; EDD 1-2007(Temp), f. & cert. ef. 1-8-07 thru 7-6-07

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123-065-4990

Utilization of Payments

In accordance with ORS 285C.240(6)(b), the moneys collected through the payment by a qualified business firm shall be used for the benefit of residents of the enterprise zone and its immediate vicinity, such that:

(1) For a rural zone, the immediate vicinity will generally encompass (but is not necessarily limited to) the entire incorporated and urban growth area of any city sponsoring the zone, unless the city is relatively large, and only some parts of the zone boundary are in or near the city.

(2) Public, public/private or community-based activities, efforts or expenditures that acceptably benefit residents of the zone and its local area include but are not limited to the following:

(a) Job training, placement, skill development, career counseling and similar programs predominately involving such residents;

(b) Better educational opportunities, facilities and so forth that serve such residents;

(c) Planning, analyses or support for infrastructure, public safety or other public/community services or facilities that have the potential to stimulate commerce and employment growth in association with the zone;

(d) Programs that assist with financing or other matters for businesses largely started by or employing such residents;

(e) Improvements to environmental conditions, recreational resources or other qualities of the community; or

(f) Reasonable contributions to the management, marketing or other needs of the enterprise zone itself.

(3) These moneys may be combined with funds obtained from authorization filing fees or other resources associated with the enterprise zone or the local community.

(4) If the payment per cosponsor is less than \$1,000, the zone sponsor may:

(a) Delay spending the moneys for an indefinite period of time, pending complementary opportunities or resources; and

(b) Spend the moneys on existing programs and projects that are likely to benefit such residents, even if not exclusively.

(5) If the payment per cosponsor is between \$1,000 and \$10,000, the zone sponsor may:

(a) Postpone spending the moneys for up to two years; and

(b) Spend the moneys on existing programs and projects, but the sponsor shall make reasonable efforts to ensure that such residents in particular are beneficiaries of the additional expenditures.

(6) If the payment per cosponsor exceeds \$10,000 the zone sponsor shall see that the moneys are spent on ongoing programs, special projects and so forth, but only insofar as such expenditures can be shown to have a direct and particular impact on such residents.

(7) A zone sponsor is in no way obligated to maintain or repeat for future payments any of the elections and methods utilized in accordance with this rule for a given payment.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.240

Hist.: EDD 9-2000, f. & cert. ef. 5-2-00; EDD 1-2005, f. & cert. ef. 2-25-05; EDD 1-2007(Temp), f. & cert. ef. 1-8-07 thru 7-6-07

123-065-7200

Enterprise Zones and Electronic Commerce

For purposes of an enterprise zone authorized/designated for Electronic Commerce under ORS 285C.095:

(1) It may be any enterprise zone designated by the Director and defined under ORS 285C.050(8), regardless of how or when, or whether it is urban or rural, but the effective date of designation of the enterprise zone must precede or coincide with its authorization for Electronic Commerce status.

(2) If for whatever reason the underlying enterprise zone terminates, Electronic Commerce status ends too, without harm to any exemption from property taxes due to an authorized business firm consistent with ORS 285C.245(1).

(3) Electronic Commerce status applies fully to the entire area of an enterprise zone including areas added by a subsequent change to the zone's boundary.

(4) The sponsor of an enterprise zone with Electronic Commerce status may revoke that status by resolution(s), such that:

(a) The Director shall order the revocation of Electronic Commerce status in that zone, setting the effective date thereof;

(b) Any business firm eligible only on that basis shall be treated for purposes of exemptions, as if the zone had terminated on the date specified by the Director; and

(c) That enterprise zone may never again be authorized for Electronic Commerce status.

(5) Respective to section (2) or (4) of this rule, the Department shall seek applications from zone sponsors, either subsequently, or in anticipation that an existing zone with Electronic Commerce status is to be Terminated by Statute. A Preexisting (Electronic Commerce) Enterprise Zone needs to also reapply for Electronic Commerce in order to be re-designated as such, for which it has no special claim except that the Director may order direct re-designation for Electronic Commerce if such status is less than three years old at the time that the underlying zone Terminated by Statute.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.095

Hist.: EDD 16-2002, f. 9-12-02 cert. ef. 9-15-02; EDD 1-2005, f. & cert. ef. 2-25-05; EDD 1-2007(Temp), f. & cert. ef. 1-8-07 thru 7-6-07

123-065-7300

Application and Designation

(1) An application by an enterprise zone in accordance with ORS 285C.095 must consist of at least two sets of items:

(a) Copy of a resolution newly adopted by each governing body of the zone sponsor, consistent with its charter, by-laws or ordinance, that requests designation for Electronic Commerce; and

(b) A completed form as prescribed by and available from the Department and any supporting materials.

(2) The Department shall evaluate the general merit of authorizing the applicant zone for Electronic Commerce status (possibly in relation to concurrent applications) based on the responses from the applicant zone sponsor in the prescribed form, respective to the following factors:

(a) Significance associated with the location and attributes of the cities, business sites and so forth that are in the current zone boundary, as well as future boundary change requests (to be considered, any such boundary change must be acknowledged in the sponsor's resolution or resolutions of application);

(b) Strategic or marketing plans, resources and readiness of the enterprise zone for local development relating to Electronic Commerce, especially as a result of major public investments;

(c) Past success in using the statutory and local incentives of the enterprise zone for inducing business development, and other comparable programs or tools;

(d) Interest and support among local businesses, community organizations and the general public for having the enterprise zone obtain Electronic Commerce status;

(e) Other local assets that support and complement Electronic Commerce activity or investments (for example, training institutions, telecommunication infrastructure, environmental initiatives);

(f) Prospective, qualifying Electronic Commerce investments that could depend on the tax incentives; or

(g) One other factor of the applicant's choosing.

(3) The Director may accept applications for or make designation of an enterprise zone for Electronic Commerce contingent on an eligible business firm that is ready to be authorized and to make a significant investment in Electronic Commerce operations in the zone, pursuant and according to policies or criteria prescribed by and available from the Department.

(4) In determining if an applicant enterprise zone is to be designated for Electronic Commerce, the Director shall consider the results of analysis by staff (or as requested, by external parties) of factors in section (2) of this rule.

(5) The Director shall make a final determination, which may not be appealed, regarding any applicant zone to order for Electronic Commerce designation, and may choose not to use all such available designations.

(6) The Department shall promptly give written notification to any applicant zone sponsor rejected for Electronic Commerce designation.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1) & 285C.095(2)

Stats. Implemented: ORS 285C.095

Hist.: EDD 16-2002, f. 9-12-02 cert. ef. 9-15-02; EDD 1-2005, f. & cert. ef. 2-25-05; EDD 1-2007(Temp), f. & cert. ef. 1-8-07 thru 7-6-07

123-065-7400

Enterprise Zone Designations

(1) If additional Electronic Commerce designations are allowed under ORS 285C.095 by the Legislature, the Department shall seek applications in accordance with OAR 123-065-7300 through the local zone managers of all existing enterprise zones.

(2) January 1, 2002, is the effective date of designation for the four initial Electronic Commerce enterprise zones.

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(3) At the time of the last amendment of this rule (in order to establish matters for the record), the enterprise zones designated for Electronic Commerce are Cascade Locks/Hood River, Florence, Grants Pass Area, Harney County/Burns/Hines, Lincoln County, Medford Urban, N/NE Portland, Roberts Creek and Salem.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.050(2), 285C.060(1) 285C.095(2)
Stats. Implemented: ORS 285C.095, 285C.135, 285C.180, 285C.185, 315.507
Hist.: EDD 16-2002, f. 9-12-02 cert. ef. 9-15-02; EDD 1-2005, f. & cert. ef. 2-25-05; EDD 1-2007(Temp), f. & cert. ef. 1-8-07 thru 7-6-07

123-065-7500

Other Electronic Commerce Areas

(1) The City of North Plains in Washington County is a city designated for Electronic Commerce under ORS 285C.100, effective on March 4, 2002.

(2) All areas then or later inside the city limits or urban growth boundary of the City of North Plains shall be considered and treated equivalent to an enterprise zone, but only for purposes of Electronic Commerce and business firms that are eligible on that basis, under ORS 285C.050 to 285C.250 and 315.507.

(3) The city shall act as the effective zone sponsor and take responsibility for all duties of a zone sponsor as they apply to any business firm seeking to utilize areas of the city for special Electronic Commerce benefits.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)
Stats. Implemented: ORS 285B.650, 285B.675, 285B.707, 285B.713 & 315.507
Hist.: EDD 16-2002, f. 9-12-02 cert. ef. 9-15-02; EDD 1-2005, f. & cert. ef. 2-25-05; EDD 1-2007(Temp), f. & cert. ef. 1-8-07 thru 7-6-07

123-065-8200

Designation of a Rural Renewable Energy Development Zone

(1) To apply for designation of an RREDZ under ORS 285C.353, the city, county or multiple counties shall furnish the Department with the following:

(a) Copy of the resolution(s) requesting designation, as duly adopted by each jurisdiction within the past 90 days;

(b) The documentation as stipulated in OAR 123-065-1050 and any further indication of consultations with local taxing districts; and

(c) A formal statement that specifies the following:

(A) The jurisdiction(s) to be so designated, and in the case of a multi-county RREDZ, the county that would act as the sponsor; and

(B) The status of any previous RREDZ designation in the jurisdiction(s), including but not limited to the unused portion of the exemption limitation under ORS 285C.353(4).

(2) Subject to the accuracy and completeness of the materials provided consistent with this rule and any other information as the Department may request, as well as adherence to applicable laws and these administrative rules:

(a) The designation shall be approved by order of the Director;

(b) The date of designation may be made effective as early as when the Department received a complete application, if so requested by the applicant; and

(c) The director's order shall state the exemption limitation for the RREDZ in accordance with OAR 123-065-8300.

(3) Termination of an RREDZ may occur in accordance with ORS 285C.245(4) or (5) (with equivalent protection and allowances under ORS 285C.245(1) for any authorized or qualified business firm in the RREDZ at that time, as would be the case for an enterprise zone), such that:

(a) For a multi-county RREDZ all counties must adopt a resolution seeking termination under ORS 285C.245(4), not only the sponsor; and

(b) An RREDZ may not later be re-designated if it corresponds to the one so terminated.

(4) If the application is for a subsequent additional designation corresponding to an existing RREDZ, then the existing RREDZ terminates and is replaced by the new designation effective on January 1, directly following the last date on which a resolution of application was adopted, so that:

(a) Any authorized business firm in the previously existing RREDZ is assigned to the newly designated RREDZ for qualification of property first placed in service as of an assessment year beginning on or after the January-1 date, on which the new RREDZ takes effect (regardless of when the application of authorization was submitted or approved); and

(b) Any unused portion of the previous RREDZ's exemption limitation under ORS 285C.353(4) ceases to exist, and only the new RREDZ's exemption limitation may be used for exemptions beginning in subsequent tax years.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1) & 285C.370
Stats. Implemented: ORS 285C.350 - 285C.370

Hist.: EDD 1-2005, f. & cert. ef. 2-25-05; EDD 1-2007(Temp), f. & cert. ef. 1-8-07 thru 7-6-07

123-065-8300

Limitation of Exempt Real Market Value

Under ORS 285C.353(4), each RREDZ designation allows for cumulative exemptions on qualified property up to but not exceeding a certain amount of value over the life of the RREDZ, such that:

(1) Value is measured by the property's real market value (RMV) on the assessment date of the first year that the exemption is claimed by the authorized business firm (see OAR 123-065-8200(4) in the case a subsequent additional RREDZ).

(2) The sponsor shall coordinate with the county assessor to track the amount of this limitation that has been used by former/ongoing exemptions and the unused portion thereof. (If affected property is later disqualified and property taxes paid back, then the associated RMV is added back to the unused portion for future use in the same RREDZ).

(3) The exemption limitation as described in this rule equals the amount specified in the resolution(s) adopted by the city, county or counties in applying for the RREDZ, and any such specified amount must be:

(a) Less than or equal to the maximum under ORS 285C.353(4)(d); and

(b) In the event of a subsequent additional RREDZ, greater than the unused portion of the previous RREDZ's exemption limitation.

(4) If any such resolution fails to specify an exemption limitation for the RREDZ or two or more such resolutions comprising a joint application disagree as to the amount, then the limitation for that RREDZ defaults to the maximum allowed by law.

(5)(a) If the exemption limitation will be exhausted by new qualified property first subject to exemption in a single year, then the exemption or exemptions shall be granted only up to the point at which the property's RMV equals the unused portion; and

(b) In the case of two or more qualified firms, the unused portion shall be pro-rated among them commensurate with the total value of each one's property.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1) & 285C.370
Stats. Implemented: ORS 285C.350 - 285C.370
Hist.: EDD 1-2005, f. & cert. ef. 2-25-05; EDD 1-2007(Temp), f. & cert. ef. 1-8-07 thru 7-6-07

123-065-8400

Further Distinctions from an Enterprise Zone Exemption

Other differences for an RREDZ exemption in contrast to the provisions of ORS 285C.050 to 285C.250 include (but are not necessarily limited to) the following:

(1) The application for authorization must give special attention to characterizing the proposed investment in qualified property, clarifying how it relates to renewable energy, and estimating its real market value by January 1 of the first full calendar year of operations.

(2) To be exempt, the qualified property must essentially correspond to what is described in the application.

(3) For purposes of a business firm's being authorized and then qualifying:

(a) An "eligible business firm" under ORS 285C.135 is effectively limited to such operations or business activities that are engaged in renewable energy.

(b) The "employment of the firm" under ORS 285C.200 and 285C.210 is effectively limited to employees engaged a majority of their time in eligible renewable energy operations within the RREDZ.

(4) For purposes of an additional one or two years of exemption on qualified property (following the standard three-year period) inside a county that is a contiguous part of the RREDZ, but that is not the sponsor of the RREDZ:

(a) At least 21 calendar days before execution of the requisite written agreement between the sponsor and the eligible business firm (prior to authorization), the sponsor shall give the county's governing body formal notice of the potential extension to the tax abatement period; and

(b) If on or before the date, on which the written agreement is executed, the county's governing body adopts a resolution electing not to participate, then the extended abatement is disallowed for the proposed investment in qualified property in that county.

(5) As used in ORS 285C.350, "renewable energy" necessitates that electricity is derived to a significant degree from the combustion, harnessing or utilization of the renewable energy resource, but it may also be converted (even for the most part) into other energy forms, including but not limited to steam, heat or mechanical power.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1) & 285C.370

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Stats. Implemented: ORS 285C.350 - 285C.370
Hist.: EDD 1-2005, f. & cert. ef. 2-25-05; EDD 1-2007(Temp), f. & cert. ef. 1-8-07 thru 7-6-07

Occupational Therapy Licensing Board
Chapter 339

Rule Caption: Clarify limits to Occupational Therapy Limited Permits; clarify Occupational Therapy use of us of "aides."

Adm. Order No.: OTLB 1-2006

Filed with Sec. of State: 12-28-2006

Certified to be Effective: 12-28-06

Notice Publication Date: 12-1-06

Rules Amended: 339-010-0040, 339-010-0055

Subject: The amended rule clarifies that Limited Permit is only for those who have already applied to take the National Certification Examination and received their Eligibility to Test letter. This change is needed to clarify that applicants receiving the Limited Permit only receive it for a short time (60) days after they receive their Eligibility to Test letter. The Board wants to limit the time the applicants work under the limited permit and for them to take the test and get the results within 60 days. (Limited permit holders work under the supervision of a licensed Occupational Therapist and can only receive the Limited permit one time).

The second amended rules about Occupational Therapists using aides to better clarify when Occupational Therapy can use "occupational therapy aides" for very limited tasks. The new language is only intended to make clearer the need for supervision and the very limited tasks such an aide can perform.

Rules Coordinator: Felicia Holgate—(971) 673-0198

339-010-0040

Limited Permit

(1) Students who have successfully completed the educational and field work requirements and students who receive their eligibility to take the NBCOT certification examination, but do not yet have their test results, may apply for a limited permit to practice occupational therapy under at least routine supervision (as defined in OAR 339-010-0005(1)(b)) of an Oregon licensed occupational therapist.

(2) Persons practicing occupational therapy in another country who are graduates of a World Federation of Occupational Therapists' approved school may apply for a limited permit. Applicants must present proof of eligibility to take the next certification exam.

(3) Applicants under sections (1) and (2) of this rule:

(a) Shall submit an application on a form provided by the Board with payment of a permit fee of \$25;

(b) Must submit an official transcript and/or other verification of having successfully completed academic and supervised field work requirements as set forth in ORS 675.240 and 675.250;

(c) Must show evidence of being approved to take the next certification examination.

(4) An Oregon licensed occupational therapist must sign the limited permit application verifying a supervisory role to the applicant.

(5) A limited permit may not be issued to applicants who have taken and failed the certification examination, and limited permits may not be renewed.

(6) A person who fails the exam must immediately surrender the limited permit upon receipt of examination scores.

(7) The Board may grant an extension of a limited permit to persons who, because of extenuating circumstances, are unable to take the scheduled certification examination. Request must be made in writing to the Board.

Stat. Auth.: ORS 675.230, 675.240, 675.250, 675.300 & 675.310

Stats. Implemented: ORS 675.320(13)

Hist.: OTLB 1-1988, f. & cert. ef. 1-29-88; OTLB 2-1990, f. & cert. ef. 12-20-90; OTLB 1-1996, f. & cert. ef. 4-16-96; OTLB 1-2006, f. & cert. ef. 12-28-06

339-010-0055

Occupational Therapy Aides Tasks

(1) An "aide" is a person who provides support services to an occupational therapist and occupational therapy assistant, but is not licensed by the Occupational Therapy Licensing Board. Any aide who is working with or supporting patients, and is performing activities covered under the occupational therapy plan of treatment, is considered an occupational therapy aide. The occupational therapy practitioner is responsible for the overall use

and actions of the aide, and must ensure the competency of the aide performing the assigned tasks.

(2) An occupational therapist or occupational therapy assistant may supervise the aide. When the aide is performing treatment related tasks, the supervising occupational therapy practitioner must be within sight or earshot of the aide, and must be immediately available at all times to provide in-person direction, assistance, advice, or instruction to the aide.

(3) Treatment related tasks that the aide may assist with under the direct supervision of the occupational therapy practitioner include:

(a) Routine transfers;

(b) Routine care of patient's personal needs during the course of treatment;

(c) Execution of a well-established routine activity and/or exercise;

(d) Assisting the occupational therapy practitioner as directed during the course of treatment.

(4) Non-treatment related tasks that may be performed by the occupational therapy aide include:

(a) Clerical;

(b) Secretarial;

(c) Housekeeping;

(d) Supply ordering;

(e) Equipment maintenance;

(f) Fabrication of generic strapping material for splints;

(g) Transporting patients;

(h) Preparation of the work area or equipment.

(5) An aide does not provide skilled occupational therapy services in any practice setting. These rules do not apply to school aides and occupational therapists working in school settings. The rules on aides in the education setting are found in OAR 339-010-0050.

Stat. Auth.: ORS 675.320(11)

Stats. Implemented: ORS 675.320(11)

Hist.: OTLB 1-1996, f. & cert. ef. 4-16-96; OTLB 1-1999, f. & cert. ef. 10-27-99; OTLB 1-2006, f. & cert. ef. 12-28-06

Oregon Housing and Community Services
Chapter 813

Rule Caption: Incorporates clarification language and ability to implement application and loan commitment.

Adm. Order No.: OHCS 1-2007

Filed with Sec. of State: 1-11-2007

Certified to be Effective: 1-11-07

Notice Publication Date: 12-1-06

Rules Adopted: 813-035-0070

Rules Amended: 813-035-0005, 813-035-0011, 813-035-0016, 813-035-0018, 813-035-0021, 813-035-0029, 813-035-0033, 813-035-0036, 813-035-0040, 813-035-0045, 813-035-0051

Rules Repealed: 813-035-0700, 813-035-0705, 813-035-0710, 813-035-0715, 813-035-0720

Subject: The Pass-Through Revenue Bond Financing Program provides funds to finance the construction, rehabilitation and acquisition of multi-unit housing in the State of Oregon for persons and families of lower income, while providing sufficient safeguards to protect the financial interests of the state.

813-035-0005 is intended clarify the program and the general purpose of the rules.

813-035-0011 clarifies terms used in the program and rules. Adds definitions.

813-035-0016 Removes the requirement that the application must be in compliance with the applicable local comprehensive plan. Other Housekeeping amendments.

813-035-0018 Adds the language that private placement bonds need only address the purchasers investment grade interests.

813-035-0021 Housekeeping. Changes the term sponsor to eligible borrower.

813-035-0029 Defines the criteria for any transfer of ownership. Establishes that the department may require transfer application and

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transfer review charges from owners of projects that receive financing through the Department who wish to transfer ownership.

813-035-0033 Housekeeping. Changes term loan to financing. Repeals language requiring the interest rates on a Program loan to be consistent with the relevant commitment.

813-035-0036 Housekeeping.

813-035-0040 Amends the eligibility requirements for a person or household.

813-035-0045 Housekeeping.

813-035-0051 Establishes the requirements for the release of finds.

813-035-0700 Repealed. No longer applicable to the program operation.

813-035-0705 Repealed. No longer applicable to the program operation.

813-035-0715 Repealed. No longer applicable to the program operation.

813-035-0720 Repealed. No longer applicable to the program operation.

813-035-0070 Adds waiver language already provided for within statute.

Rules Coordinator: Sandy McDonnell—(503) 986-2012

813-035-0005

Purpose and Objectives

The rules of OAR chapter 813, division 035, are established to administer and enforce ORS 456.515 through 456.720, and specifically ORS 456.615 through 456.720. These rules implement the Pass-Through Revenue Bond Financing Program, which has an objective of providing funds to finance the construction, rehabilitation and acquisition of multi-unit housing in the State of Oregon for persons and families of lower income, while providing sufficient safeguards to protect the financial interest of the state. Other objectives of the Program include providing for additional flexibility in the Department's overall financial loan structuring, and providing an efficient process for simplifying underwriting, approval and Project monitoring so as to accommodate pass-through revenue bond financing.

Stat. Auth.: ORS 90.800 - 90.840, 91.886, 183, 456.515 - 456.723 & 458.210 - 458.650

Stats. Implemented: ORS 456.555 & 456.625

Hist.: OHCS 1-2000(Temp), f. 6-8-00, cert. ef. 6-8-00 thru 12-4-00; OHCS 3-2000, f. & cert. ef. 9-15-00; OHCS 1-2007, f. & cert. ef. 1-11-07

813-035-0011

Definitions

(1) All terms are used in OAR chapter 813, division 035, as defined in the Act, and as provided in OAR 813-005-0005 and herein.

(2) As used in these rules, unless the context indicates otherwise:

(a) "Bond Documents" means the Trust Indenture, the Loan Agreement, the Regulatory Agreement, Operating Agreement and related documents executed by one or more of the parties to the financing and development of the Project, including without limitation the Department, the Borrower, and the Trustee.

(b) "Borrower" or "Sponsor" means that legal entity to which bond proceeds are loaned. While the term "Borrower" generally is used in this Division, it and "Sponsor" are used interchangeably in Department rules, statutes, and documents

(c) "Operating Agreement" means the Operating Agreement and Declaration of Restrictive Covenants and Equitable Servitude executed by one or more of the parties to the financing and development of the Project, including without limitation the Department and the Borrower.

(d) "Project" means the project site and all buildings, structures, fixtures, equipment and other improvements now or later constructed or located upon the project site.

(e) "Pass-Through Revenue Bond Financing Program" or "Program" means the Program established pursuant to this division 035.

(f) "Private Placement" with respect to municipal securities, a negotiated sale in which the new issue securities are sold directly to institutional or private investors rather than through a Public Offering. The offer and sale of the securities by the issuer is directly to one or more investors, rather than through an underwriter.

(g) "Public Offering" as used in this Division means any offering of bonds by the Department to finance Project(s) other than a private placement with a single financial institution.

(h) "Transferee" means the person, or entity, to whom the Borrower sells, transfers to or disposes of the Project or any portion thereof (other than by leasing or renting for individual tenant use.)

Stat. Auth.: ORS 90.800 - 90.840, 91.886, 183, 456.515 - 456.723 & 458.210 - 458.650

Stats. Implemented: ORS 456.620, 456.645 & 456.675

Hist.: OHCS 1-2000(Temp), f. 6-8-00, cert. ef. 6-8-00 thru 12-4-00; OHCS 3-2000, f. & cert. ef. 9-15-00; OHCS 1-2007, f. & cert. ef. 1-11-07

813-035-0016

Standard Underwriting Criteria

In reviewing any Project financing application for approval, the Department and the State Housing Council, in addition to requirements elsewhere stated in the Program rules, may consider factors including but not limited to the following:

(1) The location of the Project site, including its proximity to transportation, shopping, social, commercial and recreational facilities, medical services, and such other facilities and services as may best serve the prospective residents.

(2) Availability of street, sewer, water, utilities and other public services.

(3) Availability of public transportation.

(4) Financial feasibility of the Project, including any relevant commercial or other elements as they may impact Project viability.

(5) Architectural design, including aesthetic quality, soundness of construction, energy efficiency, and suitability to the needs of the residents to be served.

(6) Compliance with land use regulations.

(7) Market demand in the area.

(8) The financial strength, credit reputation and history of the Borrower.

(9) The experience of the developer, contractors, architects, consultants and management agent in developing, constructing and operating housing Projects.

Stat. Auth.: ORS 90.800 - 90.840, 91.886, 183, 456.515 - 456.723 & 458.210 - 458.650

Stats. Implemented: ORS 456.625 & 456.666

Hist.: OHCS 1-2000(Temp), f. 6-8-00, cert. ef. 6-8-00 thru 12-4-00; OHCS 3-2000, f. & cert. ef. 9-15-00; OHCS 1-2007, f. & cert. ef. 1-11-07

813-035-0018

Investment Grade Bonds

The Department has responsibility for several Department bond programs and its Publicly Offered bonds normally must be of investment grade credit quality. Private Placement bonds need only address the purchaser's investment grade interests. To ensure investment grade credit quality for its Publicly Offered bonds or other financing funds, the Department may require that Borrower and its participating institution provide an appropriate credit enhancement device that will secure the bonds in a manner that will result in investment grade credit quality. Any exceptions to this investment grade credit quality standard will only be at the Department's sole determination and must be appropriately supported and documented.

Stat. Auth.: ORS 456.559 & 456.625

Stats. Implemented: ORS 456.620, 456.645 & 456.675

Hist.: OHCS 1-2000(Temp), f. 6-8-00, cert. ef. 6-8-00 thru 12-4-00; OHCS 3-2000, f. & cert. ef. 9-15-00; OHCS 1-2007, f. & cert. ef. 1-11-07

813-035-0021

Financing Commitments and Charges

(1) The Department may finance Projects pursuant to written Commitments made to eligible Borrowers.

(2) Projects may be financed directly with proceeds from the issuance of Bonds or other available funds obtained by the Department. The Department may establish charges and interest rates for financing Projects based upon factors including but not limited to the following:

(a) The cost of borrowing through Bond issuance; and

(b) Other funds required to carry out the Program.

(3) The Borrower shall comply with all provisions of the Program and the Act.

(4) The Department may take appropriate enforcement action in accordance with the Commitment and other Project documents, or as otherwise available at law.

(5) The Department may finance Projects in such order, as in the sole judgment of the Department, best achieves the purposes of the Program and the Act.

Stat. Auth.: ORS 90.800 - 90.840, 91.886, 183, 456.515 - 456.723 & 458.210 - 458.650

Stats. Implemented: ORS 456.515 - 456.720

Hist.: OHCS 1-2000(Temp), f. 6-8-00, cert. ef. 6-8-00 thru 12-4-00; OHCS 3-2000, f. & cert. ef. 9-15-00; OHCS 1-2007, f. & cert. ef. 1-11-07

ADMINISTRATIVE RULES

813-035-0029

Transfer of Ownership

(1) Except for transfers in connection with refinancing of the Bond by or through the Department and/or low income housing tax credits provided by the State, the parties agree that during the term of the Department's Operating Agreement, if the Borrower sells, transfers or otherwise disposes of any interest in the Project or any portion thereof (other than by leasing or renting for individual tenant use as contemplated in the application for financing) without obtaining the prior written consent of the Department, an event of default shall occur under the terms of the Operating Agreement and Bond Documents and the remedies provided in said documents may be exercised by the Department, the trustee or otherwise. The Department's consent shall not be unreasonably withheld or delayed, but may be conditioned upon one or more of the following:

(a) The execution of transfer, assumption and modification documents satisfactory to the Department;

(b) Reasonable evidence satisfactory to the Department that the Borrower is not then in default beyond any applicable grace period or cure period;

(c) An opinion of counsel for the Transferee, delivered to the Department and trustee, to the effect that the Transferee has assumed in writing and in full all duties and obligations of the Borrower under the Operating Agreement and Bond Documents, and that the Operating Agreement and the Bond Documents constitute legal, valid and binding obligations of the Transferee;

(d) An opinion of bond counsel to the effect that the sale, transfer or disposition of the Project or any portion thereof will not adversely affect the exclusion of the interest on the Bond from the gross income of the bondholders and will not adversely affect the award of low-income housing tax credits to the Project, and;

(e) Such other conditions which reasonably may be imposed by the Department or the trustee to assure compliance with federal or state law, including but not limited to the Borrower providing the Department with current financial information with respect to the Transferee and a full description of such Transferee's and its principal's experience in real property development and management.

(2) A transfer of ownership means a sale, conveyance or other transfer of:

(a) Any interest of a general partner;

(b) Any interest in a joint venture;

(c) More than 25 percent of the limited partner's interest;

(d) More than 10 percent of a corporate or a limited liability company owner's interest; or

(e) Any individual interest when the ownership is not a limited partnership, general partnership, joint venture, limited liability company, or corporation.

(3) The Department may require a transfer application charge from owners of projects that receive financing through the Department, who request the Department's approval of a change in Project ownership.

(4) The Department may assess a transfer review charge to Project owners and transferees who effect a change in project ownership without prior written approval by the Department.

Stat. Auth.: ORS 90.800 - 90.840, 91.886, 183, 456.515 - 456.723 & 458.210 - 458.650

Stats. Implemented: ORS 456.620, 456.645 & 456.675

Hist.: OHCS 1-2000(Temp), f. 6-8-00, cert. ef. 6-8-00 thru 12-4-00; OHCS 3-2000, f. & cert. ef. 9-15-00; OHCS 1-2007, f. & cert. ef. 1-11-07

813-035-0033

Project Financing

(1) To be eligible for Project financing, a prospective Borrower shall comply with the terms contained in the State Housing Council approval, the Project financing documents, and other Program or Department requirements.

(2) Program financing may not exceed that portion of the Project's appraised value appropriate to prudent underwriting, as determined by the lender and reviewed by the Department.

(3) Program financing may have a final maturity of not more than 40 years from the date of its making unless allowed by law, and shall be secured by a first lien deed of trust granted by the Borrower, or others as appropriate, in the Project and other property securing the loan.

(4) Program financing may provide financing for Projects to be newly constructed or to be acquired and substantially rehabilitated.

(5) Project documents, including all Loan Documents, must be in form and substance as approved or required by the Department at its sole discretion.

Stat. Auth.: ORS 90.800 - 90.840, 91.886, 183, 456.515 - 456.723 & 458.210 - 458.650

Stats. Implemented: ORS 456.555 & 456.625

Hist.: OHCS 1-2000(Temp), f. 6-8-00, cert. ef. 6-8-00 thru 12-4-00; OHCS 3-2000, f. & cert. ef. 9-15-00; OHCS 1-2007, f. & cert. ef. 1-11-07

813-035-0036

Eligible Projects

(1) The Department shall evaluate each Project for consistency with sound architectural and planning principles and underwriting standards.

(2) This Department evaluation may include, but is not limited to the following:

(a) Site; location; market demand; financial feasibility; qualifications of general contractor, management agent, and developer; appraisal; financial strength and credit worthiness of the prospective Borrower; management plan; final architectural package; prospective Borrower's organizational documents; title report; and any other information the Department may prescribe;

(b) If subject to a Federal Housing Assistance Payments contract, whether or not the Project complies with any standards required by the U.S. Department of Housing and Urban Development (HUD);

(c) Whether or not the Project meets all applicable state and local land use and zoning requirements, housing codes, and similar requirements;

(d) Whether or not the Project is located in the State of Oregon; and

(e) Whether or not the Project meets all applicable laws and other Program requirements.

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

Stat. Auth.: ORS 90.800 - 90.840, 91.886, 183, 456.515 - 456.723 & 458.210 - 458.650

Stats. Implemented: ORS 456.555 & 456.625

Hist.: OHCS 1-2000(Temp), f. 6-8-00, cert. ef. 6-8-00 thru 12-4-00; OHCS 3-2000, f. & cert. ef. 9-15-00; OHCS 1-2007, f. & cert. ef. 1-11-07

813-035-0040

Resident Eligibility and Occupancy

(1) To be eligible to occupy a Project, a Person or household shall:

(a) Be a Resident of the state.

(b) Have an annualized gross household income that does not exceed the limit established by the Department from time to time in compliance with the Act, and the limits of Section 142(d)(1) of the Code, if applicable.

(c) The project shall conform to the maximum income requirement of ORS 456.620(4). With the approval of the council, establish maximum household income limits for all or a portion of the units in housing projects, housing developments or other residential housing financed in whole or in part by the department. A maximum of one-third of the units in a housing Project, housing development or other residential housing financed by the department may be rented to households with an income level exceeding 120 percent of the median family income level, as determined by the department. If the income level in any unit exceeds 120 percent of the median family income, the department shall, to the extent practicable, require that the Project, development or other housing financed by the department has a percentage of low income units that is higher than the minimum percentages established in ORS 456.120(19) for Projects financed by local housing authorities or income limitations that are lower than the limits described in ORS 456.120(19) or a combination thereof.

(d) Relating specifically to acquisition/rehabilitation projects only, where tenants already reside in the project, the Department, at its sole discretion, may allow up to a one (1) year grace period for implementation of the standards identified in subsection (c) above in order to reduce the impact of displacement for over-income residents.

(2) Rental of units shall not violate the Fair Housing provisions of the 1968 Civil Rights Act or other applicable provision of state or federal law.

(3) Lower-income Persons or households residing in the Project shall have equal access to and enjoyment of all common facilities of the Project.

(4) The Borrower shall accept as residents in compliance with Section 8 programs, lower-income Persons or households who are holders of certificates for federal housing assistance payments pursuant to Section 8 of the United States Housing Act of 1937 or a successor federal program, on the same basis as all other prospective residents. The Borrower shall not apply resident selection criteria to such Section 8 certificate holders which are more burdensome than the criteria applied to any other prospective resident.

(5) The Borrower shall conduct timely annual income certifications of residents to the Department's satisfaction to assure compliance with the income requirements of the Program.

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

Stat. Auth.: ORS 456.559 & 456.625

Stats. Implemented: ORS 456.620, 456.645 & 456.675

Hist.: OHCS 1-2000(Temp), f. 6-8-00, cert. ef. 6-8-00 thru 12-4-00; OHCS 2-2000(Temp), f. & cert. ef. 9-15-2000 thru 3-13-01; OHCS 3-2000, f. & cert. ef. 9-15-00; OHCS 1-2001, f. & cert. ef. 2-15-01; OHCS 1-2007, f. & cert. ef. 1-11-07

ADMINISTRATIVE RULES

813-035-0045

Inspections and Audits

(1) The Department will have the ability to conduct, and Borrowers shall cooperate fully with the Department in accomplishing, such physical inspections of the Project(s) as the Department may from time to time require.

(2) Borrowers shall provide annual audited financial reports and such other information and documents concerning the Project as the Department from time to time may require, and in form and substance satisfactory to the Department at its sole discretion.

(3) The purposes of inspections, audited financial reports and other requested information may include, but are not limited to reviews of tenant occupancy income verification procedures and documents, maintenance and reserves compliance verification, and financial management of the Project.

(4) The Borrower shall at all times manage the Project so as to comply with Program requirements, the terms of the Project documents and all applicable laws.

Stat. Auth.: ORS 456.559 & 456.625

Stats. Implemented: ORS 456.620, 456.645 & 456.675

Hist.: OHCS 1-2000(Temp), f. 6-8-00, cert. ef. 6-8-00 thru 12-4-00; OHCS 3-2000, f. & cert. ef. 9-15-00; OHCS 1-2007, f. & cert. ef. 1-11-07

813-035-0051

Loan Security

Notwithstanding any other representation or provision contained in the Program rules or otherwise, financing funds shall not be disbursed for the Project loan until:

(1) Fully executed Bond Documents, or other adequate instrument as required by the Department fully secures the Project.

(2) The Borrower and other necessary parties have executed all Project documents required by the Department at its sole discretion.

(3) The Borrower and other necessary parties have satisfied all program financing conditions contained, as well as the requirement for assuring investment grade credit quality bond-financing for the Project as determined by the Department at its sole discretion.

Stat. Auth.: ORS 90.800 - 90.840, 91.886, 183, 456.515 - 456.723 & 458.210 - 458.650

Stats. Implemented: ORS 456.555 & 456.625

Hist.: OHCS 1-2000(Temp), f. 6-8-00, cert. ef. 6-8-00 thru 12-4-00; OHCS 3-2000, f. & cert. ef. 9-15-00; OHCS 1-2007, f. & cert. ef. 1-11-07

813-035-0070

Waiver

The Department may waive or modify any requirements of OAR 813, division 060, unless such waiver or modification would violate applicable federal or state statutes or regulations.

Stat. Auth.: ORS 456.515 - 456.720

Stats. Implemented: ORS 456.555

Hist.: OHCS 1-2007, f. & cert. ef. 1-11-07

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Rule Caption: Incorporation clarification language and ability to implement application and loan commitment charges.

Adm. Order No.: OHCS 2-2007

Filed with Sec. of State: 1-11-2007

Certified to be Effective: 1-11-07

Notice Publication Date: 12-1-06

Rules Adopted: 813-030-0070

Rules Amended: 813-030-0005, 813-030-0010, 813-030-0020, 813-030-0025, 813-030-0030, 813-030-0031, 813-030-0032, 813-030-0034, 813-030-0035, 813-030-0040, 813-030-0044, 813-030-0046, 813-030-0047, 813-030-0060, 813-030-0062, 813-030-0066, 813-030-0067, 813-030-0068

Subject: The Elderly Housing Program provides funds to finance the construction, rehabilitation and acquisition of housing for elderly households in the State of Oregon, while providing sufficient safeguards to protect the financial interests of the state.

813-030-0005 is intended clarify the program and the general purpose of the rules.

813-030-0010 clarifies terms used in the program and rules. Adds definitions for Gross Household Income and Multifamily Housing.

813-030-0020 Housekeeping and clarification. Changes the term sponsor to eligible borrower.

813-030-0030 Housekeeping. Changes the term sponsor to eligible borrower.

813-030-0031 Housekeeping. Changes the term sponsor to eligible borrower.

813-030-0032 Housekeeping. Changes the term mobile home to manufactured dwelling and sponsor to eligible borrower.

813-030-0034 Housekeeping. Reduces the term of financing from five to two years.

813-030-0035 Housekeeping. Changes the term sponsor to eligible borrower and person to entity.

813-030-0040 Requires the prospective Borrower to submit an application to the Department on forms acceptable to the Department. Adds that an application conference will be scheduled with the prospective borrower is the Project meets the Program requirements. Changes fees to charges and adds additional potential subjects for discussion at the application conference. Requires the prospective Borrower to provide necessary loan application documentation and establishes the criteria for qualifying for a loan. Removes language that states the Department may perform an inspection within ten months after completion of the project.

813-030-0044 Amends the conditions of commitment at loan closing.

813-030-0046 Amends the eligibility requirements for an Elderly Household.

813-030-0047 Housekeeping. Changes the term sponsor to eligible borrower.

813-030-0048 Allows the department to stipulate the terms of a servicing agreement.

813-030-0062 Allows the department to terminate or amend servicing agreements and direct a change of Approved Servicer at any time consistent with the terms of the servicing agreement and these rules.

813-030-0066 Changes the term sponsor to eligible borrower and person to entity. Allows the department to charge a transfer charge from owners of Projects that receive loans through the Department who request approval for a change in Project ownership.

813-030-0067 Stipulates that it is the general policy of the Department

to not accept prepayments, however the Department may permit a prepayment with certain conditions. Requires a Borrower to submit a written request for prepayment at least 90 days prior to the Borrowers estimated prepayment date. Allows the Department to charge the Borrower a prepayment review charge to cover the Departments costs of review and processing.

813-030-0068 Housekeeping. Changes the term sponsor to eligible borrower.

813-030-0070 Adds waiver language already provided for within statute.

Rules Coordinator: Sandy McDonnell—(503) 986-2012

813-030-0005

Purpose and Objectives

The rules of OAR chapter 813, division 030, are promulgated to carry out the provisions of ORS 456.515 to 456.720 specifically ORS 456.515 through 456.547, as they pertain to the administration by the Housing and Community Services Department (Department) of the Elderly Housing Program. These rules and the related determinations and orders of the Department constitute the Department's Elderly Housing Program. The purpose of the program is to provide funds to finance the construction, rehabilitation and acquisition of multi-unit housing for elderly households in the State of Oregon, while providing sufficient safeguards to protect the financial interests of the state.

Stat. Auth.: ORS 90.800 - 90.840, 91.886, 183, 456.515 - 456.723 & 458.210 - 458.650

Stats. Implemented: ORS 456.515 - 456.720

Hist.: IHD 1-1978(Temp), f. & ef. 7-12-78; IHD 1-1979, f. & ef. 1-16-79; IHD 4-1979, f. & ef. 9-11-79; IHD 1-1983, f. & ef. 5-20-83; IHD 11-1984, f. & ef. 9-4-84; HSG 3-1987(Temp), f. & ef. 2-5-87; HSG 7-1987, f. & ef. 3-10-87; HSG 3-1989(Temp), f. & cert. ef. 6-8-89; HSG 11-1989, f. & cert. ef. 11-3-89; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; OHCS 2-2007, f. & cert. ef. 1-11-07

813-030-0010

Definitions

(1) All terms are used in OAR chapter 813, division 030 as defined in the Act and as provided in OAR 813-005-0005 and herein.

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(2) As used in these rules unless otherwise indicated by the context:

(a) "Elderly Housing Project" ("Project") means housing containing more than one living unit for elderly households, but not providing continuous nursing care;

(b) "Gross Household Income" means the anticipated total income from all sources received by the family head and by each additional member of the family of 18 years of age and over, including all net income derived from assets for the twelve-month period following the date of certification of income, in accordance with the U.S. Department of Housing and Urban Development (HUD) in 24 CFR 813;

(c) "Multifamily Housing" means a structure or facility which provides more than one living unit, and may provide spaces for common use by the occupants in social and recreational activities including, but not limited to, individual living units within such structures, manufactured homes and manufactured dwelling parks and residential facilities licensed under ORS 443,400 to 443,455 and other congregate care facilities with or without domiciliary care.

Stat. Auth.: ORS 90.800 - 90.840, 91.886, 183, 456.515 - 456.723 & 458.210 - 458.650

Stats. Implemented: ORS 456.515 - 456.720

Hist.: IHD 1-1978(Temp), f. & ef. 7-12-78; IHD 1-1979, f. & ef. 1-16-79; IHD 4-1979, f. & ef. 9-11-79; IHD 6-1980, f. & ef. 3-19-80; IHD 9-1980, f. & ef. 4-2-80; IHD 1-1980, f. & ef. 12-4-80; IHD 5-1981, f. & ef. 3-31-81; IHD 7-1981, f. & ef. 4-7-81; IHD 8-1983(Temp), f. & ef. 11-7-83; IHD 3-1984(Temp), f. & ef. 5-25-84; IHD 5-1984, f. & ef. 7-5-84, ef. 7-8-84; IHD 11-1984, f. & ef. 9-4-84; HSG 3-1987(Temp), f. & ef. 2-5-87; HSG 7-1987, f. & ef. 3-10-87; HSG 3-1989(Temp), f. & cert. ef. 6-8-89; HSG 11-1989, f. & cert. ef. 11-3-89; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; OHCS 2-2007, f. & cert. ef. 1-11-07

813-030-0020

Form of Loan Assistance

(1) The Department shall make loans to Borrowers under the terms of written Commitments.

(2) Loans shall be made directly with proceeds from the issuance of bonds or other available funds obtained by the Department. The Department may establish charges and interest rates based upon:

- (a) The cost of borrowing through bond issuance;
- (b) The funds required to carry out the Elderly Housing Program; and
- (c) Such other factors as the Department considers appropriate or necessary.

(3) Interest on a loan shall not exceed the rate stated in the Commitment. If the Department is able to charge an interest rate lower than that specified in the Commitment, the Department may provide for the reduction of interest payment on the loan. The Department may require a reduction on the Project rents.

(4) The Department shall not execute a Commitment to an Eligible Borrower for a loan amount that exceeds allowable total Project costs or 85 percent of the appraised value, whichever is less, of the Project.

(5) Each loan shall have a final maturity of not more than 42 years from the date of its making and shall be secured by a first lien deed of trust granted by the Borrower on the property securing the loan.

(6) Loan documents shall be on forms approved by the Department.

(7) Each loan shall provide for the monthly collection of Escrow Payments to the extent provided by law together with the monthly installment of principal and interest. All such payments shall be:

(a) Held for the benefit of the Department in an account with an Approved Servicer; or

(b) Held by the State of Oregon as provided or required by law.

(8) If the Department receives loan applications in an amount greater than the amount of funds available, the Department shall select those applications which, in the judgment of the Department, best achieve purposes of the program rules and the Act.

(9) The Department shall establish prepayment penalties applicable to loans. In setting such penalties, the Department shall take into account the need to protect the ability of the state to provide for the payment of the Bonds. Any prepayment penalties shall be set forth in the trust deed note.

Stat. Auth.: ORS 90.800 - 90.840, 91.886, 183, 456.515 - 456.723 & 458.210 - 458.650

Stats. Implemented: ORS 456.515 - 456.720

Hist.: IHD 1-1978(Temp), f. & ef. 7-12-78; IHD 1-1979, f. & ef. 1-16-79; IHD 4-1979, f. & ef. 9-11-79; IHD 15-1980, f. & ef. 12-4-80; IHD 11-1984, f. & ef. 9-4-84; HSG 3-1987(Temp), f. & ef. 2-5-87; HSG 7-1987, f. & ef. 3-10-87; HSG 3-1989(Temp), f. & cert. ef. 6-8-89; HSG 11-1989, f. & cert. ef. 11-3-89; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; OHCS 2-2007, f. & cert. ef. 1-11-07

813-030-0025

Loan Security

Notwithstanding any other provision contained in the program rules, the Department shall not disburse funds for a loan until:

(1) The loan is secured by a fully executed trust deed note and first lien trust deed or other evidence of security; and

(2) The Eligible Borrower has satisfied all conditions contained in a Commitment.

Stat. Auth.: ORS 90.800 - 90.840, 91.886, 456.515 - 456.723 & 458.210 - 458.650

Stats. Implemented: ORS 456.515 - 456.720

Hist.: IHD 1-1978(Temp), f. & ef. 7-12-78; IHD 1-1979, f. & ef. 1-16-79; IHD 4-1979, f. & ef. 9-11-79; IHD 11-1984, f. & ef. 9-4-84; HSG 3-1987(Temp), f. & ef. 2-5-87; HSG 7-1987, f. & ef. 3-10-87; HSG 3-1989(Temp), f. & cert. ef. 6-8-89; HSG 11-1989, f. & cert. ef. 11-3-89; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; OHCS 2-2007, f. & cert. ef. 1-11-07

813-030-0030

Eligible Elderly Housing Projects

(1) The Department shall evaluate each Project for consistency with the Department's interpretation of sound architectural design and prudent underwriting standards as established in OAR 813-030-0031.

(2) In order to qualify for a loan, a Project shall:

(a) Be approved by the Department with respect to site; location; market demand; financial feasibility; qualifications of general contractor, management agent and developer; appraisal; financial strength and credit worthiness of the Eligible Borrower; management plan; final architectural package; Eligible Borrower's organizational documents; American Land Title Association (ALTA) title report; and any other information the Department shall require;

(b) Meet all applicable state and local land use and zoning requirements, housing codes, licensing, and similar requirements;

(c) Be in compliance with federal regulations, state statutes and Program rules;

(d) Be located in the State of Oregon; and

(e) Remain affordable in terms of the loan documents.

Stat. Auth.: ORS 90.800 - 90.840, 91.886, 183, 456.515 - 456.723 & 458.210 - 458.650

Stats. Implemented: ORS 456.515 - 456.720

Hist.: IHD 4-1979, f. & ef. 9-11-79; IHD 15-1980, f. & ef. 12-4-80; IHD 8-1983(Temp), f. & ef. 11-7-83; IHD 3-1984(Temp), f. & ef. 5-25-84; IHD 5-1984, f. & ef. 7-5-84, ef. 7-8-84; IHD 11-1984, f. & ef. 9-4-84; HSG 3-1987(Temp), f. & ef. 2-5-87; HSG 7-1987, f. & ef. 3-10-87; HSG 3-1989(Temp), f. & cert. ef. 6-8-89; HSG 11-1989, f. & cert. ef. 11-3-89; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; OHCS 2-2007, f. & cert. ef. 1-11-07

813-030-0031

Standard Underwriting Criteria

In approving or disapproving any loan application, the Department and the State Housing Council shall consider, in addition to requirements elsewhere stated in the Program rules, the following criteria:

(1) The location of the Project site, including its proximity to transportation, shopping, social, commercial and recreational facilities, medical services and such other facilities and services as shall best serve the prospective residents;

(2) Financial feasibility of the Project;

(3) Availability of street, sewer, water, utilities and other public services;

(4) Availability of public or private transportation;

(5) Architectural design, including aesthetic quality, soundness of construction, energy efficiency, and suitability to the needs of the residents to be served;

(6) Compliance with applicable local comprehensive plan and land use regulations;

(7) Market demand;

(8) The financial strength, credit reputation and history of the Eligible Borrower; and

(9) The experience of the developer, contractors, architects, consultants and management agent in developing, constructing and operating housing projects.

Stat. Auth.: ORS 90.800 - 90.840, 91.886, 183, 456.515 - 456.723 & 458.210 - 458.650

Stats. Implemented: ORS 456.515 - 456.720

Hist.: IHD 1-1983, f. & ef. 5-20-83; IHD 8-1983(Temp), f. & ef. 11-7-83; IHD 3-1984(Temp), f. & ef. 5-25-84; IHD 5-1984, f. & ef. 7-5-84, ef. 7-8-84; IHD 11-1984, f. & ef. 9-4-84; HSG 3-1987(Temp), f. & ef. 2-5-87; HSG 7-1987, f. & ef. 3-10-87; HSG 3-1989(Temp), f. & cert. ef. 6-8-89; HSG 11-1989, f. & cert. ef. 11-3-89; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; OHCS 2-2007, f. & cert. ef. 1-11-07

813-030-0032

Manufactured Dwelling Park Projects

(1) To qualify as a Manufactured Dwelling Park, the Project shall comply with the following standards and conditions:

(a) Site, design and licensing standards of the local government;

(b) Regulations of the Building Codes Division, State of Oregon, OAR 918-600-0010 to 918-600-0110;

(c) All manufactured dwellings shall have skirting, unless the home is set on a ground level foundation. If the manufactured dwelling is purchased after September 4, 1984, the design, color and texture of the skirting shall

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appear to be an integral part of the adjacent exterior wall of the manufactured dwelling;

(d) All manufactured dwellings purchased after September 4, 1984, shall have a roof with a non-reflective surface at a minimum slope of two inches in 12 inches (16 percent);

(e) The area occupied by the manufactured dwelling and any accessory buildings (including porches, car-ports, etc.) shall not exceed 40 percent of the lot area; and

(f) All manufactured dwellings shall be installed in compliance with the State of Oregon, Building Codes Division regulations. Installation inspections shall be completed by the Building Codes Division, or by a city or county which has contracted to do the inspections. A copy of the final inspection report shall be submitted to the Department together with a copy of a certificate of occupancy.

(2) The Borrower shall establish rules for the residents of the Project, to be a required part of each resident's lease. The rules and lease shall be submitted for the Department's review and approval as part of the proposal.

Stat. Auth.: ORS 90.800 - 90.840, 91.886, 183, 456.515 - 456.723 & 458.210 - 458.650
Stats. Implemented: ORS 456.515 - 456.720
Hist.: IHD 5-1981, f. & ef. 3-31-81; IHD 7-1981, f. & ef. 4-7-81; IHD 11-1984, f. & ef. 9-4-84; HSG 3-1987(Temp), f. & ef. 2-5-87; HSG 7-1987, f. & ef. 3-10-87; HSG 3-1989(Temp), f. & cert. ef. 6-8-89; HSG 11-1989, f. & cert. ef. 11-3-89; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; OHCS 2-2007, f. & cert. ef. 1-11-07

813-030-0034

Interim Loans

(1) The Department may from time to time make available funds for construction, acquisition and/or rehabilitation, or other financing of Elderly Housing Projects, for a term not to exceed two years.

(2) Notwithstanding any other requirements of OAR chapter 813, division 030, the Department may, as funds are available, solicit applications for the use of such funds. Applications shall specify in writing any terms and conditions of the available funds, as well as criteria or priorities the Department shall use to evaluate and select applications for funding.

(3) The Department shall evaluate applications received in accordance with program policies and priorities approved by the State Housing Council, and with applicable requirements of OAR chapter 813, division 30.

Stat. Auth.: ORS 90.800 - 90.840, 91.886, 456.515 - 456.723 & 458.210 - 458.650
Stats. Implemented: ORS 456.515 - 456.720
Hist.: HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; OHCS 2-2007, f. & cert. ef. 1-11-07

813-030-0035

Approved Housing Borrowers

(1) To be eligible to receive a loan, an Eligible Borrower shall comply with the terms contained in the Commitment issued by the Department and the conditions of eligibility as set forth in these rules.

(2) Any entity may apply to become an Eligible Borrower.

(3) To help the Department evaluate the financial strength of an Eligible Borrower to develop, own, maintain and manage a Project, the Eligible Borrower shall submit financial statements, credit reports and any other documents requested by the Department in accordance with the provisions of the Equal Credit Opportunity Act as it relates to the Department.

Stat. Auth.: ORS 90.800 - 90.840, 91.886, 183, 456.515 - 456.723 & 458.210 - 458.650
Stats. Implemented: ORS 456.515 - 456.720
Hist.: IHD 1-1978(Temp), f. & ef. 7-12-78; IHD 1-1979, f. & ef. 1-16-79; IHD 4-1979, f. & ef. 9-11-79; IHD 6-1980, f. & ef. 3-19-80; IHD 9-1980, f. & ef. 4-2-80; IHD 15-1980, f. & ef. 12-4-80; IHD 11-1984, f. & ef. 9-4-84; HSG 3-1987(Temp), f. & ef. 2-5-87; HSG 7-1987, f. & ef. 3-10-87; HSG 3-1989(Temp), f. & cert. ef. 6-8-89; HSG 11-1989, f. & cert. ef. 11-3-89; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; OHCS 2-2007, f. & cert. ef. 1-11-07

813-030-0040

Processing Procedures

(1) Before accepting a Project for the application process, the prospective Borrower shall submit an application to the Department on forms acceptable to the Department. If the Project meets the Program requirements, an application conference with the prospective Borrower shall be scheduled. At the conference, the Department may discuss, but is not limited to discussing:

- (a) Type of loan requested;
- (b) Type and formation of prospective Borrower's company (sole proprietorship, partnership, corporation, nonprofit, etc.) and qualifications;
- (c) Requested loan amount, terms and interest rate;
- (d) Any time constraints on prospective Borrower or Department;
- (e) Charges;
- (f) Reserve and equity requirements;

- (g) Debt service ratio and other contingency requirements;
- (h) Appraisal requirements;
- (i) Environmental Surveys;
- (j) Contractor's cost estimate and qualifications;
- (k) Management and maintenance plans;
- (l) Project management requirements, reports, and qualifications;
- (m) Loan servicing requirements and procedures;
- (n) Design and related requirements;
- (o) Document requirements;
- (p) Construction procedures;
- (q) Department loan processing procedures;
- (r) Eligibility requirements under federal and state law and regulations;
- (s) Site control;
- (t) Reserves and costs for Bond issue; and
- (u) Any other items pertinent to the proposed project.

(2) At the conclusion of the application conference, if the prospective Borrower and the Department agree to proceed with the application process, the prospective Borrower shall provide the necessary loan application documentation.

(3) After receiving a completed loan application package from the prospective Borrower, the Department shall evaluate each Project for consistency with the Department's interpretation of sound architectural and planning principles and prudent underwriting standards.

(4) In order to qualify for a loan, a Project shall:

(a) Be approved by the Department with respect to site; location; market demand; financial feasibility; qualifications of general contractor, management agent and developer; appraisal; financial strength and credit worthiness of the prospective Borrower; management plan; final architectural package; organizational documents; ALTA title report; resident services plan; and any other information the Department shall prescribe;

(b) Meet all applicable state and local land use and zoning requirements, housing codes, and similar requirements;

(c) Be in compliance with federal regulations, state statutes and Program rules;

(d) Be located in the State of Oregon; and

(e) If the loan is for an amount over \$100,000, be approved by the State Housing Council prior to the Department's issuance of a loan Commitment;

(A) The Department shall review each application for a loan over \$100,000 and prepare a proposal to the State Housing Council for approval or disapproval. The Department will send a copy of its proposal to the prospective Borrower with a notice of the State Housing Council meeting at which the application will be considered. Upon receipt of the notice, the prospective Borrower may request an opportunity to present testimony at the meeting;

(B) After considering the Department's proposal, as well as any other testimony presented, the State Housing Council shall approve or disapprove the application or take other appropriate action;

(C) The prospective Borrower shall promptly be advised in writing of the State Housing Council's decision.

(5) In approving or disapproving any loan application, the Department and the State Housing Council shall consider, in addition to requirements elsewhere stated in the Program rules, the following criteria:

(a) The location of the Project site, including its proximity to transportation, shopping, social, commercial and recreational facilities, medical services and such other facilities and services as shall best serve the residents;

(b) Financial feasibility of the Project;

(c) Availability of street, sewer, water, utilities and other public services;

(d) Availability of public transportation;

(e) Architectural design, including aesthetic quality, soundness of construction, energy efficiency, and suitability to the needs of the residents to be served;

(f) Compliance with applicable local comprehensive plan and land use regulations;

(g) Market demand;

(h) The financial strength, credit reputation and history of the prospective Borrower; and

(i) The experience of the developer, contractors, architects, consultants and management agent in developing, constructing and operating housing projects.

(6) The prospective Borrower may submit a written request for review and appeal of the State Housing Council's decision in accordance with the

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provisions of ORS Chapter 183. To be considered, a request must be received by the Department within 30 days of the date of the notice of application disapproval.

(7) Upon loan approval the Department shall issue a Commitment, which may be subject to loan funds being available, and may include, but are not limited to:

- (a) The amount of the loan;
- (b) The maximum rate of interest to be charged on the loan;
- (c) The term of the loan;
- (d) The amount of the Commitment fee, Rent-Up Reserve Account and Contingency Escrow Account;
- (e) When the Commitment fee shall be paid, and when the Rent-Up Reserve Account and Contingency Escrow Account shall be funded;
- (f) All other conditions of the commitment, and when they shall be fulfilled;
- (g) Provisions concerning construction;
- (h) Provisions and conditions of loan disbursement;
- (i) Provisions of Loan Closing; and
- (j) Conditions of termination of the Commitment.

(8) If the Commitment conditions are not completed by the dates specified in the commitment, the offer for a Commitment shall expire, unless the Department grants an extension in writing.

(9) Construction and Completion:

(a) During the construction of the Project, the Department may conduct random inspections for Borrower's compliance with the plans and specifications previously approved by the Department. The Borrower's architect shall submit regular inspection reports to the Department. Change orders must be signed by the contractor, Project architect and the Borrower before being submitted to the Department for its approval and prior to the changes being made;

(b) Upon completion of construction of the Project, the Department shall perform an inspection to assure the Borrower's compliance with the approved plans and specifications. If some items of construction remain to be completed due to circumstances beyond the control of the Borrower (provided the incomplete items do not detract from livability or safety of the Project), the Department may require the Borrower to escrow as approved by the Department and under Department control, an amount equal to one and one-half times the estimated cost of completion, until the construction item is completed.

Stat. Auth.: ORS 90.800 - 90.840, 91.886, 183, 456.515 - 456.723 & 458.210 - 458.650
Stats. Implemented: ORS 456.515 - 456.720
Hist.: 1HD 1-1978(Temp), f. & ef. 7-12-78; 1HD 1-1979, f. & ef. 1-16-79; 1HD 4-1979, f. & ef. 9-11-79; 1HD 2-1980(Temp), f. & ef. 2-22-80; 1HD 4-1980, f. & ef. 3-19-80; 1HD 7-1980, f. & ef. 4-2-80; 1HD 11-1980, f. 6-18-80, ef. 6-20-80; 1HD 13-1980, f. & ef. 8-8-80; 1HD 15-1980, f. & ef. 12-14-80; 1HD 16-1980, f. & ef. 12-15-80; 1HD 1-1981, f. & ef. 1-30-81; 1HD 5-1981, f. & ef. 3-31-81; 1HD 7-1981, f. & ef. 4-7-81; 1HD 2-1982, f. & ef. 1-4-82; 1HD 1-1983, f. & ef. 5-20-83; 1HD 9-1983, f. & ef. 12-1-83; 1HD 2-1984(Temp), f. & ef. 2-10-84; 1HD 5-1984, f. 7-5-84, ef. 7-8-84; 1HD 11-1984, f. & ef. 9-4-84; HSG 3-1987(Temp), f. & ef. 2-5-87; HSG 7-1987, f. & ef. 3-10-87; HSG 3-1989(Temp), f. & cert. ef. 6-8-89; HSG 11-1989, f. & cert. ef. 11-3-89; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; OHCS 2-2007, f. & cert. ef. 1-11-07

813-030-0044

Loan Closing

Before the loan closing takes place, the Department shall provide to the escrow officer written instructions for closing the loan. The Department shall not authorize disbursement of loan funds until all conditions of the commitment are satisfied and the Department has received and approved:

- (1) Cost certification;
- (2) Certificate or policy of insurance for fire and extended coverage, liability, business income and flood insurance (if applicable), with the appropriate loss deductible. All insurance coverage shall be in the amounts set forth in the Department's Regulatory Agreement and Declaration of Restrictive Covenants;
- (3) Contingency Escrow Account;
- (4) Certificate of occupancy from the local government, or final inspection report, as required;
- (5) Notice of Completion;
- (6) Commercial leases (if applicable);
- (7) Ground leases (if applicable);
- (8) Any other relevant leases;
- (9) Tax abatement approval;
- (10) American Land Title Association (ALTA) mortgagee's preliminary title insurance report from the title company of the Borrower's choice;
- (11) Any licenses required by the state;
- (12) For Acquisition Loans:

(a) Certification of completion of work on repairs from the general contractor and owner.

(13) All other reasonable requirements of the Department.

Stat. Auth.: ORS 90.800 - 90.840, 91.886, 183, 456.515 - 456.723 & 458.210 - 458.650

Stats. Implemented: ORS 456.515 - 456.720

Hist.: 1HD 11-1984, f. & ef. 9-4-84; HSG 3-1987(Temp), f. & ef. 2-5-87; HSG 7-1987, f. & ef. 3-10-87; HSG 3-1989(Temp), f. & cert. ef. 6-8-89; HSG 11-1989, f. & cert. ef. 11-3-89; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; OHCS 2-2007, f. & cert. ef. 1-11-07

813-030-0046

Resident Eligibility and Occupancy

(1) To be eligible to occupy a project, an Elderly Household shall:

- (a) Be a Resident of the state;
- (b) Be a household whose head is over the age of 58 years;
- (c) Have an annualized Gross Household Income which does not exceed the income limits as established by the Department from time to time in compliance with the Act;
- (d) The project shall conform to the maximum income requirement of ORS 456.620(4). A maximum of one-third of the units in a housing project, housing development or other residential housing financed by the Department may be rented to households with an income level exceeding 120 percent of the median family income level as determined by the Department;

(e) Relating specifically to acquisition/rehabilitation projects only, where tenants already reside in the project, the Department, at its sole discretion, may allow up to a one (1) year grace period for implementation of the standards identified in subsection (d) above in order to reduce the impact of displacement for over-income residents.

(2) Where the Project has a Regulatory Agreement and Declaration of Restrictive Covenants which was signed after June 16, 1982, have an annualized Gross Household Income, which does not exceed the income limit as established by the Department from time to time in compliance with the Act.

(3) Where the Project will be financed with proceeds of Bonds issued after August 15, 1986, have an annualized Gross Household Income which does not exceed such other income limit as may be required to assure compliance with Section 142(d)(1) of the Internal Revenue Code of 1986, as amended:

(a) If Section 142(d)(1) of the Code so requires, the Borrower shall elect at Commitment to apply either the "20-50" or "40-60" income requirement under Section 142(d)(1) of the Code, as summarized below, to the Project during the qualified Project period;

(b) If the Borrower elects to meet the "20-50" requirement under Section 142(d)(1) of the Code, at all times during the qualified project period at least 20 percent of the completed residential units in the Project shall be rented to and occupied by (or held available for rent by) Persons whose annualized Gross Household Income is 50 percent or less of area median income, adjusted for family size; and,

(c) If the prospective Borrower elects to meet the "40-60" requirement under Section 142(d)(1) of the Code, at all times during the qualified project period at least 40 percent of the completed residential units in the Project shall be rented to and occupied by (or held available for rent by) Persons whose annualized Gross Household Income is 60 percent or less of area median income, adjusted for family size.

(4) The Borrower shall conduct annual income certifications of all residents to assure compliance with Section 142(d) of the Code, and shall, where necessary, hold units vacant and available for occupancy by Persons meeting the income requirements elected pursuant to Section 142(d).

(5) The Department may waive the Department's income limits for a household seeking residence in an Elderly Housing Project if a Person in the household is a Disabled Person requiring special housing provisions to accommodate the impairment and whose disability arises from a physical or mental impairment that substantially limits one or more Major Life Activity; however, no such waiver shall be made of the requirements of Section 142(d) of the Code.

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

Stat. Auth.: ORS 90.800 - 90.840, 91.886, 183, 456.515 - 456.723, 458.210 - 458.650

Stats. Implemented: ORS 456.620, 456.645 & 456.675

Hist.: 1HD 1-1978(Temp), f. & ef. 7-12-78; 1HD 1-1979, f. & ef. 1-16-79; 1HD 4-1979, f. & ef. 9-11-79; 1HD 13-1980, f. & ef. 8-8-80; 1HD 5-1981, f. & ef. 3-31-81; 1HD 7-1981, f. & ef. 4-7-81; 1HD 8-1981, f. & ef. 5-12-81; 1HD 11-1984, f. & ef. 9-4-84; Renumbered from 813-030-0050; HSG 3-1987(Temp), f. & ef. 2-5-87; HSG 7-1987, f. & ef. 3-10-87; HSG 3-1989(Temp), f. & cert. ef. 6-8-89; HSG 11-1989, f. & cert. ef. 11-3-89; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; OHCS 2-2000(Temp), f. & cert. ef. 9-15-00 thru 3-13-01; OHCS 1-2001, f. & cert. ef. 2-15-01; OHCS 2-2007, f. & cert. ef. 1-11-07

813-030-0047

Commitment Fee and Other Charges

(1) The Department shall charge a non-refundable Commitment fee up to two percent of the loan.

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(2) The Eligible Borrower shall include the fee with the Eligible Borrower's signed acceptance of the Commitment returned to the Department.

(3) The Commitment fee shall not be deducted from the Borrower's equity requirement.

(4) The Department may charge other fees or charges, as needed, to cover the costs and reduce the financial risk to the Department's of issuing bonds.

Stat. Auth.: ORS 90.800 - 90.840, 91.886, 183, 456.515 - 456.723 & 458.210 - 458.650
Stats. Implemented: ORS 456.515 - 456.720
Hist.: 1HD 11-1984, f. & ef. 9-4-84; HSG 3-1987(Temp), f. & ef. 2-5-87; HSG 7-1987, f. & ef. 3-10-87; HSG 3-1989(Temp), f. & cert. ef. 6-8-89; HSG 11-1989, f. & cert. ef. 11-3-89; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; OHCS 2-2007, f. & cert. ef. 1-11-07

813-030-0060

Loan Servicing

(1) The servicing of loans shall be performed by servicer(s) selected by the Department. Servicing, unless performed by the Department, shall be conducted under the terms and conditions contained in a servicing agreement entered into between the Department and any Approved Servicer. The Department shall prescribe the form of the servicing agreement. The Approved Servicer shall:

(a) Promptly collect all payments due under the Loan Agreement and Regulatory Agreement and Declaration of Restrictive Covenants;

(b) Provide the Department with a monthly accounting of loan payments and disbursements;

(c) Ensure that escrow account balances are maintained at a level sufficient for the payment of the Project's property taxes, insurance premiums and costs of replacement as they become due and payable;

(d) Forward payments to the Department according to the provisions of the servicing agreement;

(e) Forward payments for insurance premiums to the insurance company when due;

(f) Forward payments for property taxes to the county assessor when due;

(g) Assure that all improvements on the mortgaged premises are kept insured against fire and extended coverage, casualty, liability and business income loss in accordance with the Loan Agreement and Regulatory Agreement and Declaration of Restrictive Covenants;

(h) Provide Borrower with regular analyses of servicing accounts; and

(i) Perform such other responsibilities as the Department may prescribe.

(2) If the Department does not act as the Approved Servicer, the Borrower selects the entity to act as Approved Servicer for the Loan. In order to qualify as an Approved Servicer and continue as such, an entity shall demonstrate to the satisfaction of the Department that:

(a) One of its principal functions is the servicing of multi-family or commercial loans secured by real estate;

(b) Such servicing is a customary and regular business activity of the applicant;

(c) It is qualified to engage in the servicing of mortgage loans for specified government agencies or private institutions engaged in the secondary market for mortgage investments;

(d) It deposits funds to accounts in depositories which comply with the requirements of ORS 295.005, 295.015 to 295.018, and 295.025 and which are insured to the full extent legally possible by the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, or other similar federal insuring agency; and

(e) It shall maintain servicing facilities adequately staffed with personnel familiar with all regulations and requirements pertaining to or affecting Loans serviced for the Department.

Stat. Auth.: ORS 456.555
Stats. Implemented: ORS 456.555 & 456.625
Hist.: 1HD 4-1979, f. & ef. 9-11-79; 1HD 11-1984, f. & ef. 9-4-84; HSG 3-1987(Temp), f. & ef. 2-5-87; HSG 7-1987, f. & ef. 3-10-87; HSG 3-1989(Temp), f. & cert. ef. 6-8-89; HSG 11-1989, f. & cert. ef. 11-3-89; HSG 6-1990, f. & cert. ef. 5-2-90; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; HSG 6-1995(Temp), f. & cert. ef. 11-8-95; OHCS 2-2007, f. & cert. ef. 1-11-07

813-030-0062

Change of Approved Servicers

(1) The servicing agreement may be terminated or amended as provided for in the servicing agreement or these rules.

(2) The Department may direct a change of Approved Servicer at any time consistent with the terms of the servicing agreement and these rules.

Stat. Auth.: ORS 456.555
Stats. Implemented: ORS 456.555 & 456.625
Hist.: 1HD 3-1983, f. & ef. 7-20-83; 1HD 11-1984, f. & ef. 9-4-84; Renumbered from 813-030-0080; HSG 3-1987(Temp), f. & ef. 2-5-87; HSG 7-1987, f. & ef. 3-10-87; HSG 3-1989

(Temp), f. & cert. ef. 6-8-89; HSG 11-1989, f. & cert. ef. 11-3-89; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; HSG 6-1995(Temp), f. & cert. ef. 11-8-95; HSG 4-1996, f. & cert. ef. 5-15-96; OHCS 2-2007, f. & cert. ef. 1-11-07

813-030-0066

Transfer of Ownership

(1)(a) A Borrower who has received a loan or commitment from the Department shall not transfer ownership, lease, or otherwise encumber any property which serves or will serve as security for a loan from the Department without prior written approval from the Department;

(b) The Borrower shall be required to submit underwriting documentation as requested by the Department.

(2) A transfer of ownership means a sale, conveyance or other transfer of:

(a) Any interest of a general partner;

(b) Any interest in a joint venture;

(c) More than 25 percent of a limited partner's interest;

(d) More than ten percent of a corporate owner's interest; or

(e) Any individual interest when the ownership is not a limited partnership, general partnership, joint venture or corporation.

(3) The Department may require a transfer application charge from Borrowers of Projects that received loans through the Department, who request the Department's approval of a change in Project ownership. The Department may require a transfer review charge to Project owners and transferees who effect a change in Project ownership without prior written approval from the Department.

(4) A 100-percent transfer of ownership means a sale, conveyance or other transfer of:

(a) All interest of a general partnership;

(b) All interest of a joint venture;

(c) All interest of a corporation;

(d) All general partners' interest in a limited partnership; and

(e) All individual interest of an ownership entity when the ownership entity is not a limited partnership, general partnership, joint venture or corporation.

Stat. Auth.: ORS 90.800 - 90.840, 183, 91.886, 456.515 - 456.723 & 458.210 - 458.650
Stats. Implemented: ORS 456.515 - 456.720

Hist.: 1HD 3-1980(Temp), f. & ef. 3-4-80; 1HD 15-1980, f. & ef. 12-4-80; 1HD 11-1984, f. & ef. 9-4-84, Renumbered from 813-030-0070; HSG 3-1987(Temp), f. & ef. 2-5-87; HSG 7-1987, f. & ef. 3-10-87; HSG 3-1989(Temp), f. & cert. ef. 6-8-89; HSG 11-1989, f. & cert. ef. 11-3-89; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; OHCS 2-2007, f. & cert. ef. 1-11-07

813-030-0067

Loan Prepayments

(1) It is the general policy of the Department not to accept prepayments. The Department may, however, permit a prepayment if, in its sole discretion, the Department determines that the prepayment is consistent with the best interests of the Department, including its public purpose as defined in ORS 456.550.

(a) The Borrower must submit to the Department a written request for prepayment at least 90 days prior to the Borrower's estimated prepayment date;

(b) The Department may charge the Borrower a prepayment review charge to cover the Department's cost of review and processing the prepayment request.

(2) The Department must give prior written approval of any loan prepayment. In order to be valid, a written approval of prepayment must be signed by an authorized representative of the Department. In making a decision whether or not to allow prepayment of a loan, the Department may consider criteria that include, but are not limited to, the following:

(a) The financial impact of the prepayment on the Department's programs or on an individual program or Bond indenture;

(b) Economic factors, including, but not limited to, portfolio diversification and relative cost of capital;

(c) The cash flow and other relevant financial considerations of the Project loan for which prepayment is requested;

(d) The ability of the Department to use proceeds of the loan prepayment to increase the availability of housing affordable to low-income Oregonians;

(e) The willingness of the Borrower to execute a written agreement or give other assurances that the Project will continue to be used for the purposes(s) originally intended, as specified in the Loan Documents, or for an alternate use consistent with the best interests of the Department, including its public purpose as defined in ORS 456.550. Such continued use will be for a period of time mutually agreed on by the Department and the Borrower;

(f) Tax law consequences; and

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(g) Other factors the Department considers appropriate to insure the security for and the ability of the State to repay the Bonds, and to insure the ongoing financial viability and stability of the Department's programs.

(3) If the Department determines that a loan prepayment is consistent with the best interests of the Department, it only shall authorize the prepayment provided that the sum to be prepaid, computed as of the date of prepayment, shall equal the unpaid principal balance of the loan plus accrued interest and all other obligations plus, at the Department's discretion, a penalty or premium for the privilege of prepayment. Such prepayment penalty shall be determined based on terms of the original Loan Documents, and amendments thereto which have been mutually agreed on by the Department and the Borrower. The Department may waive all or a portion of such prepayment penalty if it determines in its sole discretion that such waiver is in the best interests of the Department. In making a decision whether or not to waive any or all of a prepayment penalty, the Department may consider, but is not limited to, the criteria identified in OAR 813-030-0067(2)(a) through (g).

(4) Where Section 8 Housing Assistance contracts or other rent subsidies are in place, the Department may approve a loan prepayment request only if such rent subsidies are not unduly impaired, determined at the sole discretion of the Department.

(5) Failure to make timely submission of a prepayment penalty will cause additional interest to accrue at loan rate or statutory rate, whichever is higher.

Stat. Auth.: ORS 90.800 - 90.840, 91.886, 183, 456.515 - 456.723 & 458.210 - 458.650
Stats. Implemented: ORS 456.555 & 456.625
Hist.: HSG 11-1989, f. & cert. ef. 11-3-89; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; OHCS 1-1998(Temp), f. & cert. ef. 9-1-98 thru 2-27-99; OHCS 1-1999, f. & cert. ef. 6-1-99; OHCS 2-2007, f. & cert. ef. 1-11-07

813-030-0068

Disposal of Department-Owned Projects

(1) The Department may transfer ownership of Department-owned Projects through sale, gift or other lawful manner to a person, persons or entity whom the Department determines best meets the requirements of this Program. The Department shall establish written procedures for selling a Project prior to any offering of such Project, as applicable.

(2) The method of transfer of ownership, timing, price, terms and any other factors pertinent to the transfer of ownership shall be effected by the Department in a manner which, in the opinion of the Department, best preserves the integrity and continuity of the Department's rental programs. Factors the Department may consider include, but are not limited to:

- (a) The financial investment of the Department in the project;
- (b) Preservation of existing rental housing;
- (c) Proposed Eligible Borrower's ability to manage, market, maintain and protect property used as security for the loan made by the Department;
- (d) Proposed Eligible Borrower's capacity to preserve or improve upon the property's safety, sanitation, durability and livability;
- (e) Proposed Eligible Borrower's ability to preserve units which are affordable and suitable to the needs of the Residents;
- (f) Continued compliance with state or federal laws, rules or regulations, as applicable to the financing or use of the Project.

Stat. Auth.: ORS 90.800 - 90.840, 91.886, 183, 456.515 - 456.723 & 458.210 - 458.650
Stats. Implemented: ORS 456.515 - 456.720
Hist.: HSG 11-1989, f. & cert. ef. 11-3-89; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; OHCS 2-2007, f. & cert. ef. 1-11-07

813-030-0070

Waiver

The Department may waive or modify any requirements of OAR 813, division 030, unless such waiver or modification would violate applicable federal or state statutes or regulations.

Stat. Auth.: ORS 456.515 - 456.720
Stats. Implemented: ORS 456.555
Hist.: OHCS 2-2007, f. & cert. ef. 1-11-07

Rule Caption: Incorporates clarification language and ability to implement application and loan commitment.

Adm. Order No.: OHCS 3-2007

Filed with Sec. of State: 1-11-2007

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Rules Adopted: 813-010-0740

Rules Amended: 813-010-0006, 813-010-0011, 813-010-0016, 813-010-0021, 813-010-0029, 813-010-0032, 813-010-0033, 813-010-0036, 813-010-0042, 813-010-0051, 813-010-0700, 813-010-0705, 813-010-0710, 813-010-0715, 813-010-0720

Rules Repealed: 813-010-0023, 813-010-0024, 813-010-0028

Subject: 813-010-0006 are intended clarify the program and the general purpose of the rules

813-010-0011 clarifies terms used in the program and rules.

813-010-0016 clarifies that the Housing Council shall approve standard criteria for the eligible borrower in lieu of a sponsor.

813-010-0021 clarifies that loans shall be made to eligible borrowers in lieu of sponsors under the terms of written commitments. Establishes that the Department of may establish fees, charges premiums and interest rates, repayment terms, performance criteria and reporting requirements as the Department considers appropriate or necessary for the type, use and amount of loan provided. Defines the terms.

813-010-0023 were repealed as these rules were no longer applicable to the program.

813-010-0024 were repealed as these rules were no longer applicable to the program.

813-010-0028 were repealed. Terms for the loans were included in 813-010-0021.

813-010-0029 clarifies the eligible applicants of the program as borrowers in lieu of sponsors. Includes transfer of ownership to include any lease of the property and the sale, or conveyance or transfer of more than 10 percent of a corporate or limited liability company owner's interest. Adds that the department may require a transfer application charge from owners of projects receiving loans when approval is requested for the change in project ownership or when a change is made without prior written approval by the Department.

813-010-0032 Changes the term 'sponsor' to 'prospective borrower.'

813-010-0033 stipulates that the loan amounts shall not exceed the total allowable project costs or 85% of the appraised value of the project, whichever is less.

813-010-0036 Changes the term 'sponsor' to 'prospective borrower.'

813-010-0042 Housekeeping language. Removes certain statutory authority references.

813-010-0051 Changes the term 'sponsor' to 'prospective borrower.'

813-010-0700 Includes the references to electronic transmissions. Changes the term 'tenant' to 'resident' and 'sponsor' to 'borrower.'

813-010-0705 Clarifies that the servicing of loans shall be performed by servicers selected and approved by the Department. Removes that the servicing agreement is subject to termination under 813-010-0710. Payments will be collected under the Loan Agreement, Regulatory Agreement and Declaration of Restrictive Covenants. Includes corrected statutory references under the statutory authority.

813-010-0710 Housekeeping. Updates the statutory authorities applicable to the rules.

813-010-0715 Includes the criteria for the Department allowing prepayments.

813-010-0720 Housekeeping. Updates the statutory authorities applicable to the rules.

813-010-0740 Adds waiver language already provided for within statute.

Rules Coordinator: Sandy McDonnell—(503) 986-2012

813-010-0006

Purpose and Objectives

OAR chapter 813, division 10 is promulgated to carry out the provisions of ORS 456.515 through 456.725, as they pertain to the administration by the Housing and Community Services Department (Department) of the Multi-Unit Housing Program. These rules and the related determinations constitute the Department's Multi-Unit Housing Program. The purpose of the program is to provide financing for the construction, rehabilitation and acquisition of multiunit housing in the State of Oregon for persons and families of lower income, while providing sufficient safeguards to protect the financial interest of the state.

Stat. Auth.: ORS 183, 456.515 - 456.725 & 458.210 - 458.650
Stats. Implemented: ORS 456.555 & 456.625

ADMINISTRATIVE RULES

Hist.: 1HD 2-1979, f. & ef. 6-29-79; 1HD 8-1984, f. & ef. 9-4-84; HSG 6-1987, f. & ef. 3-10-87; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; OHCS 3-2007, f. & cert. ef. 1-11-07

813-010-0011

Definitions

(1) All terms used in OAR chapter 813, division 010, are defined in the Act, in OAR 813-005-0005 and herein.

(2) As used in OAR chapter 813, division 010, unless the context indicates otherwise: "Multi-Unit Project" or "Project" means housing containing more than one living unit for lower income families or persons, and/or disabled persons, but not providing continuous nursing care.

Stat. Auth.: ORS 90.800 - 90.840, 91.886, 183, 456.515 - 456.723 & 458.210 - 458.650

Stats. Implemented: ORS 456.555 & 456.625

Hist.: 1HD 2-1979, f. & ef. 6-29-79; 1HD 8-1984, f. & ef. 9-4-84; HSG 6-1987, f. & ef. 3-10-87; HSG 3-1989(Temp), f. & cert. ef. 6-8-89; HSG 8-1989, f. & cert. ef. 11-3-89; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; OHCS 3-2007, f. & cert. ef. 1-11-07

813-010-0016

Standard Underwriting Criteria

In approving or disapproving any loan application, the Department and the State Housing Council shall consider, in addition to requirements elsewhere stated in the Program rules, the following criteria:

(1) The location of the Project site, including its proximity to transportation, shopping, social, commercial and recreational facilities, medical services, and such other facilities and services as shall best serve the prospective residents.

(2) Availability of street, sewer, water, utilities and other public services.

(3) Availability of public transportation.

(4) Financial feasibility of the Project.

(5) Architectural design, including aesthetic quality, soundness of construction, energy efficiency, and suitability to the needs of the residents to be served.

(6) Compliance with applicable local comprehensive plan and land use regulations.

(7) Market demand.

(8) The financial strength, credit reputation and history of the prospective Borrower.

(9) The experience of the developer, contractors, architects, consultants and management agent in developing, constructing and operating housing projects.

Stat. Auth.: ORS 183, 456.515 - 456.725 & 458.210 - 458.650

Stats. Implemented: ORS 456.625 & 456.666

Hist.: HSG 6-1987, f. & ef. 3-10-87; HSG 3-1989(Temp), f. & cert. ef. 6-8-89; HSG 8-1989, f. & cert. ef. 11-3-89; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; OHCS 3-2007, f. & cert. ef. 1-11-07

813-010-0021

Form of Loan Assistance

(1) The Department shall make loans to Eligible Borrowers under the terms of written Commitments.

(2) Loans shall be made directly with proceeds from the issuance of Bonds or other available funds obtained by the Department. The Department may establish fees, charges, premiums and interest rates, repayment terms, performance criteria and reporting requirements as the Department considers appropriate or necessary for the type, use and amount of Loan provided, including but not limited to the following terms:

(a) The cost of borrowing through Bond issuance;

(b) The funds required to carry out the Multi-Unit Housing Program;

(c) Such other factors as the Department considers appropriate or necessary.

(3) The Borrower shall comply with the provisions of the Program rules and the Act. If the Borrower does not comply, the Department may revoke its Commitment or approval and/or demand repayment of all or a portion of the loan funds advanced.

(4) If the Department receives loan applications in an amount greater than the amount of funds available, the Department shall select those applications which, in the judgment of the Department, best achieve the purposes of the Program rules and the Act.

Stat. Auth.: ORS 183, 456.515 - 456.725 & 458.210 - 458.650

Stats. Implemented: ORS 456.515 - 456.720

Hist.: 1HD 2-1979, f. & ef. 6-29-79; 1HD 5-1980, f. 3-19-80; 1HD 8-1980, f. & ef. 4-2-80; 1HD 13-1980, f. & ef. 8-8-80; 1HD 15-1980, f. & ef. 12-4-80; 1HD 2-1981, f. & ef. 1-30-81; 1HD 4-1981, f. & ef. 3-31-81; 1HD 2-1982, f. & ef. 1-4-82; 1HD 11-1983, f. & ef. 12-1-83; 1HD 8-1984, f. & ef. 9-4-84; HSG 6-1987, f. & ef. 3-10-87; HSG 3-1989(Temp), f. & cert. ef. 6-8-89; HSG 8-1989, f. & cert. ef. 11-3-89; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; OHCS 3-2007, f. & cert. ef. 1-11-07

813-010-0029

Transfer of Ownership

(1) A Borrower who has received a loan or Commitment from the Department shall not transfer ownership, lease, or otherwise encumber any property which serves or will serve as security for a loan from the Department without prior written approval from the Department.

(2) A transfer of ownership means a sale, conveyance or other transfer of:

(a) Any interest of a general partner;

(b) Any interest in a joint venture;

(c) More than 25 percent of the limited partner's interest;

(d) More than 10 percent of a corporate or limited liability company owner's interest;

(e) Any individual interest when the ownership is not a limited partnership, general partnership, joint venture, limited liability company or corporation, or

(f) Any lease of the property (except tenant leases done in the normal operation of the property).

(3) The Department may require a transfer application charge from owners of Projects that receive loans through the Department, who request the Department's approval of a change in Project ownership. The Department may require a transfer review charge to Project owners and transferees who effect a change in Project ownership without prior written approval by the Department.

Stat. Auth.: ORS 183, 456.515 - 456.725 & 458.210 - 458.650

Stats. Implemented: ORS 456.555 & 456.625

Hist.: 1HD 11-1980, f. 6-18-80, ef. 6-20-80; 1HD 2-1981, f. & ef. 1-30-81; 1HD 3-1982, f. & ef. 4-6-82; 1HD 8-1984, f. & ef. 9-4-84; HSG 2-1987(Temp), f. & ef. 2-5-87; HSG 6-1987, f. & ef. 3-10-81; HSG 3-1989(Temp), f. & cert. ef. 6-8-89; HSG 8-1989, f. & cert. ef. 11-3-89; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; OHCS 3-2007, f. & cert. ef. 1-11-07

813-010-0032

Approved Housing Borrowers

(1) Any person may apply to become a Borrower.

(2) To help the Department evaluate the financial strength of a prospective Borrower to develop, own, maintain and manage a Project, the prospective Borrower shall submit any documents, credit reports and financial statements requested by the Department and consistent with the provisions of the Equal Credit Opportunity Act as it relates to the Department.

Stat. Auth.: ORS 183, 456.515 - 456.725 & 458.210 - 458.650

Stats. Implemented: ORS 456.555 & 456.625

Hist.: 1HD 2-1979, f. & ef. 6-29-79; 1HD 8-1984, f. & ef. 9-4-84; HSG 6-1987, f. & ef. 3-10-87; HSG 3-1989(Temp), f. & cert. ef. 6-8-89; HSG 8-1989, f. & cert. ef. 11-3-89; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; OHCS 3-2007, f. & cert. ef. 1-11-07

813-010-0033

Loans

(1) To be eligible to receive a loan, an Eligible Borrower shall comply with the terms contained in the Commitment issued by the Department and those conditions of eligibility set forth in the Program rules.

(2) Each loan shall not exceed the total allowable project costs or 85% of the appraised value of the Project, whichever is less,

(3) Except as determined by the Department, each loan shall be insured by the Federal Housing Administration or be for a Project which is the subject of a Housing Assistance Payments Contract between the Department, the Department of Housing and Urban Development (HUD) and the Borrower as well as an Annual Contributions Contract between the Department and HUD pursuant to Section 8 of the National Housing Act. Where a loan is not subject to such insurance or assistance payments, the Project shall be for occupancy by persons eligible for other federal or state assistance payments which would be paid at a level at least commensurate with the Borrower's annual mortgage payments and operating expenses and which are certified to be likely to continue at least at such level throughout the term of a loan.

(4) Each loan shall have a final maturity of not more than 30 years and 62 days from the date of its making and shall be secured by a first lien deed of trust on the property securing the loan. Loans may be made to provide financing for newly-constructed or rehabilitated Projects.

(5) Loan Documents shall be on forms approved by the Department.

(6) Interest on a loan shall not exceed the rate stated in the Commitment. In establishing the rates of interest applicable to loans the Department shall take into account the rates of interest applicable to Bonds. If the Department is able to charge an interest rate lower than that specified in the Commitment, the Department may provide for the reduction of principal and interest payment on the loan.

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(7) Each loan shall provide for the monthly collection of Escrow Payments to the extent permitted by law together with the monthly installment of principal and interest. All such payments shall be:

(a) Held for the benefit of the Department in an account in a financial institution acceptable to the Department and insured to the full extent legally possible by the Federal Deposit Insurance Corporation, or other similar federal insuring department; or

(b) Be held by the State of Oregon as provided and required by law.

(8) The Department shall establish prepayment penalties applicable to loans. In setting such penalties the Department shall take into account the need to protect the ability of the state to provide for the payment of the Bonds. Any prepayment penalties shall be set forth in the trust deed note.

Stat. Auth.: ORS 183, 456.515 - 456.725 & 458.210 - 458.650

Stats. Implemented: ORS 456.555 & 456.625

Hist.: 1HD 2-1979, f. & ef. 6-29-79; 1HD 8-1980, f. & ef. 3-19-80; 1HD 8-1980, f. & ef. 4-2-80; 1HD 2-1981, f. & ef. 1-30-81; 1HD 8-1984, f. & ef. 9-4-84; Renumbered from 813-010-0027; HSG 6-1987, f. & ef. 3-10-87; HSG 3-1989(Temp), f. & cert. ef. 6-8-89; HSG 8-1989, f. & cert. ef. 11-3-89; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; OHCS 3-2007, f. & cert. ef. 1-11-07

813-010-0036

Eligible Multi-Unit Projects

(1) The Department shall evaluate each Project for consistency with the Department's interpretation of sound architectural and planning principles and underwriting standards.

(2) In order to qualify for a loan, a Project shall:

(a) Be approved by the Department with respect to site; location; market demand; financial feasibility; qualifications of general contractor, management agent, and developer; appraisal; financial strength and credit worthiness of the prospective Borrower; management plan; final architectural package; prospective Borrower's organizational documents; title report; and any other information the Department shall prescribe;

(b) If subject to a Federal Housing Assistance Payments contract, comply at least with any standards required by the U.S. Department of Housing and Urban Development (HUD);

(c) Meet all applicable state and local land use and zoning requirements, housing codes, and similar requirements;

(d) Be located in the State of Oregon; and

(e) Meet all applicable HUD regulations provided for in the **Code of Federal Regulations Part 24 Section 883**, and all applicable State statutes and Program rules.

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

Stat. Auth.: ORS 183, 456.515 - 456.725 & 458.210 - 458.650

Stats. Implemented: ORS 456.555 & 456.625

Hist.: 1HD 2-1979, f. & ef. 6-29-79; 1HD 8-1984, f. & ef. 9-4-84; HSG 6-1987, f. & ef. 3-10-87; HSG 3-1989(Temp), f. & cert. ef. 6-8-89; HSG 8-1989, f. & cert. ef. 11-3-89; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; OHCS 3-2007, f. & cert. ef. 1-11-07

813-010-0042

Resident Eligibility and Occupancy

(1) To be eligible to occupy a Project, a person or household shall:

(a) Be a Resident of the State;

(b) Have an annualized gross household income which does not exceed the limit established by the Department from time to time in compliance with the Act, and the limits of Section 142(d)(1) of the Code, if applicable.

(2) The project shall conform to the maximum income requirement of ORS 456.620(4). At no time shall the maximum income limits exceed 120 percent of the median family income level, as determined by the Department. No more than 20 percent of the units of a housing project shall have an income level of between 100 and 120 percent.

(3) Relating specifically to acquisition/rehabilitation projects only, where tenants already reside in the project, the Department, at its sole discretion, may allow up to a one (1) year grace period for implementation of the standards identified in section (2) above in order to reduce the impact of displacement for over-income residents.

(4) No preference shall be given to any particular class or group in renting the residential units in the Project, except to the extent that residential units are required to be leased or rented to lower-income persons or households to comply with Program guidelines and as required to preserve the tax-exemption on Bonds issued to finance the Project. Rental of units shall not violate the Fair Housing provisions of the 1968 Civil Rights Act.

(5) Lower-income persons or households residing in the Project shall have equal access and enjoyment to all common facilities of the Project.

(6) The Borrower shall accept as residents in compliance with Section 8 programs, lower-income persons or households who are holders of certificates for federal housing assistance payments pursuant to Section 8 of the United States Housing Act of 1937 or a successor federal program, on

the same basis as all other prospective residents. The Borrower shall not apply resident selection criteria to such Section 8 certificate holders which are more burdensome than the criteria applied to any other prospective resident.

(7) The Borrower shall conduct annual income certifications of residents to assure compliance with the income requirements of the Program.

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

Stat. Auth.: ORS 183, 456.515 - 456.725 & 458.210 - 458.650

Stat. Implemented: ORS 456.620, 456.646 & 456.675

Hist.: OHCS 2-2000(Temp), f. & cert. ef. 9-15-00 thru 3-13-01; OHCS 1-2001, f. & cert. ef. 2-15-01; OHCS 3-2007, f. & cert. ef. 1-11-07

813-010-0051

Loan Security

Notwithstanding any other provision contained in the Program rules, the Department shall not disburse funds for a Loan until:

(1) The Loan is secured by a fully executed trust deed note and trust deed or other evidence of security.

(2) The Eligible Borrower has satisfied all conditions contained in the Commitment.

Stat. Auth.: ORS 183, 456.515 - 456.725 & 458.210 - 458.650

Stats. Implemented: ORS 456.555 & 456.625

Hist.: 1HD 2-1979, f. & ef. 6-29-79; 1HD 8-1984, f. & ef. 9-4-84; HSG 6-1987, f. & ef. 3-10-87; HSG 3-1989(Temp), f. & cert. ef. 6-8-89; HSG 8-1989, f. & cert. ef. 11-3-89; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; OHCS 3-2007, f. & cert. ef. 1-11-07

813-010-0700

Housing Assistance Payments Request and Certification Processing

(1) The Department shall review and approve documents and electronic transmissions relating to Section 8 subsidized Projects. The Department shall establish such reasonable requirements necessary to assure timely and accurate submission of such documents and transmissions. In order for the Department to disburse Housing Assistance Payments (HAP) to Borrowers of Section 8 Projects, Borrowers shall submit to the Department the following information:

(a) Electronic certifications of resident income;

(b) Electronic recertifications of resident income; and

(c) Electronic and paper requests for HAP.

(2) The following guidelines shall govern the processing of information in subsections (1)(a) through (c) of this rule:

(a) Certifications shall be prepared for all new residents and be signed by the resident and by the Borrower or its agent on or before the resident's move-in date. All certifications shall be transmitted to the Department for review, before HAP may be paid on the unit. Certifications shall be by the 15th day of the month following the resident move-in. If the certification is received after that date, the HAP for that unit may begin the date the certification is received by the Department.

Example 1: Resident moves in March 3, certification is received by April 15; HAP starts March 3.

Example 2: Resident moves in March 3, certification is received April 20; HAP starts April 20. (Borrower lost HAP for period of March 3 through April 19).

(b) Recertification of resident income shall be completed and transmitted annually for each resident by the Borrower. Recertifications shall be transmitted by the Borrower to the Department by the 15th day of the month before the resident move-in date (effective date of recertification). Recertifications not received as prescribed may result in forfeiture of the HAP for that unit for each month the recertification is not received by the Department as prescribed.

(c) The Borrower or its agent shall submit HAP requests to the Department for each month, in advance, by the 15th day of the month before the month for which the request is made. The Borrower shall make any necessary adjustments to the HAP request each month.

(d) HAP requests, certifications and recertifications shall be correct before submission to the Department. The Department may make any adjustments necessary to comply with HUD requirements, the Housing Assistance Payments Contract, Department requirements and the Program rules.

Stat. Auth.: ORS 183, 456.515 - 456.725 & 458.210 - 458.650

Stats. Implemented: ORS 456.555 & 456.625

Hist.: 1HD 2-1983, f. & ef. 5-20-83; 1HD 8-1984, f. & ef. 9-4-84; HSG 6-1987, f. & ef. 3-10-87; HSG 3-1989(Temp), f. & cert. ef. 6-8-89; HSG 8-1989, f. & cert. ef. 11-3-89; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; HSG 1-1996, f. & cert. ef. 3-14-96; OHCS 3-2007, f. & cert. ef. 1-11-07

813-010-0705

Loan Servicing

(1) The servicing of loans shall be performed by servicer(s) selected and approved by the Department. Servicing, unless performed by the Department itself, shall be conducted under the terms and conditions

ADMINISTRATIVE RULES

contained in a servicing agreement entered into between the Department and any Approved Servicer. The Department shall prescribe the form of the servicing agreement. The Approved Servicer shall:

(a) Promptly collect all payments due under the Loan Agreement, Regulatory Agreement and Declaration of Restrictive Covenants;

(b) Provide the Department with a monthly accounting of loan payments and disbursements;

(c) Ensure that escrow account balances are maintained at a level sufficient for the payment of the Project's property taxes, insurance premiums and costs of replacement as they become due and payable;

(d) Forward payments to the Department according to the provisions of the servicing agreement;

(e) Forward payments for insurance premiums to the insurance company when due;

(f) Forward payments for property taxes to the county assessor when due;

(g) Assure that all improvements on the mortgaged premises are kept insured against fire and extended coverage, casualty, liability and business income loss in accordance with the Regulatory Agreement and Declaration of Restrictive Covenants;

(h) Provide the Borrower with regular analyses of servicing accounts; and

(i) Perform such other responsibilities as the Department may prescribe.

(2) In order to qualify as an Approved Servicer and continue as such, a Servicer shall demonstrate to the satisfaction of the Department that:

(a) One of its principal functions is the servicing of multi-unit or commercial loans secured by real estate;

(b) Such servicing is a customary and regular business activity of the Servicer;

(c) It is qualified to engage in the servicing of mortgage loans for government agencies or private institutions engaged in the secondary market for mortgage investments;

(d) It deposits funds to accounts in depositories which comply with the requirements of ORS 295.005, 295.015 to 295.018, and 295.025 and which are insured to the full extent legally possible by the Federal Deposit Insurance Corporation, or other similar federal insuring agency; and

(e) It shall maintain servicing facilities adequately staffed with personnel familiar with all regulations and requirements pertaining to or affecting loans serviced for the Department.

Stat. Auth.: ORS 183, 456.515 - 456.725 & 458.210 - 458.650

Stats. Implemented: ORS 456.555 & 456.625

Hist.: IHD 2-1979, f. & ef. 6-29-79; IHD 8-1984, f. & ef. 9-4-84; Renumbered from 813-010-0041; HSG 6-1987, f. & ef. 3-10-87; HSG 3-1989(Temp), f. & cert. ef. 6-8-89; HSG 8-1989, f. & cert. ef. 11-3-89; HSG 4-1990, f. & cert. ef. 5-2-90; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; HSG 5-1995(Temp), f. & cert. ef. 11-8-95; HSG 3-1996, f. & cert. ef. 5-15-96; OHCS 3-2007, f. & cert. ef. 1-11-07

813-010-0710

Change of Servicers

(1) The servicing agreement may be terminated or amended as provided in the servicing agreement or the Program rules.

(2) The Department may direct a change of Approved Servicers at any time consistent with the terms of the servicing agreement and these rules.

Stat. Auth.: ORS 183, 456.515 - 456.725 & 458.210 - 458.650

Stats. Implemented: ORS 456.555 & 456.625

Hist.: IHD 3-1983, f. & ef. 7-20-83; IHD 8-1984, f. & ef. 9-4-84; HSG 6-1987, f. & ef. 3-10-87; HSG 3-1989(Temp), f. & cert. ef. 6-8-89; HSG 8-1989, f. & cert. ef. 11-3-89; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; HSG 5-1995(Temp), f. & cert. ef. 11-8-95; HSG 3-1996, f. & cert. ef. 5-15-96; OHCS 3-2007, f. & cert. ef. 1-11-07

813-010-0715

Loan Prepayments

(1) It is the general policy of the Department not to accept prepayments. The Department may, however, permit a prepayment if, in its sole discretion, the Department determines that the prepayment is consistent with the best interests of the Department, including its public purpose as defined in ORS 456.550.

(a) The Borrower must submit to the Department a written request for prepayment at least 90 days prior to the Borrower's estimated prepayment date;

(b) The Department may charge the Borrower a prepayment review fee to cover the Department's cost of review and processing the prepayment request.

(2) The Department must give prior written approval of any loan prepayment. In order to be valid, a written approval of prepayment must be signed by an authorized representative of the Department. In making a deci-

sion whether or not to allow prepayment of a loan, the Department may consider criteria that include, but are not limited to, the following:

(a) The financial impact of the prepayment on the Department's programs or on an individual program or Bond indenture;

(b) Economic factors, including, but not limited to, portfolio diversification and relative cost of capital;

(c) The cash flow and other relevant financial considerations of the Project loan for which prepayment is requested;

(d) The ability of the Department to use proceeds of the loan prepayment to increase the availability of housing affordable to low-income Oregonians;

(e) The willingness of the Borrower to execute a written agreement or give other assurances that the Project will continue to be used for the purposes(s) originally intended, as specified in the Loan Documents, or for an alternate use consistent with the best interests of the Department, including its public purpose as defined in ORS 456.550. Such continued use will be for a period of time mutually agreed on by the Department and the Borrower;

(f) Tax law consequences; and

(g) Other factors the Department considers appropriate to insure the security for and the ability of the State to repay the Bonds, and to insure the ongoing financial viability and stability of the Department's programs.

(3) If the Department determines that a loan prepayment is consistent with the best interests of the Department, it only shall authorize the prepayment provided that the sum to be prepaid, computed as of the date of prepayment, shall equal the unpaid principal balance of the loan plus accrued interest and all other obligations plus, at the Department's discretion, a penalty or premium for the privilege of prepayment. Such prepayment penalty shall be determined based on terms of the original Loan Documents, and any amendments. The Department may waive all or a portion of such prepayment penalty if it determines in its sole discretion that such waiver is in the best interests of the Department. In making a decision whether or not to waive any or all of a prepayment penalty, the Department may consider, but is not limited to, the criteria identified in OAR 813-010-0715(2)(a) through (g).

(4) Where Section 8 Housing Assistance contracts or other rent subsidies are in place, the Department may approve a loan prepayment request only if such rent subsidies are not unduly impaired as determined in the sole discretion of the Department.

Stat. Auth.: ORS 183, 456.515 - 456.725 & 458.210 - 458.650

Stats. Implemented: ORS 456.555 & 456.625

Hist.: HSG 8-1989, f. & cert. ef. 11-3-89; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; OHCS 1-1998(Temp), f. & cert. ef. 9-1-98 thru 2-27-99; OHCS 1-1999, f. & cert. ef. 6-1-99; OHCS 3-2007, f. & cert. ef. 1-11-07

813-010-0720

Disposal of Department-Owned Projects

(1) The Department may transfer ownership of a Department-owned Project through sale, gift or other lawful manner to a Person or Persons whom the Department determines best meets the requirements of this Program. The Department shall establish written procedures for selling a Project prior to any offering of such project, as applicable.

(2) The method of transfer of ownership, timing, price, terms and any other factors pertinent to the transfer of ownership shall be determined by the Department, in a manner which, in the opinion of the Department, best preserves the integrity and continuity of the Department's rental programs. Factors the Department may consider include, but are not limited to:

(a) The financial investment of the Department in the Project;

(b) Preservation of existing rental housing;

(c) Proposed owner's ability to manage, market, maintain and protect the project and property used as security for the loan made by the Department;

(d) Proposed owner's capacity to preserve or improve upon the projects safety, sanitation, durability and livability;

(e) Proposed Owner's ability to preserve units which are affordable and suitable to the needs of the residents; and

(f) Continued compliance with state or federal laws, rules or regulations, as applicable to the financing or use of the Project.

Stat. Auth.: ORS 456.515 - 456.725 & 458.210 - 458.650

Stats. Implemented: ORS 456.555 & 456.625

Hist.: HSG 8-1989, f. & cert. ef. 11-3-89; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; OHCS 3-2007, f. & cert. ef. 1-11-07

813-010-0740

Waiver

The Department may waive or modify any requirements of OAR 813, division 010, unless such waiver or modification would violate applicable federal or state statutes or regulations.

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Stat. Auth.: ORS 456.515 - 456.720
Stats. Implemented: ORS 456.555
Hist.: OHCS 3-2007, f. & cert. ef. 1-11-07

Rule Caption: Incorporates clarification language and ability to implement application and loan commitment.

Adm. Order No.: OHCS 4-2007

Filed with Sec. of State: 1-11-2007

Certified to be Effective: 1-11-07

Notice Publication Date: 12-1-06

Rules Adopted: 813-012-0180

Rules Amended: 813-012-0010, 813-012-0020, 813-012-0030, 813-012-0040, 813-012-0050, 813-012-0060, 813-012-0070, 813-012-0080, 813-012-0090, 813-012-0100, 813-012-0110, 813-012-0120, 813-012-0130, 813-012-0140, 813-012-0150, 813-012-0160, 813-012-0170

Subject: The Rental Housing Program provides financing for the construction, rehabilitation and acquisition of multi-unit rental housing in the State of Oregon for persons of lower income, while providing safeguards to protect the financial interest of the state.

813-012-0010 are intended clarify the program and the general purpose of the rules.

813-012-0020 clarifies terms used in the program and rules.

813-012-0030 Housekeeping. Clarifies the criteria for eligible projects.

813-012-0040 Housekeeping. Clarifies that an eligible project shall conform to the maximum income requirement of ORS 456.620(4).

813-012-0050 Housekeeping.

813-012-0060 Housekeeping.

813-012-0070 Changes the term 'sponsor' to 'eligible borrower.'

813-012-0080 Adds that the greatest level of support services must be appropriate to the needs of the expected resident population.

813-012-0090 Housekeeping. Changes the term 'sponsor' to 'eligible borrower.'

813-012-0100 Stipulates that the Department may require from the Borrower additional charges to cover the costs and reduce the financial risk to the Department of issuing bonds.

813-012-0110 Housekeeping. Changes the term 'sponsor' to 'eligible borrower.'

813-012-0120 Removes the language that the Department may perform an inspection, along with the Borrower's architect within ten months after completion of the project. Changes the term 'sponsor' to 'prospective borrower.'

813-012-0130 Stipulates that the servicing of loans shall be performed by servicer(s) selected by the Department. Clarifies that the selected servicer shall promptly collect all payments and ensure that all improvements are kept insured against fire and extended coverage, casualty, liability and business income loss in accordance with the Loan Agreement and Regulatory Agreement and Declaration of Restrictive Covenants. Establishes the qualifications of an Approved Servicer.

813-012-0140 Allows the department to terminate a servicing agreement or direct a change of Approved Servicers at any time consistent with the terms of the servicing agreement and the rules.

813-012-0150 Allows the department to charge a transfer charge from owners of Projects that receive loans through the Department who request approval for a change in Project ownership.

813-012-0160 Stipulates that it is the general policy of the Department to not accept prepayments, however the Department may permit a prepayment with certain conditions. Requires a Borrower to submit a written request for prepayment at least 90 days prior to the Borrower's estimated prepayment date. Allows the Department to charge the Borrower a prepayment review charge to cover the Department's costs of review and processing.

813-012-0170 Housekeeping. Updates the statutory authorities applicable to the rules.

813-012-0180 Adds waiver language already provided for within statute.

Rules Coordinator: Sandy McDonnell—(503) 986-2012

813-012-0010

Purpose and Objectives

The rules of OAR chapter 813, division 12, is promulgated to carry out the provisions of ORS 456.515 through 456.720, and specifically ORS 456.550 through 456.720, as they pertain to the administration by the Housing and Community Services Department (Department) of the Rental Housing Program. These rules and the related determinations and order of the Department constitute the Department's Rental Housing Program. The purpose of the program is to provide funds to finance the construction, rehabilitation and/or acquisition of multi-unit rental housing for persons of lower income in the State of Oregon, while providing sufficient safeguards to protect the financial interests of the state.

Stat. Auth.: ORS 90.800 - 90.840, 90.630, 183, 456.515 - 456.723 & 458.210 - 458.650

Stats. Implemented: ORS 456.625

Hist.: HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; OHCS 4-2007, f. & cert. ef. 1-11-07

813-012-0020

Definitions

(1) All terms are used in OAR chapter 813, division 012, as defined in the Act, and as provided in OAR 813-005-0005 and herein.

(2) As used in OAR chapter 813, division 012, unless the context indicates otherwise:

(a) "Code" means the **Internal Revenue Code of 1986**, as amended.

(b) "HUD" means U.S. Department of Housing and Urban Development.

(c) "Rental Housing Project" or "Project" means a structure or facility described in OAR 813-012-0030.

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

Stat. Auth.: ORS 90.800 - 90.840, 90.630, 183, 456.515 - 456.723 & 458.210 - 458.650

Stats. Implemented: ORS 456.625

Hist.: HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; OHCS 4-2007, f. & cert. ef. 1-11-07

813-012-0030

Eligible Rental Housing Projects

In order to qualify for a Program Loan, a Project shall:

(1) Be constructed and operated by the Borrower in accordance with the restrictions set forth in these rules, the Commitment and the Department's Rental Housing Program Loan Documents. The Program documents will require the Borrower to operate the Project so that all residents are persons of lower income pursuant to ORS 456.615, and so that the Project qualifies for tax-exempt financing under **Section 103 of the Code**;

(2) Be a structure or facility which provides five or more living units for lower income Persons or households, and may provide spaces for common use by the occupants in social, recreational and daycare activities:

(a) Projects may include, but are not limited to: disabled, elderly, congregate, and manufactured dwelling parks in which the manufactured dwellings are rental units;

(b) Projects do not include:

(A) Group care homes, nursing homes or hospitals;

(B) Structure primarily for recreational or social activities; and

(C) Single-family detached dwellings except as provided for in tax law.

(3) Be approved by the Department with respect to site; location; market demand; financial feasibility; qualifications of general contractor, management agent and developer; appraisal; financial strength and credit worthiness of the Eligible Borrower; management and resident support service plans; final architectural package; Eligible Borrower's organizational documents; title report; and any other information the Department shall prescribe;

(4) Comply with all applicable state and local land use and zoning requirements, housing codes, and similar requirements;

(5) Qualify for and receive insurance under HUD/FHA programs such as Risk Sharing, 221(d)(4) or 221(d)(3), or obtain other insurance or guarantees which are acceptable to the Department;

(6) Be located in the State of Oregon; and

(7) Qualify for tax-exempt financing under **Section 103 of the Code**.

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

Stat. Auth.: ORS 90.800 - 90.840, 90.630, 183, 456.515 - 456.723 & 458.210 - 458.650

Stats. Implemented: ORS 456.625

Hist.: HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; OHCS 4-2007, f. & cert. ef. 1-11-07

813-012-0040

Resident Eligibility and Occupancy

(1) To be eligible to occupy a Project, a Person or household shall:

(a) Be a resident of the state;

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(b) Have an annualized gross household income which does not exceed the limit established by the Department from time to time in compliance with the Act, and the limits of Section 142(d)(1) of the Code, if applicable.

(c) The project shall conform to the maximum income requirement of ORS 456.620(4). A maximum of one-third of the units in a housing project, housing development or other residential housing financed by the Department may be rented to households with an income level exceeding 120 percent of the median family income level, as determined by the Department.

(A) Relating specifically to acquisition/rehabilitation projects only, where tenants already reside in the project, the Department, at its sole discretion, may allow up to a one (1) year grace period for implementation of the standards identified in subsection (c) above in order to reduce the impact of displacement for over-income residents.

(2) No preference shall be given to any particular class or group in renting the residential units in the Project, except to the extent that residential units are required to be leased or rented to lower-income persons or households as outlined in this rule and as required to preserve the tax-exemption on Bonds issued to finance the Project. Rental of units shall not violate the Fair Housing provisions of the **1968 Civil Rights Act**.

(3) Lower-income Persons or households residing in the Project shall have equal access and enjoyment to all common facilities of the Project.

(4) The Borrower shall accept as residents in compliance with Section 8 programs, lower-income Persons or households who are holders of certificates for federal housing assistance payments pursuant to **Section 8 of the United States Housing Act of 1937** or a successor federal program, on the same basis as all other prospective residents. The Borrower shall not apply resident selection criteria to such Section 8 certificate holders which are more burdensome than the criteria applied to any other prospective resident.

(5) The Borrower shall conduct annual income certifications of residents to assure compliance with the income requirements of the Program.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 90.800 - 90.840, 90.630, 183, 456.515 - 456.723, 458.210 - 458.650
Stats. Implemented: ORS 456.620, 456.645 & 456.675
Hist.: HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; OHCS 2-2000(Temp), f. & cert. ef. 9-15-00 thru 3-13-01; OHCS 1-2001, f. & cert. ef. 2-15-01; OHCS 4-2007, f. & cert. ef. 1-11-07

813-012-0050

Restrictions Associated with Tax-Exempt Financing

All projects will be required to comply with the applicable restrictions of Section 103 and Sections 141 to 149 of the Code. The Department expects to provide financing for Projects under the Rental Housing Program by issuing Bonds, the interest on which is excludable from gross income under the Code. The exclusion is available under **Section 103 of the Code**, and is detailed in Sections 141 through 149 of the Code. These Code provisions impose substantial restrictions on the Projects which receive financing, the amount of financing, and the residents who occupy the Projects. The restrictions may vary depending on the type of entity which owns and operates the Project; projects owned or operated by private, for-profit entities are subject to the greatest restrictions, as detailed in Section 142(d) of the Code and the applicable regulations.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 90.800 - 90.840, 91.886, 456.515 - 456.723 & 458.210 - 458.650
Stats. Implemented: ORS 456.625
Hist.: HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; OHCS 4-2007, f. & cert. ef. 1-11-07

813-012-0060

Borrower Reporting and Record Keeping

(1) The Borrower shall determine at least annually whether a resident of a unit is a lower-income Person or household on the basis of the current income of the resident in a manner satisfactory to the Department.

(2) The Borrower shall make periodic reports to the Department regarding the occupants of the Project in the manner and with the frequency required by the Department.

(3) The Borrower shall permit at any time during the original term of the Program Loan, any duly authorized representative of the Department to inspect the books and records of the Borrower pertaining to the incomes of Persons or households residing in the Project.

Stat. Auth.: ORS 90.800 - 90.840, 90.630, 183, 456.515 - 456.723, 458.210 - 458.650
Stats. Implemented: ORS 456.625
Hist.: HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; OHCS 4-2007, f. & cert. ef. 1-11-07

813-012-0070

Insurance and Guarantees

The Borrower shall be responsible for obtaining HUD/FHA insurance or other guarantee satisfactory to the Department.

Stat. Auth.: ORS 90.800 - 90.840, 90.630, 183, 456.515 - 456.723, 458.210 - 458.650
Stats. Implemented: ORS 456.625
Hist.: HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; OHCS 4-2007, f. & cert. ef. 1-11-07

813-012-0080

Criteria for Selecting Projects

The Department may select Project applications which, in the judgment of the Department best achieve the purposes of the Program and the Act. Preference will be given to Projects which:

(1) Have the lowest rents possible in comparison with local market rents (as determined by the Department) in the community where the Project is to be located;

(2) Have the greatest level of support services appropriate to the needs of the expected resident population (e.g. child care, job training); and

(3) Because of their characteristics, would have the most difficulty obtaining other financing.

Stat. Auth.: ORS 90.800 - 90.840, 90.630, 183, 456.515 - 456.723, 458.210 - 458.650
Stats. Implemented: ORS 456.625
Hist.: HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; OHCS 4-2007, f. & cert. ef. 1-11-07

813-012-0090

Processing Procedures

(1) The Department shall provide a list of Program Loan application contents, and shall provide the prospective Borrower a reasonable opportunity to discuss the application and the Department's criteria for financing.

(2) After receiving a completed Program Loan application package from the prospective Borrower, the Department shall evaluate each Project for consistency with the Department's underwriting and policy standards.

(3) Program Loans under \$100,000 may be approved by the Department. Any Program Loan for an amount over \$100,000 must be approved by the State Housing Council:

(a) The Department shall review each application for a Program Loan over \$100,000 and prepare a recommendation to the Council for approval or disapproval. The Department will send a copy of its recommendation to the prospective Borrower with a notice of the Council meeting at which the application will be considered. Upon receipt of the notice, the prospective Borrower may request an opportunity to present testimony at the meeting;

(b) After considering the Department's proposal, as well as any other testimony presented, the Council shall approve or disapprove the application or take other appropriate action;

(c) The prospective Borrower shall promptly be advised in writing of the Council's decision.

(4) If an application is approved, the Department shall issue a Commitment. The Commitment shall be conditioned upon the subsequent sale and delivery of Bonds at a rate acceptable to the Department, and shall state:

(a) The amount of the Program Loan;

(b) The rate of interest to be charged on such Program Loan expressed as a function of the Bond interest rate;

(c) The term of the Program Loan;

(d) The amounts of any Commitment fees, reserves and escrow accounts, payments of issuance costs and other amounts which are required by the Department;

(e) The dates when the Eligible Borrower is required to pay the Commitment fees, charges, reserves and escrow accounts, payments of issuance costs and other amounts which are required by the Department;

(f) All other conditions and requirements of the Commitment.

(5) If the Eligible Borrower does not complete the requirements by the dates specified in the Commitment, the Commitment shall expire, unless the Department grants an extension in writing. The Department may require payment of an additional charge upon approval of an extension of the dates upon which Commitment conditions shall be met.

(6) If the Department fails to sell Bonds at an interest rate which would allow the Department to pay Bond debt service and Program costs, and make Program Loans at or below the maximum rate stated in the Commitment, the Commitment shall terminate.

Stat. Auth.: ORS 90.800 - 90.840, 90.630, 183, 456.515 - 456.723, 458.210 - 458.650
Stats. Implemented: ORS 456.625
Hist.: HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; OHCS 4-2007, f. & cert. ef. 1-11-07

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813-012-0100

Fees, Charges and Loan Interest Rate

(1) The Department may charge a nonrefundable commitment fee up to two percent of the committed Program Loan amount. The Eligible Borrower shall include the fee, if any, with the Eligible Borrower's signed acceptance of the Commitment when it is returned to the Department.

(2) The Department may require from the Borrower additional charges to cover the costs and reduce the financial risk to the Department of issuing Bonds.

(3) The Department shall establish loan rates which are at least sufficient to permit the Department to pay debt service on its Bonds, and costs of issuing the Bonds and administering the Rental Housing Program.

Stat. Auth.: ORS 90.800 - 90.840, 90.630, 183, 456.515 - 456.723, 458.210 - 458.650
Stats. Implemented: ORS 456.625
Hist.: HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; OHCS 4-2007, f. & cert. ef. 1-11-07

813-012-0110

Program Loans

(1) To be eligible to receive a Program Loan for financing, an Eligible Borrower shall comply with the terms contained in the Commitment issued by the Department and those conditions of eligibility set forth in these Program rules.

(2) Loan Documents shall be on forms approved by the Department.

(3) Notwithstanding any other provision contained in the Program rules, the Department shall not disburse funds for a Program Loan until:

(a) The Project has been completed to the satisfaction of the Department;

(b) The Eligible Borrower executes a loan agreement, trust deed note and first lien trust deed or other evidence of security, and other program documentation satisfactory to the Department;

(c) The Eligible Borrower has satisfied all conditions contained in the Commitment; and

(d) If the Project is subject to requirements which may continue after payment of the Department's loan, a regulatory agreement is recorded which details those requirements.

(4) Each Program Loan shall provide for the monthly collection of Escrow Payments for taxes, if applicable, and insurance plus any other required accounts to the extent permitted by law together with the monthly installment of principal and interest. All such payments shall be held for the benefit of the Department in an account in a financial institution acceptable to the Department and subject to the rules which apply to the deposit of public funds of the State of Oregon, pursuant to ORS Chapter 295.

Stat. Auth.: ORS 90.800 - 90.840, 90.630, 183, 456.515 - 456.723, 458.210 - 458.650
Stats. Implemented: ORS 456.625
Hist.: HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; OHCS 4-2007, f. & cert. ef. 1-11-07

813-012-0120

Construction and Completion

(1) During the construction of the Project, the Department may conduct random inspections for Borrower's compliance with the plans and specifications previously approved by the Department. The Borrower's supervising architect shall submit regular inspection reports to the Department. Change orders must be signed by the contractor, supervising architect, the Borrower and HUD, if applicable, before being submitted to the Department for its approval.

(2) Upon completion of construction of a Project, the Department and other contractual or regulatory entities, as applicable, may perform an inspection to assure the Borrower's compliance with the approved plans and specifications. If some items of construction remain to be completed due to circumstances beyond the control of the Borrower (provided the incomplete items do not detract from livability or safety of the Project), the Department may require the Borrower to place in an escrow account, approved by the Department and under Department control, an amount equal to one and one-half times the estimated cost of completion, until the construction item is completed.

(3) Upon substantial completion of acquisition, construction and equipping of the Project, the Borrower shall submit to the Department a certificate containing the following:

(a) The Borrower's statement that the Project has been substantially completed and is ready and available for occupancy as of a specified date (which shall be the completion date);

(b) The Borrower's statement of the aggregate amount, if any, advanced against the Program Loan prior to and upon the completion date; and

(c) The Borrower's certification that as of the completion date, there has been full compliance with the provisions of the Regulatory Agreement and Declaration of Restrictive Covenants.

(4) An architect with an ownership interest in the Project shall not act as a supervising architect.

Stat. Auth.: ORS 90.800 - 90.840, 90.630, 183, 456.515 - 456.723, 458.210 - 458.650
Stats. Implemented: ORS 456.625
Hist.: HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; OHCS 4-2007, f. & cert. ef. 1-11-07

813-012-0130

Loan Servicing

(1) The servicing of loans shall be performed by servicer(s) selected by the Department. Servicing, unless performed by the Department, shall be conducted under the terms and conditions contained in a servicing agreement entered into between the Department and the Approved Servicer. The Department shall prescribe the form of the servicing agreement. The Approved Servicer shall:

(a) Promptly collect all payments due under the Loan Agreement and Regulatory Agreement and Declaration of Restrictive Covenants;

(b) Provide the Department with a monthly accounting of Program Loan payments and disbursements;

(c) Ensure that escrow account balances are maintained at a level sufficient for the payment of the Project's property taxes, insurance premiums and costs of replacement as they become due and payable;

(d) Forward payments to the Department according to the provisions of the servicing agreement;

(e) Forward payments for insurance premiums to the insurance company when due;

(f) Forward payments for property taxes to the county assessor when due;

(g) Assure that all improvements on the mortgaged premises are kept insured against fire and extended coverage, casualty, liability and business income loss in accordance with the Loan Agreement and Regulatory Agreement and Declaration of Restrictive Covenants;

(h) Provide the Borrower with regular analyses of servicing accounts; and

(i) Perform such other responsibilities as the Department may prescribe.

(2) In order to qualify as an Approved Servicer and continue as such, an entity shall demonstrate to the satisfaction of the Department that:

(a) One of its principal functions is the servicing of multi-unit or commercial loans secured by real estate;

(b) Such servicing is a customary and regular business activity of the applicant;

(c) It can demonstrate qualifications to engage in the servicing of mortgage loans for specified government agencies or private institutions engaged in the secondary market for mortgage investments and have errors and omissions insurance acceptable to the Department;

(d) It deposits funds to accounts in depositories which comply with the requirements of ORS 295.005, 295.015—295.018 and 295.025 and which are insured to the full extent legally possible by the Federal Deposit Insurance Corporation, or other federal insuring department; and

(e) It shall maintain servicing facilities adequately staffed with personnel familiar with all regulations and requirements pertaining to or affecting Program Loans serviced for the Department.

Stat. Auth.: ORS 90.800 - 90.840, 90.630, 183, 456.515 - 456.723, 458.210 - 458.650
Stats. Implemented: ORS 456.625
Hist.: HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; OHCS 4-2007, f. & cert. ef. 1-11-07

813-012-0140

Change of Approved Servicers

(1) The servicing agreement may be terminated or amended as provided in the servicing agreement or these rules.

(2) The Department may direct a change of Approved Servicers at any time consistent with the terms of the servicing agreement and these rules.

Stat. Auth.: ORS 90.800 - 90.840, 90.630, 183, 456.515 - 456.723, 458.210 - 458.650
Stats. Implemented: ORS 456.625
Hist.: HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; OHCS 4-2007, f. & cert. ef. 1-11-07

813-012-0150

Transfer of Ownership

(1) A Borrower or Eligible Borrower who has received a Program Loan or Commitment from the Department shall not transfer ownership, lease or otherwise encumber any property which serves or will serve as

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security for a Program Loan without prior written approval from the Department. Approval will not be unreasonably withheld.

(2) A transfer of ownership means a sale, conveyance or other transfer of:

- (a) Any interest of a general partner;
- (b) Any interest in a joint venture;
- (c) More than 25 percent of the limited partner's interest;
- (d) More than 10 percent of a corporate owner's interest; or
- (e) Any individual interest when the ownership is not a limited partnership, general partnership, joint venture or corporation.

(3) The Department may require a transfer application charge from owners of Projects that receive loans through the Department, who request the Department's approval of a change in Project ownership. The Department may require a transfer review charge to Project owners and transferees who effect a change in project ownership without prior written approval from the Department.

(4) A 100 percent transfer of ownership means a sale, conveyance or other transfer of:

- (a) All interest of a general partnership;
- (b) All interest of a joint venture;
- (c) All interest of a corporation;
- (d) All general partners' interest in a limited partnership; or
- (e) All individual interest of an ownership entity when the ownership entity is not a limited partnership, general partnership, joint venture or corporation.

Stat. Auth.: ORS 90.800 - 90.840, 90.630, 183, 456.515 - 456.723, 458.210 - 458.650
Stats. Implemented: ORS 456.625
Hist.: HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; OHCS 4-2007, f. & cert. ef. 1-11-07

813-012-0160

Loan Prepayments

(1) It is the general policy of the Department not to accept prepayments. The Department may, however, permit a prepayment if, in its sole discretion, the Department determines that the prepayment is consistent with the best interests of the Department, including its public purpose as defined in ORS 456.550.

(a) The Borrower must submit to the Department a written request for prepayment at least 90 days prior to the Borrower's estimated prepayment date;

(b) The Department may charge the Borrower a prepayment review charge to cover the Department's cost of review and processing the prepayment request.

(2) The Department must give prior written approval of any loan prepayment. In order to be valid, a written approval of prepayment must be signed by an authorized representative of the Department. In making a decision whether or not to allow prepayment of a loan, the Department may consider criteria that include, but are not limited to, the following:

(a) The financial impact of the prepayment on the Department's programs or on an individual program or Bond indenture;

(b) Economic factors, including, but not limited to, portfolio diversification and relative cost of capital;

(c) The cash flow and other relevant financial considerations of the Project loan for which prepayment is requested;

(d) The ability of the Department to use proceeds of the loan prepayment to increase the availability of affordable housing stock to low-income Oregonians;

(e) The willingness of the Borrower to execute a written agreement or give other assurances that the Project will continue to be used for the purpose(s) originally intended, as specified in the Loan Documents, or for an alternate use consistent with the best interests of the Department, including its public purpose as defined in ORS 456.550. Such continued use will be for a period of time mutually agreed on by the Department and the Borrower;

(f) Tax law consequences; and

(g) Other factors the Department considers appropriate to insure the security for and the ability of the State to repay the Bonds, and to insure the ongoing financial viability and stability of the Department's programs.

(3) If the Department determines that a loan prepayment is consistent with the best interests of the Department, it only shall authorize the prepayment provided that the sum to be prepaid, computed as of the date of prepayment, shall equal the unpaid principal balance of the loan plus accrued interest and all other obligations plus, at the Department's discretion, a penalty or premium for the privilege of prepayment. Such prepayment penalty shall be determined based on terms of the original Loan Documents, and amendments thereto which have been mutually agreed on

by the Department and the Borrower. The Department may waive all or a portion of such prepayment penalty if it determines in its sole discretion that such waiver is in the best interests of the Department. In making a decision whether or not to waive any or all of a prepayment penalty, the Department may consider, but is not limited to, the criteria identified in OAR 813-12-160(2)(a) through (g).

(4) Where Section 8 Housing Assistance contracts or other rent subsidies are in place, the Department may approve a loan prepayment request only if such rent subsidies are not unduly impaired, determined at the sole discretion of the Department.

(5) Failure to make timely submission of a prepayment penalty will cause additional interest to accrue at loan rate or statutory rate, whichever is higher.

Stat. Auth.: ORS 90.800 - 90.840, 90.630, 183, 456.515 - 456.723, 458.210 - 458.650
Stats. Implemented: ORS 456.555 & 456.625
Hist.: HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; OHCS 1-1998(Temp), f. & cert. ef. 9-1-98 thru 2-27-99; OHCS 1-1999, f. & cert. ef. 6-1-99; OHCS 4-2007, f. & cert. ef. 1-11-07

813-012-0170

Disposal of Department-Owned Projects

(1) The Department may transfer ownership of a Department-owned Project through sale, gift or other lawful manner to a Person or Persons whom the Department determines best meets the requirements of this Program. The Department shall establish procedures for selling a Project prior to any offering of such Project.

(2) The method of transfer of ownership, timing, price, terms and any other factors pertinent to the transfer of ownership shall be effected by the Department in a manner which, in the opinion of the Department, best preserves the integrity and continuity of the Department's rental programs. Factors the Department may consider include, but are not limited to:

(a) The financial investment of the Department in the Project;

(b) Preservation of existing rental housing;

(c) Proposed owner's ability to manage, market, maintain and protect property used as security for the loan made by the Department, if applicable;

(d) Proposed owner's capacity to preserve or improve upon the property's safety, sanitation, durability and livability;

(e) Proposed owner's ability to preserve units which are affordable and suitable to the needs of the residents; and

(f) Continued compliance state or federal laws, rules or regulations, as applicable to the financing or use of the Project.

Stat. Auth.: ORS 90.800 - 90.840, 90.630, 183, 456.515 - 456.723, 458.210 - 458.650
Stats. Implemented: ORS 456.625
Hist.: HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; OHCS 4-2007, f. & cert. ef. 1-11-07

813-012-0180

Waiver

The Department may waive or modify any requirements of OAR 813, division 012, unless such waiver or modification would violate applicable federal or state statutes or regulations.

Stat. Auth.: ORS 456.515 - 456.720
Stats. Implemented: ORS 456.555
Hist.: OHCS 4-2007, f. & cert. ef. 1-11-07

Rule Caption: Incorporates clarification language and ability to implement application and loan commitment charges.

Adm. Order No.: OHCS 5-2007

Filed with Sec. of State: 1-11-2007

Certified to be Effective: 1-11-07

Notice Publication Date: 12-1-06

Rules Adopted: 813-060-0036, 813-060-0070

Rules Amended: 813-060-0005, 813-060-0010, 813-060-0020, 813-060-0025, 813-060-0030, 813-060-0031, 813-060-0032, 813-060-0040, 813-060-0044, 813-060-0045, 813-060-0047, 813-060-0055, 813-060-0056, 813-060-0061, 813-060-0062, 813-060-0065

Rules Ren. & Amend: 813-060-0035 to 813-060-0038

Subject: The Disabled Housing Program provides funds to finance the construction, rehabilitation and acquisition of multi-family housing for disabled persons in the State of Oregon, while providing sufficient safeguards to protect the financial interests of the state.

813-060-0005 is intended clarify the program and the general purpose of the rules.

813-060-0010 clarifies terms used in the program and rules.

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813-060-0020 Housekeeping and clarification. Changes the term 'sponsor' to 'eligible borrower.' Limits a Commitment up to the allowable total Project costs or 85 percent of the appraised value, whichever is less, of the Project.

813-060-0025 Housekeeping. Changes the term 'sponsor' to 'eligible borrower.'

813-060-0030 Housekeeping. Changes the term 'sponsor' to 'eligible borrower.'

813-060-0031 Housekeeping. Changes the term 'mobile home' to 'manufactured dwelling' and 'sponsor' to 'eligible borrower.'

813-060-0032 Housekeeping. Reduces the term of financing from five to two years.

813-060-0033 Adds language that allows the Department to make funds available for an interim term of 5 years. Establishes criteria.

813-060-0038 Housekeeping. Changes the term 'sponsor' to 'eligible borrower.'

813-060-0040 Housekeeping. Changes the term 'sponsor' to 'eligible borrower.'

813-060-0044 Amends the conditions of commitment at loan closing. Changes the term 'sponsor' to 'eligible borrower.'

813-060-0045 Amends the eligibility requirements for a Household.

813-060-0047 Housekeeping. Changes the term 'sponsor' to 'eligible borrower.'

813-060-0055 Allows the department to stipulate the terms of a servicing agreement.

813-060-0056 Allows the department to terminate or amend servicing agreements and direct a change of Approved Servicer at any time consistent with the terms of the servicing agreement and these rules.

813-050-0061 Changes the term 'sponsor' to 'eligible borrower.' And 'person' to 'entity.' Amended language regarding the department to charge a transfer charge from owners of Projects that receive loans through the Department who request approval for a change in Project ownership.

813-060-0062 Stipulates that there it is the general policy of the Department to not accept prepayments, however the Department may permit a prepayment with certain conditions. Requires a Borrower to submit a written request for prepayment at least 90 days prior to the Borrower's estimated prepayment date. Allows the Department to charge the Borrower a prepayment review charge to cover the Department's costs of review and processing.

813-060-0065 Housekeeping. Changes the term 'sponsor' to 'eligible borrower.'

813-060-0070 Adds waiver language already provided for with-in statute.

Rules Coordinator: Sandy McDonnell—(503) 986-2012

813-060-0005

Purpose and Objectives

OAR chapter 813, division 60, is promulgated to carry out the provisions of ORS 456.515 to 456.720, specifically ORS 456.515 through 456.547, as they pertain to the administration by the Housing and Community Services Department (Department) of the Disabled Housing Program. These rules and the related determinations and orders of the Department constitute the Department's Disabled Housing Program. The purpose of the Program is to provide funds to finance the construction, rehabilitation and acquisition of multifamily housing for disabled persons in the State of Oregon, while providing sufficient safeguards to protect the financial interests of the state.

Stat. Auth.: ORS 456.555

Stats. Implemented: ORS 456.555 & 456.625

Hist.: 1HD 6-1982(Temp), f. & ef. 9-20-82; 1HD 10-1982, f. & ef. 12-14-82; 1HD 13-1984, f. & ef. 9-4-84; HSG 4-1987(Temp), f. & ef. 2-5-87; HSG 10-1987, f. & ef. 3-10-87; HSG 3-1989(Temp), f. & cert. ef. 6-8-89; HSG 15-1989, f. & cert. ef. 11-3-89; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; HSG 4-1993(Temp), f. & cert. ef. 10-1-93; HSG 6-1996, f. & cert. ef. 6-14-96; OHCS 5-2007, f. & cert. ef. 1-11-07

813-060-0010

Definitions

(1) All terms are used in OAR chapter 813, division 60, as defined in the Act and as provided in OAR 813-005-0005 and herein.

(2) As used in these rules unless otherwise indicated by the context:
(a) "Disabled Housing Program" or "Program" means the program established under ORS 465.539.

(b) "Disabled Housing Project" or "Project" means housing containing more than one living unit for Disabled Persons and their family members and such other persons who reside therein to maintain the housing or provide services or companionship for Disabled Persons, but not providing continuous nursing care.

(c) "Disabled Person" means a Person who has a physical or mental impairment that substantially limits one or more Major Life Activity.

(d) "Gross Household Income" means the anticipated total income from all sources received by the family head and by each additional member of the family of 18 years of age and over, including all net income derived from assets for the twelve-month period following the date of certification of income, in accordance with the U.S. Department of Housing and Urban Development (HUD) in 24 CFR 813.

(e) "Major Life Activity" includes but is not limited to self-care, ambulation, communication, transportation, education, socialization, employment and ability to acquire, rent or maintain property.

(f) "Multifamily Housing" means a structure or facility which provides more than one living unit, and may provide spaces for common use by the occupants in social and recreational activities including, but not limited to, individual living units within such structures, mobile home and manufactured dwelling parks and residential facilities licensed under ORS 443.400 to 443.455 and other congregate care facilities with or without domiciliary care.

Stat. Auth.: ORS 456.555

Stats. Implemented: ORS 456.555 & 456.625

Hist.: 1HD 6-1982(Temp), f. & ef. 9-20-82; 1HD 10-1982, f. & ef. 12-14-82; 1HD 7-1983(Temp), f. & ef. 11-7-83; 1HD 4-1984(Temp), f. & ef. 5-25-84; 1HD 6-1984, f. 7-5-84, ef. 7-8-84; 1HD 13-1984, f. & ef. 9-4-84; HSG 4-1987(Temp), f. & ef. 2-5-87; HSG 10-1987, f. & ef. 3-10-87; HSG 3-1989(Temp), f. & cert. ef. 6-8-89; HSG 15-1989, f. & cert. ef. 11-3-89; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; HSG 4-1993(Temp), f. & cert. ef. 10-1-93; HSG 6-1996, f. & cert. ef. 6-14-96; OHCS 5-2007, f. & cert. ef. 1-11-07

813-060-0020

Form of Loan Assistance

(1) The Department shall make loans to Borrowers under the terms of written Commitments.

(2) Loans shall be made directly with proceeds from the issuance of Bonds or other available funds obtained by the Department. The Department shall establish charges and interest rates based upon:

(a) The cost of borrowing through Bond issuance;

(b) The funds required to carry out the Disabled Housing Program; and

(c) Such other factors as the Department considers appropriate or necessary.

(3) Interest on a loan shall not exceed the rate stated in the Commitment. If the Department is able to charge an interest rate lower than that specified in the Commitment, the Department may provide for reduction of the interest rate on the loan. The Department may require a reduction in the Project rents.

(4) The Department shall not execute a Commitment to an Eligible Borrower for a loan amount that exceeds allowable total Project costs or 85 percent of the appraised value, whichever is less, of the Project.

(5) Each loan shall have a final maturity of not more than 42 years from the date of its making and shall be secured by a first lien deed of trust granted by the Borrower on the property securing the loan.

(6) Loan Documents shall be on forms approved by the Department.

(7) Each loan shall provide for the monthly collection of Escrow Payments to the extent permitted by law together with the monthly installment of principal and interest. All such payments shall be:

(a) Held for the benefit of the Department in an account with an Approved Servicer; or

(b) Held by the State of Oregon as provided or required by law.

(8) If the Department receives loan applications in an amount greater than the amount of funds available, the Department shall select those applications which, in the judgment of the Department, best achieve the purposes of the Program rules and the Act.

(9) The Department shall establish prepayment penalties applicable to loans. In setting such penalties, the Department shall take into account the need to protect the ability of the state to provide for the payment of the Bonds. Any prepayment penalties shall be set forth in the trust deed note.

Stat. Auth.: ORS 456.555

Stats. Implemented: ORS 456.555 & 456.625

Hist.: 1HD 6-1982(Temp), f. & ef. 9-20-82; 1HD 10-1982, f. & ef. 12-14-82; 1HD 13-1984, f. & ef. 9-4-84; HSG 4-1987(Temp), f. & ef. 2-5-87; HSG 10-1987, f. & ef. 3-10-87; HSG 3-1989(Temp), f. & cert. ef. 6-8-89; HSG 15-1989, f. & cert. ef. 11-3-89; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; HSG 4-1993(Temp), f. & cert. ef. 10-1-93; HSG 6-1996, f. & cert. ef. 6-14-96; OHCS 5-2007, f. & cert. ef. 1-11-07

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f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; HSG 4-1993(Temp), f. & cert. ef. 10-1-93; HSG 6-1996, f. & cert. ef. 6-14-96; OHCS 5-2007, f. & cert. ef. 1-11-07

813-060-0025

Loan Security

Notwithstanding any other provision contained in the Program rules, the Department shall not disburse funds for a loan until:

- (1) The loan is secured by a fully executed trust deed note and first lien trust deed or other evidence of security; and
- (2) The Eligible Borrower has satisfied all conditions contained in a Commitment.

Stat. Auth.: ORS 456.555

Stats. Implemented: ORS 456.555 & 456.625

Hist.: IHD 6-1982(Temp), f. & ef. 9-20-82; IHD 10-1982, f. & ef. 12-14-82; IHD 13-1984, f. & ef. 9-4-84; HSG 4-1987(Temp), f. & ef. 2-5-87; HSG 10-1987, f. & ef. 3-10-87; HSG 3-1989(Temp), f. & cert. ef. 6-8-89; HSG 15-1989, f. & cert. ef. 11-3-89; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; HSG 4-1993(Temp), f. & cert. ef. 10-1-93; HSG 6-1996, f. & cert. ef. 6-14-96; OHCS 5-2007, f. & cert. ef. 1-11-07

813-060-0030

Eligible Disabled Housing Projects

(1) The Department shall evaluate each Project for consistency with the Department's interpretation of sound architectural design and prudent underwriting standards, as established in OAR 813-060-0031.

(2) In order to qualify for a loan, a Project shall:

(a) Be approved by the Department with respect to site; location; market demand; financial feasibility; qualifications of general contractor, management agent, and developer; appraisal; financial strength and credit a worthiness of the Eligible Borrower; management plan; final architectural package; Eligible Borrower's organizational documents; American Land Title Association (ALTA) title report; and any other information the Department shall require;

(b) Meet all applicable federal, state and local land use and zoning requirements, housing codes, licensing, and similar requirements;

(c) Be in compliance with federal regulations, state statutes and Program rules;

(d) Be located in the State of Oregon; and

(e) Remain affordable in terms of the loan documents.

Stat. Auth.: ORS 456.555

Stats. Implemented: ORS 456.555 & 456.625

Hist.: IHD 6-1982(Temp), f. & ef. 9-20-82; IHD 10-1982, f. & ef. 12-14-82; IHD 13-1984, f. & ef. 9-4-84; HSG 4-1978(Temp), f. & ef. 2-5-87; HSG 10-1987, f. & ef. 3-10-87; HSG 3-1989(Temp), f. & cert. ef. 6-8-89; HSG 15-1989, f. & cert. ef. 11-3-89; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; HSG 4-1993(Temp), f. & cert. ef. 10-1-93; HSG 6-1996, f. & cert. ef. 6-14-96; OHCS 5-2007, f. & cert. ef. 1-11-07

813-060-0031

Standard Underwriting Criteria

In approving or disapproving any loan application, the Department and the State Housing Council shall consider, in addition to requirements elsewhere stated in the Program rules, the following criteria:

(1) The location of the Project site, including its proximity to transportation, shopping, social, commercial and recreational facilities, medical services, and such other facilities and services as shall best serve the prospective residents;

(2) Financial feasibility of the Project;

(3) Availability of street, sewer, water, utilities and other public services;

(4) Availability of public and private transportation;

(5) Architectural design, including aesthetic quality, soundness of construction, energy efficiency, and suitability to the needs of the residents to be served;

(6) Compliance with applicable local comprehensive plan and land use regulations;

(7) Market demand;

(8) The financial strength, credit reputation and history of the Eligible Borrower; and

(9) The experience of the developer, contractors, architects, consultants and management agent in developing, constructing and operating housing projects.

Stat. Auth.: ORS 456.555

Stats. Implemented: ORS 456.555 & 456.625

Hist.: IHD 13-1984, f. & ef. 9-4-84; HSG 4-1987(Temp), f. & ef. 2-5-87; HSG 10-1987, f. & ef. 3-10-87; HSG 3-1989(Temp), f. & cert. ef. 6-8-89; HSG 15-1989, f. & cert. ef. 11-3-89; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; HSG 4-1993(Temp), f. & cert. ef. 10-1-93; HSG 6-1996, f. & cert. ef. 6-14-96; OHCS 5-2007, f. & cert. ef. 1-11-07

813-060-0032

Manufactured Dwelling Park Projects

(1) To qualify as a Manufactured Dwelling Park, the Project shall comply with the following standards and conditions:

(a) Site, design and licensing standards of the local government;

(b) Regulations of the Building Codes Division, State of Oregon, OAR 918-600-0010 to 918-600-0110;

(c) All manufactured dwellings shall have skirting, unless the home is set on a ground level foundation. If the manufactured dwelling is purchased after September 4, 1984, the design, color and texture of the skirting shall appear to be an integral part of the adjacent exterior wall of the manufactured dwelling;

(d) All manufactured dwellings purchased after September 4, 1984, shall have a roof with a non-reflective surface at a minimum slope of two inches in 12 inches (16 percent);

(e) The area occupied by the manufactured dwelling and any accessory buildings (including porches, car-ports, etc.) shall not exceed 40 percent of the lot area; and

(f) All manufactured dwellings shall be installed in compliance with the State of Oregon, Building Codes Division regulations. Installation inspections shall be completed by the Building Codes Division, or by a city or county which has contracted to do the inspections. A copy of the final inspection report shall be submitted to the Department together with a copy of a certificate of occupancy.

(2) The Borrower shall establish rules for the residents of the Project, to be a required part of each resident's lease. The rules and lease shall be submitted for the Department's review and approval as part of the proposal.

Stat. Auth.: ORS 456.555

Stats. Implemented: ORS 456.555 & 456.625

Hist.: IHD 13-1984, f. & ef. 9-4-84; HSG 4-1987(Temp), f. & ef. 2-5-87; HSG 10-1987, f. & ef. 3-10-87; HSG 3-1989(Temp), f. & cert. ef. 6-8-89; HSG 15-1989, f. & cert. ef. 11-3-89; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; OHCS 5-2007, f. & cert. ef. 1-11-07

813-060-0036

Interim Loans

(1) The Department may from time to time make available funds for construction, acquisition and/or rehabilitation, or other financing of Disabled Projects, for a term not to exceed five years.

(2) Notwithstanding any other requirements of OAR chapter 813, division 060, the Department may, as funds are available, solicit applications for the use of such funds. Application shall specify in writing any terms and conditions of the available funds, as well as criteria or priorities the Department shall use to evaluate and select applications for funding.

(3) The Department shall evaluate application received in accordance with Program policies and priorities approved by the State Housing Council, and with applicable requirements of OAR chapter 813, division 60.

Stat. Auth.: ORS 90.800 - 90.840, 91.886, 456.515-456.723, 458.210 - 458.650

Stats. Implemented: ORS 456.515 - 456.720

Hist.: OHCS 5-2007, f. & cert. ef. 1-11-07

813-060-0038

Approved Housing Borrowers

(1) To be eligible to receive a loan, an Eligible Borrower shall comply with the terms contained in the Commitment issued by the Department and the conditions of eligibility as set forth in these rules.

(2) Any entity may apply to become an Eligible Borrower.

(3) To help the Department evaluate the financial strength of an Eligible Sponsor Borrower to develop, own, maintain and manage a Project, the Eligible Borrower shall submit financial statements, credit reports and any other documents requested by the Department in accordance with the provisions of the Equal Credit Opportunity Act as it relates to the Department.

Stat. Auth.: ORS 456.555

Stats. Implemented: ORS 456.555, 456.625

Hist.: IHD 6-1982(Temp), f. & ef. 9-20-82; IHD 10-1982, f. & ef. 12-14-82; IHD 13-1984, f. & ef. 9-4-84; HSG 4-1987(Temp), f. & ef. 2-5-87; HSG 10-1987, f. & ef. 3-10-87; HSG 3-1989(Temp), f. & cert. ef. 6-8-89; HSG 15-1989, f. & cert. ef. 11-3-89; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; HSG 4-1993(Temp), f. & cert. ef. 10-1-93; HSG 6-1996, f. & cert. ef. 6-14-96; Renumbered from 813-060-0035, OHCS 5-2007, f. & cert. ef. 1-11-07

813-060-0040

Processing Procedures

(1) Before accepting a project for the application process, the prospective Borrower shall submit an application to the Department on forms acceptable to the Department. If the Project meets the Program requirements, an application conference with the prospective Borrower

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shall be scheduled. At the conference, the Department may discuss, but is not limited to discussing:

- (a) Type of loan requested;
- (b) Type and formation of prospective Borrower's company (sole proprietorship, partnership, corporation, nonprofit, etc.) and qualifications;
- (c) Requested of loan amount, terms and interest rate;
- (d) Any time constraints on prospective Borrower or Department;
- (e) Charges;
- (f) Reserve and equity requirements;
- (g) Debt service ratio and other contingency requirements;
- (h) Appraisal requirements;
- (i) Environmental survey(s);
- (j) Contractor's cost estimate and qualifications;
- (k) Management and maintenance plans;
- (l) Project management requirements, reports, and qualifications;
- (m) Loan servicing requirements and procedures;
- (n) Design and related requirements;
- (o) Document requirements;
- (p) Construction procedures;
- (q) Department Loan processing procedures;
- (r) Eligibility requirements under federal and state law and regulation;
- (s) Site Control;
- (t) Reserves and costs for Bond issue; and
- (u) Any other items pertinent to the proposed Project.

(2) At the conclusion of the application conference, if the prospective Borrower and the Department agree to proceed with the loan application process, prospective Borrower shall provide the necessary loan application documentation.

(3) After receiving a completed loan application package from the prospective Borrower, the Department shall evaluate each Project for consistency with the Department's interpretation of sound architectural and planning principles and prudent underwriting standards.

(4) In order to qualify for a loan, a Project shall:

(a) Be approved by the Department with respect to site; location; market demand; financial feasibility; qualifications of general contractor, management agent and developer; appraisal; financial strength and creditworthiness of the Eligible Borrower; management plan; final architectural package; organizational documents; ALTA title report; resident services plan, and any other information the Department shall prescribe;

(b) Meet all applicable state and local land use and zoning requirements, housing codes, and similar requirements;

(c) Be in compliance with federal regulations, state statutes and Program rules;

(d) Be located in the State of Oregon;

(e) If the loan is for an amount over \$100,000, be approved by the State Housing Council prior to the Department's issuance of a loan Commitment:

(A) The Department shall review each application for a loan over \$100,000 and prepare a proposal to the State Housing Council for approval or disapproval. The Department will send a copy of its proposal to the Eligible Borrower with a notice of the State Housing Council meeting at which the application will be considered. Upon receipt of the notice, the Eligible Borrower may request an opportunity to present testimony at the meeting;

(B) After considering the Department's proposal, as well as any other testimony presented, the State Housing Council shall approve or disapprove the application or take other appropriate action;

(c) The Eligible Sponsor Borrower shall promptly be advised in writing of the State Housing Council's decision.

(5) In approving or disapproving any loan application, the Department and the State Housing Council shall consider, in addition to requirements elsewhere stated in the Program rules, the following criteria:

(a) The location of the Project site, including its proximity to transportation, shopping, social, commercial and recreational facilities, medical services and such other facilities and services as shall best serve the residents;

(b) Financial feasibility of the Project;

(c) Availability of street, sewer, water, utilities and other public services;

(d) Availability of public transportation;

(e) Architectural design, including aesthetic quality soundness of construction, energy efficiency, and suitability to the needs of the residents to be served;

(f) Compliance with applicable state and local comprehensive plan and land use regulations;

(g) Market demand;

(h) The financial strength, credit reputation and history of the Eligible Borrower; and

(i) The experience of the developer, contractors, architects, consultants and management agent in developing, constructing and operating housing Projects.

(6) The Eligible Borrower may submit a written request for review and appeal of the State Housing Council's decision in accordance with the provisions of ORS Chapter 183. To be considered, the request must be received by the Department within 30 days of the date of the notice of initial loan disapproval.

(7) Upon loan approval, the Department shall issue a Commitment, which may be subject to loan funds being available, which shall include:

(a) The amount of the loan;

(b) The maximum rate of interest to be charged on such loan;

(c) The term of the loan;

(d) The amount of the Commitment fee, Rent-Up Reserve Account and Contingency Escrow Account;

(e) When the Commitment fee shall be paid, and when the Rent-Up Reserve Account and Contingency Escrow Account shall be funded;

(f) All other conditions of the Commitment, and when they shall be fulfilled;

(g) Provisions concerning construction;

(h) Provisions and conditions of loan disbursement;

(i) Provisions of loan closing; and

(j) Conditions of termination of the Commitment.

(8) If the Commitment conditions are not completed by the dates specified in the Commitment, the offer for a Commitment shall expire, unless the Department grants an extension in writing.

(9) Construction and completion:

(a) During the construction of the Project, the Department may conduct random inspections for Borrower's compliance with the plans and specifications previously approved by the Department. The Borrower's architect shall submit regular inspection reports to the Department. Change orders must be signed by the contractor, Project architect and the Borrower before being submitted to the Department for its approval and prior to the changes being made;

(b) Upon completion of construction of the Project, the Department shall perform an inspection to assure the Borrower's compliance with the approved plans and specifications. If some items of construction remain to be completed due to circumstances beyond the control of the Borrower (provided the incomplete items do not detract from livability or safety of the Project), the Department may require the Borrower to escrow as approved by the Department and under Department control an amount equal to one and one-half times the estimated cost of completion, until the construction item is completed.

Stat. Auth.: ORS 456.555

Stats. Implemented: ORS 456.555 & 456.625

Hist.: 1HD 6-1982(Temp), f. & ef. 9-20-82; 1HD 10-1982, f. & ef. 12-14-82; 1HD 10-1983, f. & ef. 12-1-83; 1HD 13-1984, f. & ef. 9-4-84; HSG 4-1987(Temp), f. & ef. 2-5-87; HSG 10-1987, f. & ef. 3-10-87; HSG 3-1989(Temp), f. & cert. ef. 6-8-89; HSG 15-1989, f. & cert. ef. 11-3-89; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; HSG 4-1993(Temp), f. & cert. ef. 10-1-93; HSG 6-1996, f. & cert. ef. 6-14-96; OHCS 5-2007, f. & cert. ef. 1-11-07

813-060-0044

Loan Closing

Before the loan closing takes place, the Department shall provide the escrow officer written instructions for closing the loan. The Department shall not authorize disbursement of loan funds until all conditions of the Commitment are satisfied and the Department has approved. The following closing documentation may be required:

(1) Cost certification;

(2) Certificate or policy of insurance for fire and extended coverage, liability, business income and flood insurance (if applicable), with the appropriate loss deductible. All insurance coverage shall be in the amounts set forth in the Department's Regulatory Agreement and Declaration of Restrictive Covenants;

(3) Contingency Escrow Account;

(4) Notice of Completion;

(5) Certificate of occupancy or final inspection report from the local government, as required;

(6) Commercial leases, if applicable;

(7) Ground leases, if applicable;

(8) All other relevant leases, if applicable;

(9) Tax abatement approval;

ADMINISTRATIVE RULES

(10) American Land Title Association (ALTA) mortgagee's preliminary title insurance report from the title company of the Sponsor's Borrower's choice;

(11) Any licenses required by the state;

(12) For Acquisition Loans:

(a) Certification of completion of work on repairs from the general contractor and owner.

(13) All other reasonable requirements of the Department.

Stat. Auth.: ORS 456.555

Stats. Implemented: ORS 456.555 & 456.625

Hist.: 1HD 13-1984, f. & ef. 9-4-84; HSG 4-1987(Temp), f. & ef. 2-5-87; HSG 10-1987, f. & ef. 3-10-87; HSG 3-1989(Temp), f. & cert. ef. 6-8-89; HSG 15-1989, f. & cert. ef. 11-3-89; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; HSG 4-1993(Temp), f. & cert. ef. 10-1-93; HSG 6-1996, f. & cert. ef. 6-14-96; OHCS 5-2007, f. & cert. ef. 1-11-07

813-060-0045

Resident Eligibility and Occupancy

(1) To be eligible to occupy a Project, a household shall:

(a) Be a Resident of the state;

(b) At least one member of the household must meet the definition of Disabled Person as provided in OAR 813-060-0010;

(c) Have an annualized Gross Household Income which does not exceed the income limit as established by the Department from time to time in compliance with the Act;

(d) The project shall conform to the maximum income requirement of ORS 456.620(4). A maximum of one-third of the units in a housing project, housing development or other residential housing financed by the Department may be rented to households with an income level exceeding 120 percent of the median family income level as determined by the Department.

(e) Relating specifically to acquisition/rehabilitation projects only, where tenants already reside in the project, the Department, at its sole discretion, may allow up to a one (1) year grace period for implementation of the standards identified in subsection (d) above in order to reduce the impact of displacement for over-income residents.

(2) Where the Project has a Regulatory Agreement and Declaration of Restrictive Covenants which was signed after June 16, 1982, have an annualized Gross Household Income, which does not exceed the income limit as established by the Department from time to time in compliance with the Act.

(3) Where the Project will be financed with proceeds of Bonds issued after August 15, 1986, have an annualized Gross Household Income which does not exceed such other income limit as may be required to assure compliance with Section 142(d)(1) of the Internal Revenue Code of 1986, as amended.

(a) If Section 142(d)(1) of the Internal Revenue Code so requires, the Borrower shall elect at Commitment to apply either the "20-50" or "40-60" income requirement under Section 142(d)(1) of the Code, as summarized below, to the Project during the qualified Project period:

(b) If the Borrower elects to meet the "20-50" requirement under Section 142(d)(1) of the Internal Revenue Code, at all times during the qualified Project period at least 20 percent (20%) of the completed residential units in the Project shall be rented to and occupied by (or held available for rent by) Persons whose annualized Gross Household Income is 50 percent (50%) or less of area median income, adjusted for family size; and

(c) If the Borrower elects to meet the "40-60" requirement under Section 142(d)(1) of the Internal Revenue Code, at all times during the qualified Project period at least 40 percent (40%) of the completed residential units in the Project shall be rented to and occupied by (or held available for rent by) Persons whose annualized Gross Household Income is 60 percent (60%) or less of area median income, adjusted for family size.

(4) The Borrower shall conduct annual income certifications of all residents to assure compliance with Section 142(d) of the Internal Revenue Code, and shall, where necessary, hold units vacant and available for occupancy by persons meeting the income requirements elected pursuant to Section 142(d).

(5) The Department may waive the Department's income limits for an elderly household seeking residence in a Disabled Housing Project if a Person in the household is a Disabled Person requiring special housing provisions to accommodate the impairment and whose disability arises from a physical or mental impairment that substantially limits one or more Major Life Activity. However, no such waiver shall be made of the requirements of **Section 142(d) of the Internal Revenue Code**.

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

Stat. Auth.: ORS 456.555

Stats. Implemented: ORS 456.555 & 456.625

Hist.: 1HD 6-1982(Temp), f. & ef. 9-20-82; 1HD 10-1982, f. & ef. 12-14-82; 1HD 13-1984, f. & ef. 9-4-84; HSG 4-1987(Temp), f. & ef. 2-5-87; HSG 10-1987, f. & ef. 3-10-87; HSG 3-1989(Temp), f. & cert. ef. 6-8-89; HSG 15-1989, f. & cert. ef. 11-3-89; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; HSG 4-1993(Temp), f. & cert. ef. 10-1-93; HSG 6-1996, f. & cert. ef. 6-14-96; OHCS 2-2000(Temp), f. & cert. ef. 9-15-00 thru 3-13-01; OHCS 1-2001, f. & cert. ef. 2-15-01; OHCS 5-2007, f. & cert. ef. 1-11-07

813-060-0047

Commitment Fee

(1) The Department shall charge a nonrefundable Commitment fee up to two percent of the loan amount.

(2) The Eligible Borrower shall include the fee with the Sponsor's Eligible Borrower's signed acceptance of the Commitment returned to the Department.

(3) The Department may charge other fees or charges, as needed, to cover the costs and reduce the financial risk to the Department of issuing Bonds.

Stat. Auth.: ORS 456.555

Stats. Implemented: ORS 456.555 & 456.625

Hist.: 1HD 13-1984, f. & ef. 9-4-84; HSG 4-1987(Temp), f. & ef. 2-5-87; HSG 10-1987, f. & ef. 3-10-87; HSG 3-1989(Temp), f. & cert. ef. 6-8-89; HSG 15-1989, f. & cert. ef. 11-3-89; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; HSG 4-1993(Temp), f. & cert. ef. 10-1-93; HSG 6-1996, f. & cert. ef. 6-14-96; OHCS 5-2007, f. & cert. ef. 1-11-07

813-060-0055

Loan Servicing

(1) The servicing of loans shall be performed by servicer(s) selected by the Department. Servicing, unless performed by the Department itself, shall be conducted under the terms and conditions contained in a servicing agreement entered into between the Department and any Approved Servicer. The Department shall prescribe the form of the servicing agreement. The Approved Servicer shall:

(a) Promptly collect all payments due under the Loan Agreement and Regulatory Agreement and Declaration of Restrictive Covenants;

(b) Provide the Department with a monthly accounting of loan payments and disbursements;

(c) Ensure that escrow account balances are maintained at a level sufficient for the payment of the Project's property taxes, insurance premiums and costs of replacement as they become due and payable;

(d) Forward payments to the Department according to the provisions of the servicing agreement;

(e) Forward payments for insurance premiums to the insurance company when due;

(f) Forward payments for property taxes to the county assessor when due;

(g) Assure that all improvements on the mortgaged premises are kept insured against fire and extended coverage, casualty, liability and business income loss in accordance with the Loan Agreement and Regulatory Agreement and Declaration of Restrictive Covenants;

(h) Provide the Borrower with regular analyses of servicing accounts; and

(i) Perform such other responsibilities as the Department may prescribe.

(2) In order to qualify as an Approved Servicer and continue as such, an entity shall demonstrate to the satisfaction of the Department that:

(a) One of its principal functions is the servicing of multi-unit or commercial loans secured by real estate;

(b) Such servicing is a customary and regular business activity of the applicant;

(c) It is qualified to engage in the servicing of mortgage loans for specified government agencies or private institutions engaged in the secondary market for mortgage investments;

(d) It deposits funds to accounts in depositories which comply with the requirements of ORS 295.005, 295.015 to 295.018 and 295.025 and which are insured to the full extent legally possible by the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, or other similar federal insuring department; and

(e) It shall maintain servicing facilities adequately staffed with personnel familiar with all regulations and requirements pertaining to or affecting loans serviced for the Department.

Stat. Auth.: ORS 456.555

Stats. Implemented: ORS 456.555 & 456.625

Hist.: 1HD 6-1982(Temp), f. & ef. 9-20-82; 1HD 10-1982, f. & ef. 12-14-82; 1HD 13-1984, f. & ef. 9-4-84; HSG 4-1987(Temp), f. & ef. 2-5-87; HSG 10-1987, f. & ef. 3-10-87; HSG 3-1989(Temp), f. & cert. ef. 6-8-89; HSG 15-1989, f. & cert. ef. 11-3-89; HSG 7-1990, f. & cert. ef. 5-2-90; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; HSG 4-1993(Temp), f. & cert. ef. 10-1-93; HSG 7-1995(Temp), f. & cert. ef. 11-8-95; HSG 5-1996, f. & cert. ef. 5-15-96; HSG 6-1996, f. & cert. ef. 6-14-96; OHCS 5-2007, f. & cert. ef. 1-11-07

ADMINISTRATIVE RULES

813-060-0056

Change of Approved Servicers

(1) The servicing agreement may be terminated or amended as provided in the servicing agreement or these rules.

(2) The Department may direct a change of Approved Servicers at any time consistent with the terms of the servicing agreement and these rules.

Stat. Auth.: ORS 456.555

Stats. Implemented: ORS 456.555 & 456.625

Hist.: 1HD 3-1983, f. & ef. 7-20-83; 1HD 13-1984, f. & ef. 9-4-84; Renumbered from 813-060-0070; HSG 4-1987(Temp), f. & ef. 2-5-87; HSG 10-1987, f. & ef. 3-10-87; HSG 3-1989(Temp), f. & cert. ef. 6-8-89; HSG 15-1989, f. & cert. ef. 11-3-89; HSG 2-1991(Temp); HSG 7-1995(Temp), f. & cert. ef. 11-8-95; HSG 5-1996, f. & cert. ef. 5-15-96; OHCS 5-2007, f. & cert. ef. 1-11-07

813-060-0061

Transfer of Ownership

(1)(a) A Sponsor Borrower who has received a loan or Commitment from the Department shall not transfer ownership, lease, or otherwise encumber any property which serves or will serve as security for a loan from the Department without prior written approval from the Department.

(b) The Borrower shall be required to submit underwriting documentation as requested by the Department.

(2) A transfer of ownership means a sale, conveyance or other transfer of:

- (a) Any interest of a general partner;
- (b) Any interest in a joint venture;
- (c) More than 25 percent of the limited partner's interest;
- (d) More than 10 percent of a corporate owner's interest; or
- (e) Any individual interest when the ownership is not a limited partnership, general partnership, joint venture or corporation.

(3) The Department may require a transfer application charge from Borrowers of Projects that receive loans through the Department, who request the Department's approval of a change in Project ownership. The Department may require a transfer review charge to Project owners and transferees who effect a change in Project ownership without prior written approval by the Department.

(4) A 100 percent transfer of ownership means a sale, conveyance or other transfer of:

- (a) All interest of a general partnership;
- (b) All interest of a joint venture;
- (c) All interest of a corporation;
- (d) All general partners' interest in a limited partnership; or
- (e) All individual interest of an ownership entity when the ownership entity is not a limited partnership, general partnership, joint venture or corporation.

Stat. Auth.: ORS 456.555

Stats. Implemented: ORS 456.555 & 456.625

Hist.: 1HD 13-1984, f. & ef. 9-4-84; HSG 4-1987(Temp), f. & ef. 2-5-87; HSG 10-1987, f. & ef. 3-10-87; HSG 3-1989(Temp), f. & cert. ef. 6-8-89; HSG 15-1989, f. & cert. ef. 11-3-89; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; HSG 4-1993(Temp), f. & cert. ef. 10-1-93; HSG 6-1996, f. & cert. ef. 6-14-96; OHCS 5-2007, f. & cert. ef. 1-11-07

813-060-0062

Loan Prepayments

(1) It is the general policy of the Department not to accept prepayments. The Department may, however, permit a prepayment if, in its sole discretion, the Department determines that the prepayment is consistent with the best interests of the Department, including its public purpose as defined in ORS 456.550.

(a) The Borrower must submit to the Department a written request for prepayment at least 90 days prior to the Borrower's estimated prepayment date;

(b) The Department may charge the Borrower a prepayment review charge to cover the Department's cost of review and processing the prepayment request.

(2) The Department must give prior written approval of any loan prepayment. In order to be valid, a written approval of prepayment must be signed by an authorized representative of the Department. In making a decision whether or not to allow prepayment of a loan, the Department may consider criteria that include, but are not limited to, the following:

- (a) The financial impact of the prepayment on the Department's programs or on an individual program or Bond indenture;
- (b) Economic factors, including, but not limited to, portfolio diversification and relative cost of capital;
- (c) The cash flow and other relevant financial considerations of the Project loan for which prepayment is requested;

(d) The ability of the Department to use proceeds of the loan prepayment to increase the availability of housing affordable to low-income Oregonians;

(e) The willingness of the Borrower to execute a written agreement or give other assurances that the Project will continue to be used for the purpose(s) originally intended, as specified in the Loan Documents, or for an alternate use consistent with the best interests of the Department, including its public purpose as defined in ORS 456.550. Such continued use will be for a period of time mutually agreed on by the Department and the Borrower;

(f) Tax law consequences; and

(g) Other factors the Department considers appropriate to insure the security for and the ability of the State to repay the Bonds, and to insure the ongoing financial viability and stability of the Department's programs.

(3) If the Department determines that a loan prepayment is consistent with the best interests of the Department, it only shall authorize the prepayment provided that the sum to be prepaid, computed as of the date of prepayment, shall equal the unpaid principal balance of the loan plus accrued interest and all other obligations plus, at the Department's discretion, a penalty or premium for the privilege of prepayment. Such prepayment penalty shall be determined based on terms of the original Loan Documents, and amendments thereto which have been mutually agreed on by the Department and the Borrower. The Department may waive all or a portion of such prepayment penalty if it determines in its sole discretion that such waiver is in the best interests of the Department. In making a decision whether or not to waive any or all of a prepayment penalty, the Department may consider, but is not limited to, the criteria identified in OAR 813-060-0062(2)(a) through (g).

(4) Where Section 8 Housing Assistance contracts or other rent subsidies are in place, the Department may approve a loan prepayment request only if such rent subsidies are not unduly impaired, determined at the sole discretion of the Department.

(5) Failure to make timely submission of a prepayment penalty will cause additional interest to accrue at loan rate or statutory rate, whichever is higher.

Stat. Auth.: ORS 456.555

Stats. Implemented: ORS 456.555 & 456.625

Hist.: HSG 15-1989, f. & cert. ef. 11-3-89; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; HSG 4-1993(Temp), f. & cert. ef. 10-1-93; HSG 6-1996, f. & cert. ef. 6-14-96; OHCS 1-1998(Temp), f. & cert. ef. 9-1-98 thru 2-27-99; OHCS 1-1999, f. & cert. ef. 6-1-99; OHCS 5-2007, f. & cert. ef. 1-11-07

813-060-0065

Disposal of Department-Owned Projects

(1) The Department may transfer ownership of Department-owned Projects through sale, gift or other lawful manner to a Person or Persons whom the Department determines best meets the requirements of this Program. The Department shall establish written procedures for selling a Project prior to any offering of such Project, as applicable.

(2) The method of transfer of ownership, timing, price, terms and any other factors pertinent to the transfer of ownership shall be effected by the Department in a manner continuity of the Department's rental programs. Factors the Department may consider include, but are not limited to:

(a) The financial investment of the Department in the Project;

(b) Preservation of existing rental housing;

(c) Proposed Eligible Borrower's ability to manage, market, maintain and protect property used as security for the loan made by the Department, if applicable;

(d) Proposed Eligible Borrower's capacity to preserve or improve upon the property's safety, sanitation, durability and livability;

(e) Proposed Eligible Borrower's ability to preserve units which are affordable and suitable to the needs of the residents;

(f) Continued compliance with state or federal laws, rules or regulations, as applicable to the financing or use of the Project.

Stat. Auth.: ORS 456.555

Stats. Implemented: ORS 456.555 & 456.625

Hist.: HSG 15-1989, f. & cert. ef. 11-3-89; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; HSG 4-1993(Temp), f. & cert. ef. 10-1-93; HSG 6-1996, f. & cert. ef. 6-14-96; OHCS 5-2007, f. & cert. ef. 1-11-07

813-060-0070

Waiver

The Department may waive or modify any requirements of OAR 813, division 060, unless such waiver or modification would violate applicable federal or state statutes or regulations.

Stat. Auth.: ORS 456.515 - 456.720

Stats. Implemented: ORS 456.555

Hist.: OHCS 5-2007, f. & cert. ef. 1-11-07

ADMINISTRATIVE RULES

Rule Caption: Clarifies terms, fund uses, eligible applicants, projects and activities; and applicable program charges.

Adm. Order No.: OHCS 6-2007

Filed with Sec. of State: 1-11-2007

Certified to be Effective: 1-11-07

Notice Publication Date: 12-1-06

Rules Adopted: 813-205-0052, 813-205-0085, 813-205-0100, 813-205-0110, 813-205-0120, 813-205-0130

Rules Amended: 813-205-0000, 813-205-0010, 813-205-0020, 813-205-0030, 813-205-0040, 813-205-0050, 813-205-0051, 813-205-0060, 813-205-0070, 813-205-0080

Rules Repealed: 813-205-0000(T), 813-205-0010(T), 813-205-0020(T), 813-205-0030(T), 813-205-0040(T), 813-205-0050(T), 813-205-0051(T), 813-205-0052(T), 813-205-0060(T), 813-205-0070(T), 813-205-0080(T), 813-205-0085(T), 813-205-0100(T), 813-205-0110(T), 813-205-0120(T), 813-205-0130(T)

Subject: 813-205-0000 Clarifies purpose and operation of the program.

813-205-0010 Add terms and definitions applicable to the program. Provides clarification of common terms and definitions within the program.

813-205-0020 Administrative changes. Clarified the program's objective. 813-205-0020(2) clarified the funding sources for the program.

813-205-0030 Clarified for easier readability.

813-205-0040(4) Allows the property owner to assign tax credits to the subgrantee providing weatherization services.

813-205-0050 Stipulates that Lead Safe Work Practices will be practiced on all dwellings constructed prior to 1978 unless it can be proven that a lead hazard does not exist.

813-205-0052 Stipulates that the department will allocate funds received as a result of legal settlement or other actions to improve and address the energy needs of low-income households.

813-205-0060 Administrative changes.

813-205-0070 (4) A Subgrantee Agency shall receive authorization from the Department for the purchase of a vehicle regardless of cost with grant funds.

813-205-0080 Administrative changes.

813-205-0085 Designates the statutory authority of the department to administer the Program through the activities of the Housing Division for low-income affordable rental housing development.

813-205-0100 Defines the applicants that are eligible to participate in the program. Establishes that the department may require application charges.

813-205-0110 Defines the eligible projects for participating in the program.

813-205-0120 Defines the eligible activities for the program.

813-205-0130 Defines how funds may be awarded to applicants.

Rules Coordinator: Sandy McDonnell—(503) 986-2012

813-205-0000

Purpose and Objectives

The rules of OAR chapter 813, division 205, are established to accomplish the general purpose of ORS 456.515 through 456.725, which sets forth the role of the Housing and Community Services Department, and ORS 458.505 to 458.545, specifically 458.505 to 458.515, which designates the Housing and Community Services Department as the state agency responsible for administering state and federal antipoverty programs in Oregon. These administrative rules describe the Weatherization Programs, which operate at the local level through antipoverty programs in Oregon. These Administrative rules describe the Weatherization Programs which operate at two local levels through:

(1) A network of service-provider agencies (Low Income Weatherization Assistance Program) and

(2) Developers of affordable rental housing (Low-Income Weatherization Program).

Stat Auth.: ORS 458.505 - 458.545

Stats. Implemented: ORS 458.505 - 458.515

Hist.: OHCS 9-2002(Temp), f. & cert. ef. 6-19-02 thru 12-15-02; OHCS 19-2002, f. & cert. ef. 12-13-02; OHCS 13-2006(Temp), f. & cert. ef. 8-4-06 thru 1-30-07; OHCS 6-2007, f. & cert. ef. 1-11-07

813-205-0010

Definitions

All terms are used in OAR chapter 813, division 205, as defined in the Act, and as provided in OAR 813-005-0005 and herein. As used in these rules, unless otherwise indicated by the context:

(1) "ACE" means Advisory Committee on Energy.

(2) "Applicant" means project sponsor, developer, borrower or income eligible applicant.

(3) "Client Energy Education" means the activities and instruction designed to help low-income clients make appropriate decisions and lifestyle changes to effectively reduce energy consumption.

(4) "Community Resources Department (CRD) Grant Application" means the biennial planning document approved by the Department that outlines how each Subgrantee Agency determines its community's needs, including what forum is used to solicit input and who participates; summarizes each area's needs, goals and outcome-based objective; and contains a quarterly reporting requirement that lets the Department and the agency determine if benchmarks are being met.

(5) "Consolidated Funding Cycle (CFC)" means any activities, reviews, applications and associated funding in regard to the open, competitive process to distribute grant and tax credit funds for affordable, multi-unit, low-income rental housing development.

(6) "Department" means the Housing and Community Services Department of the State of Oregon.

(7) "Director" means the Director of the Department of Housing and Community Services.

(8) "Disabled" means a physical or mental impairment as outlined in Section 504 of the Rehabilitation Act of 1973, as amended.

(9) "DOE" means the state Department of Energy.

(10) "ECHO" means Energy Conservation Helping Oregonians, enacted by the 1999-2001 Oregon Legislature.

(11) "Elderly" means those Persons 60 years of age and over as applied to the Low Income Weatherization Assistance Program.

(12) "Household" means any individual or group of individuals who are living together as one economic unit and purchase residential energy in common.

(13) "Housing Division" means the roles and duties of the Housing Finance Section, Housing Resources Section, Single-Family Finance Section and Department architects.

(14) "Income" means the total Household receipts before taxes from all sources. Income may be reduced by deductions allowed by the Department. Income does not mean assets or funds over which the applicant has no control.

(15) "LIEAP" is Oregon's Low Income Energy Assistance Program funded through the U.S. Department of Health and Human Services (HHS). Federally it is identified as LIHEAP, which refers to the Low Income Home Energy Assistance Program.

(16) "Low-Income" for the purposes of this Rule, means a household or person whose annual gross annual income is at or below 60 percent of an area's median income.

(17) "Low-Income Weatherization Assistance Program" means an energy efficiency update-program available to households whose total household income is at or below 60% of statewide median income. Energy efficient improvements may include shell measures, base-load, health & safety, minor repair and education.

(18) "Low-Income Weatherization Program" means funding program administered by the Housing Finance and Housing Resources Sections awarded to projects for weatherization and energy conservation activities in new construction or rehabilitation of low-income affordable rental housing projects as further described in OAR 813-205-0090 through 813-205-0140.

(19) "Multi-Family Building" means any residential building containing five (5) or more separate living quarters. This applies to Low-Income Weatherization Assistance and CRD only.

(20) "ODOE" means Oregon Department of Energy.

(21) "Oregon State Plan" means the U.S. Department of Energy (DOE) State Plan and/or the U.S. HHS Low-Income Energy Assistance Program (LIEAP) State Plan.

(22) "PVE" means Petroleum Violation Escrow Fund, a funding source resulting from the U.S. Court's decision on oil company overcharges, used in low-income weatherization projects throughout the State of Oregon, based on available funding.

(23) "Recipient" means successful applicant awarded project funding via a CFC funding cycle.

(24) "Special Population Agency" means an organization formed to serve the unique needs of an identified segment of the population.

ADMINISTRATIVE RULES

(25) "Sponsor" means principle lead recipient, for affordable housing, on behalf of a non-profit or for profit entity applying for project funding for new construction or rehabilitation of existing projects in need of funding.

(26) "State Housing Council" means an OHCS policymaking board, appointed by the Governor of the State of Oregon.

(27) "Statewide Median Income" means the "median" family income in the state determined by the Department. In determining median family income in the state, the Department may, in its discretion, use the official standard established by the U.S. Department of HHS or the U.S. Department of Housing and Urban Development, adjusted for family size.

(28) "Subgrantee Agency" means a local agency or organization with whom the Department has contracted to administer Program activities and services at the local level.

(29) "T&TA Activities" means training and technical assistance activities designed to maximize energy savings, minimize production costs, improve program management, and/or reduce the potential for waste, fraud and abuse.

Stat Auth.: ORS 458.505 - 458.545

Stats. Implemented: ORS 458.505 - 458.515

Hist.: OHCS 9-2002(Temp), f. & cert. ef. 6-19-02 thru 12-15-02; OHCS 19-2002, f. & cert. ef. 12-13-02; OHCS 13-2006(Temp), f. & cert. ef. 8-4-06 thru 1-30-07; OHCS 6-2007, f. & cert. ef. 1-11-07

813-205-0020

Program Administration, Low-Income Weatherization Assistance Program

(1) The Department has been designated by the Governor of the State of Oregon as the state agency that shall have responsibility to apply for, receive and administer federal funds available from the U.S. Department of Energy under the Energy Conservation in Existing Building Act of 1976. The Program's objective is to provide weatherization assistance for lower-income households, with priority given to the elderly, those with disabilities and households with children under six years of age.

(2) The Department receives funding for the Program from a number of sources in addition to the DOE. These include the Low-Income Energy Assistance Act (LIEAP), the Bonneville Power Administration (BPA), Petroleum Violation Escrow (PVE) funds and Energy Conservation Helping Oregonians (ECHO) as established through SB1149 during the 1999-2001 legislative biennium.

(3) The Department intends to utilize the existing network of service-provider agencies to administer Program services and activities at the local level.

(a) For the purpose of the Program, these agencies, which include Community Action Agencies, Limited Purpose Organizations, Area Agencies on Aging and Special Population Organizations, shall be identified as Subgrantee Agencies.

(b) In order to be eligible to administer the Program at the local level, a Subgrantee Agency shall have an approved Refunding Application and/or Biennium Grant Application on file with the Department. A Subgrantee Agency may contract with another organization to provide a Program service or activity in the Subgrantee Agency's service area.

(c) Each Subgrantee Agency shall follow the procedures outlined in the Oregon State Plan unless specific rules exist related to a particular grant that over rides the Oregon State Plan. These procedures include identifying potential applicants, certifying eligibility and providing weatherization services to eligible dwelling units within its geographic service area.

(d) The Department shall fund only one Subgrantee Agency within any geographical area.

(A) The Department may make an exception to this policy for a Special Population Organization.

(B)(i) If the Department makes an exception for a Special Population Organization and allows two Subgrantee Agencies to operate within a common geographical area, a Memorandum of Agreement shall first be negotiated to insure full access to the Program for all persons within the geographical area to prevent duplication of services.

(ii) The Department shall conduct a periodic evaluation of each Subgrantee Agency's Program performance. Factors that may be considered in this evaluation include, but are not limited to, the level of service provided, ease of access to applicants, error rate, and compatibility with other community service programs.

(iii) If an agency is deemed to be deficient and the Department is not assured of improvement in its performance, the Department may contract with another Subgrantee Agency for future Program operation.

Stat Auth.: ORS 456.515 - 456.725, 458.505 - 458.545

Stats. Implemented: ORS 458.505 - 458.515

Hist.: OHCS 9-2002(Temp), f. & cert. ef. 6-19-02 thru 12-15-02; OHCS 19-2002, f. & cert. ef. 12-13-02; OHCS 13-2006(Temp), f. & cert. ef. 8-4-06 thru 1-30-07; OHCS 6-2007, f. & cert. ef. 1-11-07

813-205-0030

Eligible Applicants, Low-Income Weatherization Assistance Program

To be eligible to receive assistance under the Program, a Household shall meet the requirements outlined in the Oregon State Plan, which shall include, but is not limited to:

(1) Income guidelines for the Program, as follows:

(a) A Household whose Income is at or below 60 percent of Statewide Median Income is eligible to participate in the Program.

(b) A Household who has a member receiving Supplemental Security Income (SSI) is eligible regardless of income.

(c) The period for determining eligibility shall not be more than the past 12 months from the date of application or less than the past 30 days from the date of application.

(d) A Person or Household who has applied for and been found eligible for the Low Income Home Energy Assistance Program (LIHEAP) shall be considered eligible for assistance under the Low-Income Weatherization Program. A LIHEAP income certification shall serve as evidence of income eligibility.

(2) Both renters and homeowners shall be eligible and those Households in similar circumstances shall receive similar benefits.

(3) A Person shall on the grounds of race, color, national origin or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any activity funded in whole or in part with funds made available from the Program.

(b) A Subgrantee Agency shall provide assurances to the Department that it complies with any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 or with respect to an otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973.

(4) Each Subgrantee Agency shall establish a waiting list to receive weatherization services.

(a) The Subgrantee Agency shall identify criteria for determining applicant priority on the waiting list. Priority shall be given to those who are:

(A) Elderly;

(B) Disabled; and

(C) Households with children under six (6) years of age.

(b) Additional applicant priority criteria may be developed and may include, but is not limited to, those that encourage leveraging additional resources or the potential for energy savings.

(c) The criteria must be in writing and on file with the Subgrantee Agency and included in the CRD Plan.

(d) The priority criteria must be used consistently for all applicants unless the Subgrantee Agency is involved in a Department-sanctioned special project.

Stat Auth.: ORS 458.505 - 458.545

Stats. Implemented: ORS 458.505 - 458.515

Hist.: OHCS 9-2002(Temp), f. & cert. ef. 6-19-02 thru 12-15-02; OHCS 19-2002, f. & cert. ef. 12-13-02; OHCS 13-2006(Temp), f. & cert. ef. 8-4-06 thru 1-30-07; OHCS 6-2007, f. & cert. ef. 1-11-07

813-205-0040

Eligible Activities, Low-Income Weatherization Assistance Program

(1) Under the Low Income Weatherization Program, a Subgrantee Agency may provide one or more of the following services to an eligible applicant:

(a) General weatherization measures, that include, but are not limited to, general heat waste, insulation, heating system repair and replacement, health and safety inspections and improvements, baseload measures, and Client Energy Education.

(b) Repair measures, which are measures necessary for the effective energy savings performance or preservation of weatherization materials.

(2) The Department shall allocate up to five (5) percent of the Program's funds (unless specified by the Grantor) for T&TA Activities intended to maintain or increase the efficiency, quality and effectiveness of the Program at all levels.

(3) Department staff shall provide technical assistance to a Subgrantee Agency on a variety of issues designed to assist a Subgrantee Agency to improve its management of Program activities and increase the effectiveness of its customer service efforts.

(4) The property owner may sell multifamily Business Energy Tax Credits generated through the weatherization of investment property or assign said tax credits to the subgrantee providing weatherization services.

(5)(a) Buildings (five or more units in one building) and mobile home parks (three or more mobile homes that pay space rent on a single parcel of land) can be weatherized if 66.2/3% of the units are occupied by income eligible households.

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(b) Prior to weatherizing a Mobile Home Park, subgrantees must submit a work plan to the Department and have the work plan approved.

(6) Multifamily buildings and Mobile Home Park where the owner pays 25% or more of the total cost of weatherization may qualify buildings where 50% of the occupants meet income eligibility guidelines.

Stat Auth.: ORS 456.515 - 456.725, 458.505 - 458.545
Stats. Implemented: ORS 458.505 - 458.515
Hist.: OHCS 9-2002(Temp), f. & cert. ef. 6-19-02 thru 12-15-02; OHCS 19-2002, f. & cert. ef. 12-13-02; OHCS 13-2006(Temp), f. & cert. ef. 8-4-06 thru 1-30-07; OHCS 6-2007, f. & cert. ef. 1-11-07

813-205-0050

Fund Uses (Federal), Low-Income Weatherization Assistance Program

The Department shall allocate funds received under the Program(s) through an allocation formula.

(1) The Department may set aside up to ten percent of the Program's funds for farmworkers. A Subgrantee Agency may receive an allocation based on the percent of farmworker population measured in the state as a whole.

(2) The Department may set aside up to three percent of the Program's funds for Native American populations:

(a) The Department may provide direct funding to Native American Tribes; or

(b) The Department may allocate funds to a Subgrantee Agency with recognized Native American populations.

(3) Funds remaining after administrative, T&TA and set-aside monies have been removed shall be allocated to Subgrantee Agencies using an allocation formula, outlined in the Oregon State Plan, based on percent of poverty low-income households in a service area and heating degree days.

(4)(a) No DOE funds shall be expended for the items or services not listed or do not comply with the standards in 10 CFR part 440.21. The Department may move grant funds from Subgrantee Agencies who are having difficulty spending in a timely manner to Subgrantees who have spent out their funds prior to the end of the grant period.

(b) At least once a year the Department will review the spending patterns of Subgrantee Agencies for the purpose of reallocating funds.

(5) Lead Safe Work Practices shall be practiced on all dwellings constructed prior to 1978 unless it can be proven that a lead hazard does not exist.

Stat Auth.: ORS 456.515 - 456.725, 458.505 - 458.545
Stats. Implemented: ORS 458.505 - 458.515
Hist.: OHCS 9-2002(Temp), f. & cert. ef. 6-19-02 thru 12-15-02; OHCS 19-2002, f. & cert. ef. 12-13-02; OHCS 13-2006(Temp), f. & cert. ef. 8-4-06 thru 1-30-07; OHCS 6-2007, f. & cert. ef. 1-11-07

813-205-0051

Fund Uses (ECHO), Low-Income Weatherization Assistance Program

The Department shall allocate funds received under public purposes.

(1)(a) Allocation shall be based on the number of residential meters of a participating utility within the service territory of a weatherization subgrantee as a percentage of that utility's total residential meters statewide.

(b) Once a year on July 1st the Department will contact each utility and request a residential meter count by county. This information will be used to adjust allocations to participating weatherization agencies.

(2)(a) Households must receive electric service from Pacific Power or Portland General Electric.

(b) Only households that use hard wired electrical systems as their primary heat source are eligible to receive weatherization, baseload and educational services. Households that heat with other fuels may receive baseload measures and energy-education services only.

(3) No Bonneville Power Administration (BPA) funds shall be used in conjunction with ECHO funds.

(4)(a) The Department shall work with Subgrantee Agencies to reallocate funds from agencies unable to spend out within the allotted grant period to agencies who have spent out early.

(b) At least once a year the Department will review the spending patterns of Subgrantee Agencies for the purpose of reallocating funds.

(5) The Department may reallocate funds to programs outside the existing services network (Subgrantee Agencies) for special projects and pilots once all Subgrantee Agencies funding needs have been met.

(6) Lead Safe Work Practices shall be practiced on all dwellings constructed prior to 1978 unless it can be proven that a lead hazard does not exist.

(7)(a) Subgrantees shall follow the approved ECHO Low Income Weatherization Guidelines when delivering ECHO services.

(b) The ECHO Low Income Weatherization Guidelines shall be reviewed yearly. Any changes must be reviewed by the Advisory Committee on Energy (ACE).

Stat Auth.: ORS 456.515 - 456.725, 458.505 - 458.545
Stats. Implemented: ORS 458.505 - 458.515
Hist.: OHCS 19-2002, f. & cert. ef. 12-13-02; OHCS 13-2006(Temp), f. & cert. ef. 8-4-06 thru 1-30-07; OHCS 6-2007, f. & cert. ef. 1-11-07

813-205-0052

Fund Uses (Other), Low Income Weatherization Assistance Program

The Department shall allocate funds received as a result of legal settlement or other actions to improve and address the energy needs of low-income households.

Stat Auth.: ORS 456.515 - 456.725, 458.505 - 458.545
Stats. Implemented: ORS 458.505 - 458.515
Hist.: OHCS 13-2006(Temp), f. & cert. ef. 8-4-06 thru 1-30-07; OHCS 6-2007, f. & cert. ef. 1-11-07

813-205-0060

Authorizations, Low-Income Weatherization Assistance Program

(1) Prior to weatherizing residential units, the owner or authorized agent shall give written permission for the weatherization assistance. Such written authorization must include:

(a) Location of dwelling (physical street address);

(b) Name of eligible tenant, if applicable; and

(c) Specific work to be done.

(2) If the dwelling to be weatherized is a rental unit, the Subgrantee Agency has the responsibility to:

(a) Insure that no rental dwelling unit shall be weatherized without first obtaining the written permission of the owner or the owner's authorized agent;

(b) Establish procedures to be approved by the Department to insure that:

(A) The benefits of weatherization assistance shall accrue primarily to the low-income residents;

(B) Rents shall not be raised as a result of the weatherization assistance;

(C) No undue or excessive enhancement shall occur to the value of the dwelling unit(s). If a dwelling is sold within one year after being weatherized, the subgrantee may require the seller to reimburse the subgrantee agency for actual cost of weatherization on a prorated basis determined based on the energy cost buyback of measures; and

(D) Weatherization services shall not be provided to eligible clients who pay their energy cost as part of their rent, unless the landlord agrees to make reductions in rent to reflect the reductions in fuel costs associated with the weatherization activities, or there are health or safety reasons which justify weatherization.

Stat Auth.: ORS 456.515 - 456.725, 458.505 - 458.545
Stats. Implemented: ORS 458.505 - 458.515
Hist.: OHCS 9-2002(Temp), f. & cert. ef. 6-19-02 thru 12-15-02; OHCS 13-2006(Temp), f. & cert. ef. 8-4-06 thru 1-30-07; OHCS 6-2007, f. & cert. ef. 1-11-07

813-205-0070

Fiscal Control/Reporting Requirements/Documentation, Low-Income Weatherization Assistance Program

A Subgrantee Agency has a number of responsibilities under the Program. These responsibilities, which are detailed in the Oregon State Plan and the CRD Plan (Refunding Application/Biennium Grant Application) include, but are not limited to, the following:

(1) A Subgrantee Agency shall maintain records that document the receipt and dispersal of all funds provided through the Program.

(2) A Subgrantee Agency shall maintain records that document the clients receiving services through the Program. Such records shall be in a format designated by the Department.

(3) A Subgrantee Agency shall have in place an inventory control system, travel regulations and a financial operations manual.

(4) A Subgrantee Agency shall receive authorization from the Department for purchases or lease of acquisitions in excess of \$5,000 or the purchase of a vehicle regardless of cost with grant funds.

(5) A Subgrantee Agency shall, within 15 working days following the end of each calendar quarter, provide the Department with a report detailing the progress made toward the Program objective(s), and all administrative and Program expenditures. Such reports shall be in a format designated by the Department.

(6) A Subgrantee Agency shall, within 90 days after the close of the agency's fiscal year, provide the Department with an annual audit of weatherization funds. The audit shall be conducted by a Certified Public Accountant.

Stat Auth.: ORS 456.515 - 456.725, 458.505 - 458.545

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Stats. Implemented: ORS 458.505 - 458.515
Hist.: OHCS 9-2002(Temp), f. & cert. ef. 6-19-02 thru 12-15-02; OHCS 19-2002, f. & cert. ef. 12-13-02; OHCS 13-2006(Temp), f. & cert. ef. 8-4-06 thru 1-30-07; OHCS 6-2007, f. & cert. ef. 1-11-07

813-205-0080

Monitoring, Low-Income Weatherization Assistance Program

(1) The Department shall monitor the Subgrantee Agency's annual audit to verify information received on the quarterly reports and clarify questions raised by the Department, the Subgrantee Agency or the auditor.

(2) The Department shall monitor all quarterly reports to determine compliance with program requirements, monitor spending patterns and chart program progresses. Any irregularities or questions raised by the in-house review shall be sufficient reason to schedule an on-site review.

(3) The Department may conduct an on-site review of a Subgrantee Agency on an annual basis and when required in 813-205-0080(2). During an on-site review, the following, at a minimum, shall be reviewed:

- (a) Financial records;
- (b) Inventory system;
- (c) Client files;
- (d) Work completed;
- (e) Subgrantee Agency post-installation inspection;
- (f) Subgrantee Agency review; and
- (g) Provide training and technical assistance.

Stat Auth.: ORS 456.515 - 456.725, 458.505 - 458.545

Stats. Implemented: ORS 458.505 - 458.515

Hist.: OHCS 9-2002(Temp), f. & cert. ef. 6-19-02 thru 12-15-02; OHCS 13-2006(Temp), f. & cert. ef. 8-4-06 thru 1-30-07; OHCS 6-2007, f. & cert. ef. 1-11-07

813-205-0085

Program Administration, Low-Income Weatherization Program

The Department has been designated by ORS 757.612 to have the responsibility to administer the Low-Income Weatherization Program through the activities of the Housing Division. The funds are available for low-income, affordable rental housing development.

Stat Auth.: ORS 456.515 - 456.725, 458.505 - 458.545

Stats. Implemented: ORS 458.505 - 458.515

Hist.: OHCS 13-2006(Temp), f. & cert. ef. 8-4-06 thru 1-30-07; OHCS 6-2007, f. & cert. ef. 1-11-07

813-205-0100

Eligible Applicants, Low-Income Weatherization Program

(1) Eligible applicants include for-profit businesses, local government entities and not-for-profit organizations including, but not limited to, cities, counties, housing authorities, not-for-profit community organizations, regional or statewide not-for-profit entities and private individuals or corporations.

(2) The sponsor must agree to enter into a financial assistance agreement with the Department and to record against the project's property a restrictive covenant to assure continuing compliance with all affordability requirements of the Program.

(3) The Department may require a non-refundable application charge from any applicant requesting Low-Income Weatherization Assistance funds through the Consolidated Funding Cycle or otherwise.

(4) The Department may require a supplemental application charge from applicants requesting additional resources for projects that have already been funded by the Department.

(5) The Department may require a transfer application charge from owners of projects that receive grants or tax credits through the Department, who request the Department's approval of a change in project ownership. The Department may assess a transfer review charge to project owners and transferees who effect a change in project ownership without prior written Department approval.

Stat Auth.: ORS 456.515 - 456.725, 458.505 - 458.545

Stats. Implemented: ORS 458.505 - 458.515

Hist.: OHCS 13-2006(Temp), f. & cert. ef. 8-4-06 thru 1-30-07; OHCS 6-2007, f. & cert. ef. 1-11-07

813-205-0110

Eligible Projects, Low-Income Weatherization Program

The following requirements, as well as the requirements of the Department's bond programs, the Consolidated Funding Cycle (CFC) process and other application processes and charges apply to all projects:

(1) ECHO funding is limited to projects located in the PacifiCorp (PC) and Portland General Electric (PGE) service areas. Projects that use hard wired electrical systems as their primary heat source are eligible to receive ECHO resources for weatherization, and baseload services. Projects in PC and PGE service areas that heat with other fuels may receive baseload measures only.

(2) The Department will accept applications for weatherization funding for projects located outside PC and PGE service areas, only when other than PC and PGE funds are available.

(3) New construction projects which specify higher than code minimums on insulation, windows, appliances and lighting are eligible.

(4) Acquisition/rehabilitation projects that specify upgrades from original levels of insulation, windows, appliances and lighting are eligible.

(5) This program is targeted for households that are low-income. At least one-half of the units in the project must be rented to households whose income is at or below 60 percent of the area median income as defined by the U.S. Department of Housing and Urban Development (HUD).

(6) The project must remain affordable for a minimum of 10 years, unless superceded by other department resources requirements.

(7) Applicants may be subject to prevailing wage requirements with the use of public funds such as the Low-Income Weatherization Program. Applicants should contact the Bureau of Labor and Industries for the requirements of the state program or their legal representative.

Stat Auth.: ORS 456.515 - 456.725, 458.505 - 458.545

Stats. Implemented: ORS 458.505 - 458.515

Hist.: OHCS 13-2006(Temp), f. & cert. ef. 8-4-06 thru 1-30-07; OHCS 6-2007, f. & cert. ef. 1-11-07

813-205-0120

Eligible Activities, Low-Income Weatherization Program

(1) Under the Low-Income Weatherization Program, an eligible applicant may provide one or more of the following services and/or applications:

(a) General weatherization measures, which include but are not limited to, general heat waste, insulation, heating/cooling system repair, replacement or installation, health and safety improvements, baseload measures, alternative energy applications, and various energy efficient technology.

(b) Repair measures, which are measures deemed necessary for the effective energy savings performance or preservation of energy efficient applications can be utilized.

(2) Eligible activities must demonstrate measurable cost-effective energy conservation. Energy-efficient applications for the Program must show first year savings based on a pre-determined number of kilowatts, therms or other units of power measurements for each conservation dollar invested.

Stat Auth.: ORS 456.515 - 456.725, 458.505 - 458.545

Stats. Implemented: ORS 458.505 - 458.515

Hist.: OHCS 13-2006(Temp), f. & cert. ef. 8-4-06 thru 1-30-07; OHCS 6-2007, f. & cert. ef. 1-11-07

813-205-0130

Fund Uses, Low-Income Weatherization Program

(1) Funds are awarded as a grant or a loan, if requested by the applicant (sponsor).

(2) Grants and loans in excess of \$100,000 may be awarded:

(a) On an as needed basis and when maximum power savings can be demonstrated;

(b) If adequate resources are available; and

(c) With State Housing Council approval.

(3) Up to ten percent of the ECHO funds and the Low-Income Weatherization Program award(s) for each project can be used to make general repairs as noted in 813-205-0130(2)(b).

Stat Auth.: ORS 456.515 - 456.725, 458.505 - 458.545

Stats. Implemented: ORS 458.505 - 458.515

Hist.: OHCS 13-2006(Temp), f. & cert. ef. 8-4-06 thru 1-30-07; OHCS 6-2007, f. & cert. ef. 1-11-07

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Rule Caption: Provides grants and loans to construct new, acquire or rehabilitate existing structures for low-income housing.

Adm. Order No.: OHCS 7-2007

Filed with Sec. of State: 1-11-2007

Certified to be Effective: 1-11-07

Notice Publication Date: 12-1-06

Rules Adopted: 813-042-0000, 813-042-0010, 813-042-0020, 813-042-0030, 813-042-0040, 813-042-0050, 813-042-0060, 813-042-0070, 813-042-0080, 813-042-0090, 813-042-0100, 813-042-0110

Rules Repealed: 813-042-0000(T), 813-042-0010(T), 813-042-0020(T), 813-042-0030(T), 813-042-0040(T), 813-042-0050(T), 813-042-0060(T), 813-042-0070(T), 813-042-0080(T), 813-042-0090(T), 813-042-0100(T), 813-042-0110(T)

Subject: The rules within 813-042 are established to administer ORS 456.515 to 456.720 and ORS 458.600 to 458.630. These rules

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describe the Housing Development Grant Program and serves the objective to provide grants and/or low-interest loans to construct new housing or acquire and/or rehabilitate existing structures for housing persons of low and/or very-low income.

813-042-0000 sets out the purpose and the objectives for the Housing Development Grant Program.

813-042-0010 provides clarification of common terms and definitions within the program.

813-042-0020 defines eligibility criteria for organizations, non-profit and/or for profit businesses to participate in the program

813-042-0030 sets out the distribution formula for grants and/or loans. Clarifies regions in the state.

813-042-0040 identifies the application procedures and requirements as it pertains to the availability of funds.

813-042-0050 identifies the criteria for funding applications.

813-042-0060 sets out the application review process for applications requesting funding under \$100,000, and for those applications requesting funding for amounts over \$100,000. Identifies the specific evaluation criteria.

813-042-0070 sets out the applicable charges that the department may require for applicants to the program.

813-042-0080 identifies the general administrative and monitoring requirements, such as reviews or field inspections to ensure program

compliance. Requires an HDGA recipient to retain all financial records, supporting documents and other pertinent records for five years after the project is complete, or after any litigation claim is resolved. Requires accessibility by the department to all books, accounts, documents, records, and other property belonging to the recipient which relate to the use of HDGA funds.

813-042-0090 clarifies the remedies and provides examples of reasons indicating noncompliance. Allows the department to seek remedies for noncompliance.

813-042-0100 identifies the sanctions that the department may invoke against a recipient that fails to comply with the provisions of a Use Agreement.

813-042-0110 adds waiver language already provided for within statute.

Rules Coordinator: Sandy McDonnell—(503) 986-2012

813-042-0000

Purpose and Objectives

The rules of OAR chapter 813, division 042, are established to administer ORS 456.515 to 456.720 and 458.600 to 458.630, which authorize the Department to establish a program to expand the state's supply of housing for low- and very-low-income families and individuals including, but not limited to, persons more than 65 years of age, disabled persons, farmworkers and Native Americans. These rules describe the Housing Development Grant Program and its objective to provide grants and/or low-interest loans to construct new housing or to acquire and/or rehabilitate existing structures for housing persons of low and/or very-low income.

Stat. Auth.: ORS 456.515 – 456.720, 458.600 – 458.630

Stats. Implemented: ORS 456.555

Hist.: OHCS 14-2006(Temp), f. & cert. ef. 8-4-06; OHCS 7-2007, f. & cert. ef. 1-11-07

813-042-0010

Definitions

All terms are used in OAR 813, division 042, as defined in the Act and as provided in OAR 813-005-0005 and herein. As used in these rules, unless the context indicates otherwise:

(1) "Account" means the Housing Development and Guarantee Account.

(2) "Consolidated Plan" means the plan approved by the U.S. Department of Housing and Urban Development (HUD) which describes the needs, resources, priorities and proposed activities to be undertaken with respect to HUD programs.

(3) "Council" means the State Housing Council established in ORS 456.567.

(4) "Department" means Oregon Housing and Community Services Department.

(5) "Disabled Person" means a person who has a physical or mental impairment that substantially limits one or more Major Life Activity.

(6) "In-Kind Contribution" means a supportive project contribution other than cash. In-Kind Contributions include, but are not limited to, office equipment, working space, office supplies, staff time, telephone, support staff time, auto use, donated project materials or labor, and nonBoard volunteer time.

(7) "Affordability Period" means the period during which a project assisted with HDGP funds must remain affordable to Low and Very Low Income residents. The period shall be at least 25 years from the date of the Project Use Agreement.

(8) "Low-Income" means a household with an adjusted annual household income that is more than 50 percent but less than 80 percent of the area median income, as determined by the Council, based on information from the U.S. Department of Housing and Urban Development, with allowances for family size.

(9) "Major Life Activity" includes, but is not limited to, self-care, ambulation, communication, transportation, education, socialization, employment and ability to acquire, rent or maintain property.

(10) "Organization" means a:

(a) Nonprofit corporation established under ORS chapter 65;

(b) Housing authority established under ORS 456.055 to 456.230; or

(c) Local government as defined in ORS 197.015.

(11) "Use Agreement" means the Project Use Agreement, which is a legal agreement between the grantee or borrower receiving Housing Development Grant Program funds and the Department.

(12) "Very-Low Income" means a household with an adjusted annual household income that is less than 50 percent of the area median income, as determined by the Council, based on information from the U.S. Department of Housing and Urban Development (HUD), with allowances for family size.

Stat. Auth.: ORS 456.515 – 456.720, 458.600 – 458.630

Stats. Implemented: ORS 456.555

Hist.: OHCS 14-2006(Temp), f. & cert. ef. 8-4-06; OHCS 7-2007, f. & cert. ef. 1-11-07

813-042-0020

Eligibility for Housing Development Grant Program Funds

The Department shall provide grants and/or loans from Account revenue subject to the availability of funds and limitations otherwise prescribed by law for any or all of the following purposes:

(1) To organizations and for-profit business entities to construct new housing or to acquire and/or rehabilitate existing structures for housing low- and/or very-low income households.

(2) To nonprofit organizations, as set forth in ORS 458.210 to 458.240 to provide technical assistance and/or predevelopment costs. Predevelopment costs include, but are not limited to, site acquisition, architectural services and project consultants. Predevelopment costs do not include costs described in subsection (3) of this rule.

(3) For costs to develop, nonprofit organizations that show sufficient evidence of having strong community support and a strong likelihood of producing low- and very-low income housing. No account funds shall be used by an organization for its general operations.

(4) To match public and private moneys available from other sources for the purposes of production of low- and very-low income housing.

Stat. Auth.: ORS 456.515 – 456.720

Stats. Implemented: ORS 456.555

Hist.: OHCS 14-2006(Temp), f. & cert. ef. 8-4-06; OHCS 7-2007, f. & cert. ef. 1-11-07

813-042-0030

Distribution of Funds

(1) The Department shall develop a distribution formula which takes into account the relative housing needs of regions in the state, and shall concentrate funds in those areas of the state with the greatest need for low- and very-low income housing as may be evidenced by factors including, but not limited to, the unmet housing need, extent of overcrowding or number of poverty households.

(2) The distribution formula shall provide for a minimum amount of funds to regions of the state. If there are not enough applications submitted from a particular region to use the minimum regional amount, the funds may be distributed to other regions.

(3) The maximum project award to an organization or for-profit business from the program shall be \$300,000.

Stat. Auth.: ORS 456.515 – 456.720, 458.600 – 458.630

Stats. Implemented: ORS 456.555

Hist.: OHCS 14-2006(Temp), f. & cert. ef. 8-4-06; OHCS 7-2007, f. & cert. ef. 1-11-07

813-042-0040

Application Procedure and Requirements

The Department may provide grant and/or loan funds subject to the availability of funds in the Program through a process which may include,

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but is not limited to, a first-come, first-reviewed or a competitive review process. The applicant shall submit, in an application form and process prescribed by the Department, project information which includes:

(1) A written description of the project including the number of units, unit mix, proposed rents, site location, the proposed program of services to occupants, project amenities, and any other information pertinent to the project;

(2) A statement of project purpose indicating the housing type and residents to be housed, and the length of time the units will be committed available for low- or very-low income households.

(3) A pro forma of project expenses and income;

(4) Requested amount of grant funds, or requested amount of loan funds including proposed terms of repayment.

(5) Total project development costs, including a description of all additional project funding and funding sources;

(6) A description of the sponsor/developer/owner/manager experience in developing and operating housing projects; and

(7) Such other documentation as the Department may require.

Stat. Auth.: ORS 456.515 – 456.720, 458.600 – 458.630

Stats. Implemented: ORS 456.555

Hist.: OHCS 14-2006(Temp), f. & cert. ef. 8-4-06; OHCS 7-2007, f. & cert. ef. 1-11-07

813-042-0050

Criteria for Funding

(1) A project grant and/or loan shall be given preference based on:

(a) Providing the greatest number of low- and very-low income housing units for the least amount of Account funds expended or committed toward matching fund from other loans, grants or eligible In-Kind Contributions.

(b) Insuring the longest possible use as low- or very-low income housing units;

(c) Including a program of services for residents of proposed housing including, but not limited to, programs that address home health care, mental health services, alcohol and drug treatment and post-treatment care, child care and case management; and

(d) Other subordinate criteria as determined by the Department including, but not limited to, providing housing for specific populations which have historically faced barriers in finding housing, and which are identified as having a priority in the Consolidated Plan or its successor, or in a state-acknowledged initiative.

(2) Funding to a project shall be conditioned upon the continued use of the project for the targeted tenant group and provision of supportive services for the duration and to the extent indicated in the grant and/or loan application. The Department, at its discretion, may require repayment of the funding if all or part of the commitments to residents, supportive services, or period of use for low- or very-low income housing are withdrawn from the project.

(3) Terms and conditions of the award shall be established in a Project Use Agreement, remain affordable to low and very low income residents during the Affordability Period and be recorded against the property. Loan terms and conditions shall be established in an additional Promissory Note, Loan Agreement and secured by a Trust Deed.

(a) The Use Agreement, Trust Deed, Loan Agreement and Promissory Note must be executed and the Use Agreement with the Trust Deed must be recorded before funds are advanced, in whole or in part, unless the Applicant does not own the property at the time of fund disbursement.

(b) If the applicant does not own the property at the time of fund disbursement, the Applicant will be required to open an escrow account and have the Use Agreement with Trust Deed placed in escrow and recorded immediately upon obtaining title to the property.

(4) Loans disbursed from account investment revenue shall bear an interest rate equal to the interest rate paid on U.S. Treasury long-term obligations in effect on the date the loan is negotiated as identified by the Department.

(5) At least 75 percent of the revenue earned from investment of the principal in the Account in any calendar year shall be used to produce housing for very-low income persons, and no more than 25 percent of the revenue earned from investment of the principal in any calendar year shall be used to produce housing for low-income households.

Stat. Auth.: ORS 456.515 – 456.720, 458.600 – 458.630

Stats. Implemented: ORS 456.555

Hist.: OHCS 14-2006(Temp), f. & cert. ef. 8-4-06; OHCS 7-2007, f. & cert. ef. 1-11-07

813-042-0060

Application Review

(1) For applications where the amount requested from the Program does not exceed \$100,000, the Department shall consider the application

and make application approval, deny application approval, or request additional information within the timeframe set forth in the application materials.

(2) For applications where the amount requested is in excess of \$100,000, or for requests or applications that would result in a cumulative award of more than \$100,000 to a project, the Department shall consider the proposal and approve, disapprove or request additional information within the timeframe set forth in the application materials. If the Department proposes to award more than \$100,000 to a project, it shall submit the proposal to the State Housing Council for review. The Council shall approve or disapprove the application at a public hearing of the Council, pursuant to ORS 456.571(2).

(3) In reviewing applications for assistance, the Department and the Council, as appropriate, may consider, in addition to any special evaluation criteria, the following:

(a) Amount of available funds in the Program;

(b) Ability of the proposed project to meet proposed terms of loan repayment in cases where the awardee has requested funding as a loan;

(c) Availability of other sources of assistance; and

(d) Applicant's efforts to leverage public or private funds.

(4) The Department shall select those applications which, in the judgment of the Department, best achieve the purposes of the Program and any evaluation criteria outlined in the Program application forms and handbooks.

Stat. Auth.: ORS 456.515 – 456.720, 458.600 – 458.630

Stats. Implemented: ORS 456.555

Hist.: OHCS 14-2006(Temp), f. & cert. ef. 8-4-06; OHCS 7-2007, f. & cert. ef. 1-11-07

813-042-0070

Charges

(1) The Department may require a non-refundable application charge from any applicant requesting Housing Development Guarantee Account funds through the Consolidated Funding Cycle, or otherwise.

(2) The Department may require a supplemental application charge from applicants requesting additional resources for projects that have already been funded by the Department.

(3) The Department may require a transfer application charge from owners of projects that receive grants, loans, or tax credits through the Department, who request the Department's approval of a change in project ownership. The Department may assess a transfer review charge to project owners and transferees who effect a change in project ownership without prior written Department approval.

Stat. Auth.: ORS 456.515 – 456.720, 458.600 – 458.630

Stats. Implemented: ORS 456.555

Hist.: OHCS 14-2006(Temp), f. & cert. ef. 8-4-06; OHCS 7-2007, f. & cert. ef. 1-11-07

813-042-0080

General Administrative and Monitoring Requirements

(1) The Department may perform such reviews or field inspections as it deems necessary to ensure Program compliance. The Department may require that a Recipient take such remedial actions as described in this rule and OAR 813-042-0090.

(2) Financial records, supporting documents, and all other pertinent records shall be retained by a HDGA Recipient for five years after the project is complete, or after any litigation or audit claim is resolved, whichever is later. The Department shall have access to all books, accounts, documents, records and other property belonging to or in use by the Recipient which relate to the use of HDGA funds.

Stat. Auth.: ORS 456.515 – 456.720, 458.600 – 458.630

Stats. Implemented: ORS 456.555

Hist.: OHCS 14-2006(Temp), f. & cert. ef. 8-4-06; OHCS 7-2007, f. & cert. ef. 1-11-07

813-042-0090

Remedies for Noncompliance

At any time before the expiration of the Affordability Period, the Department may find that a Recipient is not in compliance with the requirements of the Program for reasons including but not limited to use of funds for activities not approved in the Use Agreement, failure to complete activities in a timely manner, failure to comply with applicable rules or regulations, or the lack of a continued capacity by the Recipient to carry out the approved activities. Remedies for noncompliance may include penalties imposed by the Department, including but not limited to, repayment of HDGA funds.

Stat. Auth.: ORS 456.515 – 456.720, 458.600 – 458.630

Stats. Implemented: ORS 456.555

Hist.: OHCS 14-2006(Temp), f. & cert. ef. 8-4-06; OHCS 7-2007, f. & cert. ef. 1-11-07

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813-042-0100

Sanctions

(1) The Department may invoke sanctions against a Recipient that fails to comply with the provisions of its Use Agreement. The following circumstances may warrant sanctions:

(a) HDGA funds have not been expended within one year of award by the Department or the Recipient;

(b) Any local or private party funding agreements related to the project are not executed within six months of the award of HDGA funds;

(c) There is a material breach of the Use Agreement;

(d) The Use Agreement was not recorded on the property required by OAR 813-042-0050(3) or as agreed; or

(e) The Department finds that significant corrective actions are necessary to protect the integrity of the project funds, and those corrective actions are not, or will not be, made within a reasonable time (the funds were used for costs not eligible under the HDGA program or the project has not served the population stated in the Use Agreement).

(2) One or more of the following sanctions may be imposed by the Department:

(a) Prohibit a Recipient from applying for future HDGA assistance or other Department assistance;

(b) Revoke an existing HDGA award;

(c) Withhold unexpended HDGA funds;

(d) Require return of HDGA funds that have been disbursed to the Recipient but not expended by the Recipient;

(e) Require repayment of expended HDGA funds; and

(f) Invoke other remedies that may be incorporated into the Use Agreement.

(3) Sanctions will not be imposed by the Department until the Recipient has been notified in writing of its deficiencies and given a reasonable time to respond and correct the deficiencies noted. The sanctions and remedies set forth in this OAR 813-042-0100 are cumulative and not exclusive and are in addition to any other rights and remedies provided by law or under the Use Agreement.

Stat. Auth.: ORS 456.515 – 456.720, 458.600 – 458.630

Stats. Implemented: ORS 456.555

Hist.: OHCS 14-2006(Temp), f. & cert. ef. 8-4-06; OHCS 7-2007, f. & cert. ef. 1-11-07

813-042-0110

Waiver

The Director may waive or modify any requirements of these Program rules, unless such waiver or modification would violate applicable federal or state statutes or regulations.

Stat. Auth.: ORS 456.515 – 456.720

Stats. Implemented: ORS 456.555

Hist.: OHCS 14-2006(Temp), f. & cert. ef. 8-4-06; OHCS 7-2007, f. & cert. ef. 1-11-07

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Rule Caption: Defines charges relative to applicants or recipients of Oregon Affordable Housing Tax Credits.

Adm. Order No.: OHCS 8-2007

Filed with Sec. of State: 1-11-2007

Certified to be Effective: 1-11-07

Notice Publication Date: 12-1-06

Rules Amended: 813-090-0031, 813-090-0035, 813-090-0036, 813-090-0070

Rules Repealed: 813-090-0031(T), 813-090-0035(T), 813-090-0036(T), 813-090-0070(T)

Subject: 813-090-0031 Defines the charges that the department may include as part of the application process for the allocation of Low Income Housing Credits. Reasonable charges may also be charged for monitoring the project owner's compliance with restrictions established by the Department and IRC Section 42 or applicable law.

813-090-0035 Adds that any applicable charges must accompany the submission of an application form to qualify for an allocation of Low Income Housing Credits.

813-090-0036 Defines the procedure for when housing credits cannot be used in the year of allocation. Removes the requirement for the department to refund the reservation fee if the housing credit is used subsequently to meet requests within the credit authority.

813-090-0070(4) Removes that the department may charge the project owner a reasonable fee for the department's costs of monitoring the project owner's compliance.

Rules Coordinator: Sandy McDonnell—(503) 986-2012

813-090-0031

Application Requests and Charges

(1) The Department may solicit applications for an allocation of Housing Credit from interested parties when such credit is available.

(2) The Department may require a non-refundable application charge from any applicant requesting Low Income Housing Tax Credits through the Consolidated Funding Cycle or otherwise.

(3) The Department may require a supplemental application charge from applicants requesting additional resources for projects that have already been funded by the Department.

(4) The Department may require a transfer application charge from owners of projects that receive grants or tax credits through the Department, who request the Department's approval of a change in project ownership. The Department may assess a transfer review charge to project owners and transferees who effect a change in project ownership without prior written Department approval.

(5) The Department may require a reservation charge from any applicant prior to the execution of a Reservation and Extended Use Agreement.

(6) The Department may assess additional late charges to an applicant if its LIHTC final application is received by the Department after established deadlines. The Department also may assess a supplemental charge to an applicant if the Department determines that a re-evaluation of the applicant's final application is necessary or warranted.

(7) If the Housing Credits awarded to a project cannot be used by the end of the calendar year of the tax credit allocation and the owner has expended or incurred 10% of project costs, an application for a Carryover Allocation of Housing Credits must be made by the deadline established by the Department for the credit year or the credits will be lost. The Department may require a supplemental application charge from an applicant who submits a LIHTC carryover application after the deadlines established by the Department. The Department also may assess a supplemental charge to an applicant if the Department determines that a re-evaluation of the applicant's carryover application is necessary or warranted.

(8) The Carryover requirements do not apply to LIHTC projects using tax-exempt bond financing.

(9) The applicant shall submit an Application for final allocation of Housing Credits when the Project is placed in service. The Department shall prescribe the period for submitting a final Application. The Department may assess a late charge for applicants that submit Applications after the prescribed deadline. The Department also may assess a supplemental charge to an applicant if the Department determines that a re-evaluation of the applicant's final application is necessary or warranted.

(10) The Department may charge the Project owner reasonable charges for the Department's costs of monitoring the project owner's compliance with restrictions established by the Department and IRC Section 42 or applicable law.

(11) The Department shall evaluate completed applications based on a ranking system consistent with IRC Section 42(m)(1), established by the Department and set forth in the Department's qualified allocation plan.

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

Stat. Auth.: ORS 456.515 – 456.720

Stats. Implemented: ORS 456.559(1)(f)

Hist. HSG 12-1990(Temp), f. & cert. ef. 5-29-90; HSG 14-1990, f. & cert. ef. 10-26-90; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 7-1991, f. & cert. ef. 12-19-91; OHCS 9-2006(Temp), f. & cert. ef. 8-4-06 thru 1-30-07; OHCS 8-2007, f. & cert. ef. 1-11-07

813-090-0035

Applications for Low-Income Housing Tax Credits

(1) Applicants must submit an application form along with any applicable charges as given in Section 813-090-0031, to qualify for an allocation of Low-Income Housing Credits. The application required by the Department may request, among other information, the following:

(a) The amount of Housing Credit requested;

(b) Building location: state, county, town, street address and legal description;

(c) An initial statement based on waiting list information from the local public housing authority indicating whether or not there is a need for the proposed project;

(d) The qualified basis as defined in IRC Section 42, including the amount of substantial rehabilitation, if any;

(e) What elections under Section 42 the proposed Project owner will be making or has made to qualify for an allocation of Housing Credit, and when the housing units will be/were placed in service;

(f) Complete financial information about the proposed Project showing all sources and uses of funds;

(g) Operating proforma statement on a cash flow basis showing net operating income before debt service;

ADMINISTRATIVE RULES

(h) Evidence of a commitment for financing, federal loan insurance, or other major source of funds;

(i) A detailed summary of the proceeds or receipts expected to be generated by reason of tax benefits; and

(j) Other financial information regarding grants, subsidies, or tax-exempt financing for the proposed Project.

(2) Before the Department makes an offer of a Housing Credit allocation to a proposed Project owner it shall:

(a) Review all applications;

(b) Determine the amount of Housing Credit each proposed Project needs to receive to be financially feasible;

(c) Rank the applications pursuant to the Department's qualified allocation plan and IRC Section 42;

(d) Notify the chief executive officer (or the equivalent) of the local jurisdiction with in which the proposed Project is located and provide such individual a reasonable opportunity to comment on the proposed Project to the Department. When a proposed Project is located outside an incorporated community, the county commissioners for the county of jurisdiction shall be contacted; and

(e) Notify Applicants whether or not they will receive an offer to execute a Reservation and Extended Use Agreement with the Department.

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

Stat. Auth.: ORS 183 & 456.515 - 456.720

Stats. Implemented: ORS 456.559(1)(f)

Hist.: HSG 13-1987(Temp), f. & cert. ef. 9-28-87; HSG 1-1988, f. & cert. ef. 3-8-88; HSG 3-1989(Temp), f. & cert. ef. 6-8-89; HSG 18-1989, f. & cert. ef. 11-3-89; HSG 12-1990(Temp), f. & cert. ef. 5-29-90; HSG 14-1990, f. & cert. ef. 10-26-90; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 7-1991, f. & cert. ef. 12-19-91; OHCS 9-2006(Temp), f. & cert. ef. 8-4-06 thru 1-30-07; OHCS 8-2007, f. & cert. ef. 1-11-07

813-090-0036

Procedures for Allocation of Low-Income Housing Tax Credit

(1) Applicants selected for an offer under OAR 813-090-0035 must execute with the Department a Reservation and Extended Use Agreement in a form satisfactory to the Department. The Reservation and Extended Use Agreement will include, among other things, a provision for financial evaluation of the Project based on cost certification and will incorporate a Declaration of Land Use Restrictive Covenants to be executed and recorded prior to the Department completing a Form 8609 and delivering a copy thereof to the Applicant.

(2) If the Housing Credit cannot be used in the year of allocation but the proposed Project is over 10 percent completed, a Carryover Allocation may be made. If a Carryover Allocation has been made, the owner shall submit the application for final allocation of Housing Credit when the Project is placed in service. The Department shall limit at the time of the extension of a Carryover Allocation, the maximum credit which the proposed project may receive.

(3) Upon receipt of a certified copy of the recorded Declaration of Land Use Restrictive Covenants in a form satisfactory to the Department, the Department shall complete and issue Part I of Internal Revenue Service Form 8609 to confirm final allocation of Housing Credits.

(4) The Project owner shall be responsible for filing the required IRS Form with his or her tax return.

(5) An allocation may not be rescinded or reduced by the Department except as provided under OAR 813-090-0060. Proposed Project owners may return unneeded Housing Credit by completing and filing with the Department, forms supplied by the Department.

Stat. Auth.: ORS 456.515 - 456.720

Stats. Implemented: ORS 456.559(1)(f)

Hist.: HSG 12-1990(Temp), f. & cert. ef. 5-29-90; HSG 14-1990, f. & cert. ef. 10-26-90; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 7-1991, f. & cert. ef. 12-19-91; OHCS 9-2006(Temp), f. & cert. ef. 8-4-06 thru 1-30-07; OHCS 8-2007, f. & cert. ef. 1-11-07

813-090-0070

Monitoring

(1) The Department shall notify the Internal Revenue Services (IRS) in writing of the non-compliance of any Project with the provisions of IRC Section 42 as they may apply to such Project and the Department shall not be liable to the Project or Project owner for any adverse consequences resulting from the Department notifying the IRS.

(2) The Department shall send a copy to the Project owner of any notification of non-compliance sent to the IRS regarding the project.

(3) The Department may require annual reports from the Project owner in order to facilitate the Department's monitoring of Project compliance.

(4) The Declaration of Land Use Restrictive Covenants and Reservation and Extended Use Agreement, of which it is a part, may be enforced by the Department or its designee in the event the Owner fails to satisfy any of the requirements therein.

(5) The Declaration of Land Use Restrictive Covenants shall be deemed a contract enforceable by one or more tenants as third-party beneficiaries of the Declaration of Land Use Restrictive Covenants and Reservation and Extended Use Agreement.

(6) In the event the Project owner fails to satisfy the requirements of the Declaration of Land Use Restrictive Covenants and Reservation and Extended Use Agreement and legal costs are incurred by the Department or one or more tenants or beneficiaries, such legal costs, including legal charges and court costs (including costs of an appeal), are the responsibility of and may be recovered from the project owner.

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

Stat. Auth.: ORS 456.515 - 456.720

Stats. Implemented: ORS 456.559(1)(f)

Hist.: HSG 12-1990(Temp), f. & cert. ef. 5-29-90; HSG 14-1990, f. & cert. ef. 10-26-90; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 7-1991, f. & cert. ef. 12-19-91; OHCS 9-2006(Temp), f. & cert. ef. 8-4-06 thru 1-30-07; OHCS 8-2007, f. & cert. ef. 1-11-07

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Rule Caption: Defines charges relative to applicants or recipients of Oregon Affordable Housing Tax Credits.

Adm. Order No.: OHCS 9-2007

Filed with Sec. of State: 1-11-2007

Certified to be Effective: 1-11-07

Notice Publication Date: 12-1-06

Rules Amended: 813-110-0010, 813-110-0015, 813-110-0030, 813-110-0033, 813-110-0035

Rules Repealed: 813-110-0010(T), 813-110-0015(T), 813-110-0030(T), 813-110-0033(T), 813-110-0035(T)

Subject: 813-110-0010 Provides clarification of common terms and definition within the program. Changes the word 'fee' to more accurately reflect 'charge.'

813-110-0015 Removes references to a \$100 nonrefundable fee to the Department for reviewing the Sponsor's Application.

813-110-0030 Changes the word 'fee' to more accurately reflect the word 'charge.'

813-110-0033 Defines the charges that the department may request as part of the application process for the Oregon Affordable Housing Tax Credit Program.

813-110-0035 Removes references in 813-110-0035(4) to a fee being required as part of the Application process.

Rules Coordinator: Sandy McDonnell—(503) 986-2012

813-110-0010

Definitions

All terms are used in OAR 813, division 110, as defined in the Act, as provided in OAR 813-005-0005 and herein. As used in these rules, unless the context indicates otherwise:

(1) "Application" means a request signed by a Sponsor for Certification of a Project.

(2) "Cap" means the maximum amount of tax credits as set by the Legislature in ORS 317.097(6).

(3) "Certification" means the written verification by the Department to a Lender that a Project is a qualified Project for which the Lending Institution may claim a tax credit under the provisions of the Act.

(4) "Department" means the Oregon Housing and Community Services Department.

(5) "Firm Commitment of Financing" means the Lending Institution's agreement to make a loan to a specific borrower on a specific property and which will contain all of the terms and conditions that the borrower has to satisfy before said loan can be funded. Payment of a commitment charge by the borrower to the Lending Institution may be required as a condition precedent to issuance of such an agreement.

(6) "Housing Payments" as used in the Act means rent or purchase price for a sponsored Project.

(7) "Consolidated Plan" means the plan approved by the US Department of Housing and Urban Development (HUD) which describes the needs, resources, priorities and proposed activities to be undertaken with respect to HUD programs.

(8) "Lending Institution" means any bank, mortgage banking company, federal savings bank, savings bank, stock savings bank, savings and loan association, national bank, credit union or federal savings and loan association maintaining an office in this state. "Lending Institution" also includes any community development corporation, as defined in ORS 708.444(4), that is organized under the Oregon Nonprofit Corporation Law, and that meets the conditions described in ORS 708.444(2)(a) and (e).

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(9) "Letter of Intent" means a proposal for financing by a Lending Institution subject to the borrower's compliance with certain terms stipulated by the Lending Institution.

(10) "Median Income" shall be the area median family income, adjusted for family size, as published from time to time by HUD.

(11) "Project" means one or more units of housing, including refinanced housing, which will be rented to or owned by households whose incomes are less than 80 percent of Median Income. The use of a Project for eligible occupants shall be maintained for the term of the credit, in accordance with the Act, unless terminated at the discretion of the Department. If there is a foreclosure, deed-in-lieu, or an involuntary transfer where title transfers to the Lending Institution, that Lending Institution may dispose of the property at its sole discretion.

(12) "Rents Charged at the Market Interest Rate" means the rents that would be required, if the lender charged the market interest rate, in order to make the project financially feasible.

(13) "Rent Reduction" means the amount rents are reduced from the Rents Charged at the Market Interest Rate as a result of the OAHTC subsidy.

(14) "Rent Pass Through" means the amount of Rent Reduction made available to the tenants because of the reduced interest rate attributable to the OAHTC subsidy.

(15) "Sponsor" is a borrower who is a nonprofit corporation, state or local government entity including but not limited to a housing authority, which may be a controlling general partner in a limited partnership.

(16) "Tenant" means a renter who occupies or will occupy a unit in a Project, or a homeowner who is the borrower in an owner-occupied community rehabilitation program.

Stat. Auth.: ORS 317.097 & 456.515 - 456.720
Stats. Implemented: ORS 317.097

Hist.: HSG 1-1990(Temp), f. & cert. ef. 1-5-90; HSG 3-1990(Temp), f. & cert. ef. 3-1-90; HSG 9-1990, f. & cert. ef. 5-11-90; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 6-1991(Temp), f. & cert. ef. 11-5-91; HSG 3-1992, f. & cert. ef. 2-4-92; HSG 2-1994(Temp), f. & cert. ef. 3-25-94; HSG 7-1994, f. & cert. ef. 9-9-94; HSG 2-1995, f. & cert. ef. 9-25-95; OHCS 7-2006, f. & cert. ef. 5-17-06; OHCS 11-2006(Temp), f. & cert. ef. 8-4-06 thru 1-30-07; OHCS 9-2007, f. & cert. ef. 1-11-07

813-110-0015

Application Requirements

(1) The Department may provide tax credits from the OAHTC Program subject to availability of credits in the Program through a process which may include, but is not limited to, a first-come first-reviewed or competitive review process. At the time credits are made available, the Sponsor shall submit a written Application for Certification to the Department. The Application shall provide information that includes, but is not limited to:

- (a) Name, address and telephone number of the Sponsor;
- (b) Proof of eligible nonprofit corporation or governmental organizational status, if applicable;
- (c) Background and experience of Sponsor and management agent with housing for low-income persons, if applicable;
- (d) A firm Commitment of Financing including an estimated comparable market interest rate for the proposed loan, the estimated reduced interest rate, and the estimated amount of savings which will be passed on to Tenants as reduced housing payments;
- (e) Name, address and contact person of the eligible Lending Institution making the loan;
- (f) A description of the Project, including the type of housing or program involved; number and type of housing units to be provided, including the number of bedrooms; the address where the Project is or will be located; and the federal, state and local agencies or organizations involved in financing or managing the Project; and
- (g) A Certification that includes, at a minimum, the statement that all information in the Application is true, complete and accurately the Project.

(2) In addition, the Sponsor shall demonstrate in writing that at the time the Project is initially rented or purchased, and thereafter for the term of the credit, the Sponsor will pass the benefits of the Project's reduced loan interest rate to Tenant households whose earning are less than 80 percent of Median Income at the time of initial occupancy and shall execute restrictive covenants to be recorded at the time of loan closing. The OAHTC Certificate and Declaration of Restrictive Covenants may be processed concurrently at closing.

(3) The Program must be used to lower rents after all other subsidies have been applied. A Project utilizing other department programs must meet the minimum requirements of those programs before the tax credits will be considered. For example, if an applicant applies for LIHTC and indicates they are targeting 60% median income rents, the application must

show the Project is feasible at the targeted 60% median rents without the tax credit subsidy. The tax credit subsidy applied to reduce rents below the 60% level. This subsidy, which in effect is the savings generated by the lower interest rate, must be passed through directly to the tenants in its entirety. However, such pass-through need not be distributed evenly among the units. Some units may receive more of a reduction than others, subsequently driving those rents down to even deeper levels.

(4) Rental units covered by Section 8 Project Based Assistance (PBA) are not eligible to be used to demonstrate pass-through savings for the Program. The rent reductions are not passed onto the tenants in the form of a rent reduction from what the tenant would otherwise pay, and therefore, would not achieve pass-through savings. Projects that are partially covered with PBA may choose to use Program tax credits on the remaining units to meet pass-through of interest savings as rent reductions to the tenants.

Stat. Auth.: ORS 317.097 & 456.515 - 456.720

Stats. Implemented: ORS 317.097

Hist.: HSG 1-1990(Temp), f. & cert. ef. 1-5-90; HSG 3-1990(Temp), f. & cert. ef. 3-1-90; HSG 9-1990, f. & cert. ef. 5-11-90; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 6-1991(Temp), f. & cert. ef. 11-5-91; HSG 3-1992, f. & cert. ef. 2-4-92; HSG 2-1994(Temp), f. & cert. ef. 3-25-94; HSG 7-1994, f. & cert. ef. 9-9-94; HSG 2-1995, f. & cert. ef. 9-25-95; OHCS 7-2006, f. & cert. ef. 5-17-06; OHCS 11-2006(Temp), f. & cert. ef. 8-4-06 thru 1-30-07; OHCS 9-2007, f. & cert. ef. 1-11-07

813-110-0030

Reporting Requirements

Lending Institutions claiming the state tax credit shall be sent a report form by the Department annually to assist the lending institution in notifying the Department by May 1 that the Lending Institution has met all requirements imposed by law to qualify for tax credits under the Act. Such notification shall not include any representation as to performance by the Sponsor. Such report shall be signed by an officer of the Lending Institution, and shall include, at a minimum, the name and address of the institution, name and phone number of a contact person, the number of loans for which tax credits will be claimed, the amount of credit claimed, the annual charge payment, the dates the loans were closed, the location of the Projects financed by those loans, the amount loaned for each Project, and the outstanding balances of all loans.

Stat. Auth.: ORS 317.097 & 456.515 - 456.720

Stats. Implemented: ORS 317.097

Hist.: HSG 1-1990(Temp), f. & cert. ef. 1-5-90; HSG 3-1990(Temp), f. & cert. ef. 3-1-90; HSG 9-1990, f. & cert. ef. 5-11-90; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 6-1991(Temp), f. & cert. ef. 11-5-91; HSG 3-1992, f. & cert. ef. 2-4-92; HSG 7-1994, f. & cert. ef. 9-9-94; HSG 2-1995, f. & cert. ef. 9-25-95; OHCS 7-2006, f. & cert. ef. 5-17-06; OHCS 11-2006(Temp), f. & cert. ef. 8-4-06 thru 1-30-07; OHCS 9-2007, f. & cert. ef. 1-11-07

813-110-0033

Charges

(1) The Department may require a non-refundable application charge from any applicant requesting Oregon Affordable Housing Tax Credits through the Consolidated Funding Cycle or otherwise.

(2) The Department may require a supplemental application charge from applicants requesting additional resources for projects that have already been funded by the Department.

(3) The Department may require a transfer application charge from owners of projects that receive grants or tax credits through the Department, who request the Department's approval of a change in project ownership. The Department may assess a transfer review charge to project owners and transferees who effect a change in project ownership without prior written Department approval.

(4) A base charge of 5 percent of the annual tax credits claimed by an eligible Lending Institution plus \$100 per month for each full month the annual report is delayed shall be paid by the Lending Institution to the Department.

(5) On Projects certified prior to September 29, 1991, all annual charges required in OAR 813-110-0033, except for any charges for delayed reports, shall be waived.

Stat. Auth.: ORS 317.097 & 456.515 - 456.720

Stats. Implemented: ORS 317.097

Hist.: HSG 6-1991(Temp), f. & cert. ef. 11-5-91; HSG 3-1992, f. & cert. ef. 2-4-92; HSG 7-1994, f. & cert. ef. 9-9-94; HSG 2-1995, f. & cert. ef. 9-25-95; OHCS 7-2006, f. & cert. ef. 5-17-06; OHCS 11-2006(Temp), f. & cert. ef. 8-4-06 thru 1-30-07; OHCS 9-2007, f. & cert. ef. 1-11-07

813-110-0035

Community Rehabilitation Project Certification

(1) OAR 813-110 does not establish requirements for certifications to households participating in a community rehabilitation program as provided in ORS 317.097(4)(b). The Department does not establish rules for local governments or their designated agents for certifying participants in a community rehabilitation program under their jurisdiction.

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(2) A participant in a community rehabilitation program includes both individuals and nonprofit corporations or units of local government which reloan proceeds to individuals participating in a community rehabilitation program. When a local government or its designated agent certifies a participant in a community rehabilitation program, a copy shall be sent to the Department certifying that the loans included in a loan certification fall within the Cap.

(3) The local government entity shall certify to the Department that the local community rehabilitation standards will be met for all loans that will be included in the certified loan.

(4) A separate Application is required to be submitted for each lender certification form requested.

(5) Charges as outlined in Section 813-110-033 will apply for each such Application accompanied by the designated agent's Certification and preferred listing for multiple lenders, if applicable.

Stat. Auth.: ORS 317.097 & 456.515 - 456.720
Stats. Implemented: ORS 317.097
Hist.: HSG 9-1990, f. & cert. ef. 5-11-90; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 6-1991(Temp), f. & cert. ef. 11-5-91; HSG 3-1992, f. & cert. ef. 2-4-92; OHCS 7-2006, f. & cert. ef. 5-17-06; OHCS 11-2006(Temp), f. & cert. ef. 8-4-06 thru 1-30-07; OHCS 9-2007, f. & cert. ef. 1-11-07

Rule Caption: Defines charges relative to applicants or recipients of funding through the HOME Investment Partnership Program.

Adm. Order No.: OHCS 10-2007

Filed with Sec. of State: 1-11-2007

Certified to be Effective: 1-11-07

Notice Publication Date: 12-1-06

Rules Amended: 813-120-0080, 813-120-0100

Rules Repealed: 813-120-0100(T), 813-120-0080(T)

Subject: 813-120-0080 Defines the charges that the department may include as part of the application process for Home Investment Partnerships Program

813-120-0100 Adds that the department may establish charges.

Rules Coordinator: Sandy McDonnell—(503) 986-2012

813-120-0080

Application Procedure and Requirements

(1) The Department may require a non-refundable application charge from any applicant requesting HOME program funds through the Consolidated Funding Cycle or otherwise.

(2) The Department may require a supplemental application charge from applicants requesting additional resources for projects that have already been funded by the Department.

(3) The Department may require a transfer application charge from owners of projects that receive grants or tax credits through the Department, who request the Department's approval of a change in project ownership. The Department may assess a transfer review charge to project owners and transferees who effect a change in project ownership without prior written Department approval.

(4) The Department may provide funds from the HOME Program subject to availability of funds in the program through a process which may involve but is not limited to a first come — first reviewed, demonstration program, a competitive review process, or as necessary to maintain an ongoing concern.

(a) Applications for HOME funds may include a pre-application and a final application. The completeness of information in pre-applications shall be the basis for inviting final applications.

(b) Each application submitted shall be reviewed by Department staff or their designees according to program requirements and detailed project evaluation criteria.

(5) The Department may provide funds for acquisition, rehabilitation, new construction, tenant-based rental assistance, CHDO operating expenses, and for project-specific CHDO predevelopment, technical assistance, and site control loans. The Department may restrict the availability of Program funds for each such category of funds at the time it solicits applications.

(a) Homeowner Rehabilitation: For rehabilitation of single-family structures owned by Households at 80% of median income or below who occupy the home as their principal residence. Homeowner Rehabilitation programs shall be administered by a local government or a Nonprofit Organization.

(b) Homebuyer Assistance: For acquisition, rehabilitation and/or construction of housing to be owned and occupied by Low and Very Low Income households.

(c) Rental Rehabilitation: For acquisition and/or rehabilitation of existing structures for rental housing affordable to Low and Very Low Income households. The initial and long-term affordability requirements outlined in OAR 813-120-0050 shall apply to rental housing assisted with HOME funds. Rental rehabilitation projects may be sponsored by a local government, nonprofit organization, for-profit organization, individual or CHDO;

(d) New Construction: For the construction of new rental housing or the acquisition of rental housing which is acquired within one year of the date of certificate of initial occupancy. New Construction projects may be sponsored by a local government, nonprofit organization, for-profit organization, individual or CHDO.

(e) Tenant-Based Rental Assistance: For rental assistance to Low and Very Low Income households.

(f) CHDO Predevelopment and Technical Assistance: loans for project-specific predevelopment or technical assistance and site control activities performed by CHDOs may be authorized for up to 10% of the CHDO set-aside pool.

(6) The Department may further restrict the amount and/or type of assistance available, or restrict the type of applicant eligible for assistance.

(7) The Applicant shall submit, in an application form and process prescribed by the Department, project information including but not limited to:

(a) Name, address, and telephone number of the applicant;

(b) Category of assistance requested;

(c) A written description of the project including but not limited to, the number of units, unit mix, proposed rents, site location, project amenities, and any other information required in the application materials, program guidelines, or 24 CFR Part 92;

(d) A statement of project purpose indicating the housing type and tenants to be housed, and the length of time the units will be committed for occupancy by Low and Very Low Income Households;

(e) A description of how the proposed project meets the regional or statewide needs and priorities addressed in Oregon's Consolidated Plan;

(f) A pro forma of project expenses and income;

(g) Amount requested and total project development costs, including a description and documentation of all additional project funding and funding sources.

(h) A narrative of the experience of the sponsor/developer/owner/manager in developing and operating housing projects;

(i) A description of the applicant's readiness to proceed on project activities. Applicants should expect to begin construction activities within six months of HOME agreement execution; and

(j) A schedule for completion of project activities.

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

Stat. Auth.: ORS 456.620

Stats. Implemented: ORS 456.559(1)(f)

Hist.: HSG 6-1992(Temp), f. & cert. ef. 6-15-92; HSG 10-1992, f. & cert. ef. 11-20-92; HSG 1-1993(Temp), f. & cert. ef. 2-19-93; HSG 3-1993, f. & cert. ef. 8-18-93; HSG 8-1994, f. & cert. ef. 9-9-94; HSG 3-1995, f. & cert. ef. 9-25-95; HSG 1-1997, f. & cert. ef. 4-15-97; OHCS 9-2006(Temp), f. & cert. ef. 8-4-06 thru 1-30-07; OHCS 10-2007, f. & cert. ef. 1-11-07

813-120-0100

Form of Assistance

(1) The Department shall confirm to the applicant in writing the amount and form of assistance, if any, to be provided from the HOME Program.

(2) The Department may establish fees, charges, interest rates, repayment terms, performance criteria and reporting requirements according to 24 CFR, Part 92, and as the Department considers appropriate or necessary for the type and use of assistance provided. The Department shall specify such terms and conditions to the applicant in writing before funds are advanced or contractual agreements signed. The Department may require the applicant to execute such documents as the Department considers appropriate or necessary to evidence the type and amount of assistance provided, and any terms and conditions agreed to in connection with such assistance, subject to federal policy or regulatory direction.

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

Stat. Auth.: ORS 456.559(1)(f)

Stats. Implemented: ORS 456.559(1)(f)

Hist.: HSG 6-1992(Temp), f. & cert. ef. 6-15-92; HSG 10-1992, f. & cert. ef. 11-20-92; HSG 1-1993(Temp), f. & cert. ef. 2-19-93; HSG 3-1993, f. & cert. ef. 8-18-93; OHCS 10-2006(Temp), f. & cert. ef. 8-4-06 thru 1-30-07; OHCS 10-2007, f. & cert. ef. 1-11-07

Rule Caption: Clarifies terms, affordability, monitoring of application procedures/requirements; remedies. Adds waiver language.

ADMINISTRATIVE RULES

Adm. Order No.: OHCS 11-2007

Filed with Sec. of State: 1-11-2007

Certified to be Effective: 1-11-07

Notice Publication Date: 12-1-06

Rules Adopted: 813-130-0140

Rules Amended: 813-130-0000, 813-130-0010, 813-130-0020, 813-130-0030, 813-130-0040, 813-130-0050, 813-130-0060, 813-130-0070, 813-130-0080, 813-130-0090, 813-130-0100, 813-130-0110, 813-130-0120, 813-130-0130

Rules Repealed: 813-130-0000(T), 813-130-0010(T), 813-130-0020(T), 813-130-0030(T), 813-130-0040(T), 813-130-0050(T), 813-130-0060(T), 813-130-0070(T), 813-130-0080(T), 813-130-0090(T), 813-130-0100(T), 813-130-0110(T), 813-130-0120(T), 813-130-0130(T), 813-130-0140(T)

Subject: 813-130-0000 Clarifies terms and purpose of the program.

813-130-0010 Provides clarification of common terms and definitions within the program.

813-130-0020 Administrative changes. Changed 'Applicants' to 'Recipients'.

813-130-0030 Administrative changes. Restructured language for easier readability.

813-130-0040 Administrative changes. Restructured language for easier readability.

813-130-0050 Removed redundant language

813-130-0060 Administrative changes. Restructured language for easier readability.

813-130-0070 Administrative changes. Capitalization corrections.

813-130-0080 Administrative changes. Restructured language for easier readability. Added language to allow application charges for applicants requesting additional resources to projects previously funded. Added additional language to allow a transfer application charge if a change of ownership occurs.

813-130-0090 Administrative changes. Restructured language for easier readability.

813-130-0100 Added language that that each Recipient shall execute a Use Agreement containing fees, interest rates, repayment terms, performance criteria and reporting requirements as the department or HUD considers appropriate or necessary for the type and use of assistance provided.

813-130-0110 Clarified language for easier readability.

813-130-0120 Clarified language for easier readability.

813-130-0130 Clarified language for easier readability.

813-130-0140 Added a waiver rule as already provided for within statute.

Rules Coordinator: Sandy McDonnell—(503) 986-2012

813-130-0000

Purpose and Objectives

OAR chapter 813, division 130, is promulgated to ORS 456.555(2) to carry out the provisions of the HELP Program. The Department receives HELP funds from the U.S. Department of Housing and Urban Development (HUD) under Section 1012 of the Steward B. McKinney Homeless Assistance Act ("the Act") of 1988. The HELP Program is funded by monies realized from the HUD-authorized refunding of existing bonds issued by the Department, the proceeds of which were originally used to finance housing projects, pursuant to an agreement between the Department and HUD under HUD's Financing Adjustment Factor (FAF) Program. Under the FAF Program, HUD shares such monies realized from these refundings on an equal basis with bond issuers such as the Department, and attaches certain restrictions and requirements upon the use of funds realized from such refunding. The HELP Program's objective is to provide financial assistance for the construction, acquisition and/or rehabilitation of rental housing for individuals and families of very low income for the purpose of expanding the supply of affordable, decent, safe and sanitary housing in Oregon.

Stat. Auth.: ORS 456.555

Stats. Implemented: ORS 456.555

Hist.: HSG 6-1993(Temp), f. & cert. ef. 10-1-93; HSG 4-1994, f. & cert. ef. 8-1-94; OHCS 12-2006(Temp), f. & cert. ef. 8-4-06 thru 1-30-07; OHCS 11-2007, f. & cert. ef. 1-11-07

813-130-0010

Definitions

All terms used in OAR chapter 813, division 130, are defined in the Act, OAR 813-005-0005 and herein. As used in OAR chapter 813, division 130, unless the context indicates otherwise:

(1) "Affordability Period" means the period during which a project assisted with HELP funds must remain affordable to Very Low Income residents, which period shall be at least 10 years from the date of the Use Agreement.

(2) "Annual Household Income" means the anticipated total income from all sources received by the family head and by each additional member of the family of 18 years of age and over, including all net income derived from assets for the twelve-month period following the effective date of certification of income, in accordance with HUD in **24 C.F.R. 813**.

(3) "Applicant" means an applicant for HELP funds.

(4) "Household" means one or more persons occupying a housing unit.

(5) "HUD" means the U.S. Department of Housing and Urban Development.

(6) "Low Income" means annual Household income which does not exceed 80 percent of the median Household income for the area, as determined by HUD, with allowances for family size.

(7) "Nonprofit Organization" means

(i) An organization which has obtained tax-exempt status under **Section 501(c)(3) of the Internal Revenue Code of 1986**, as amended, and is established under the provisions of ORS chapter 65,

(ii) A community development corporation as defined in ORS 458.210,

(iii) A housing authority as defined in ORS 456.005,

(iv) A community action agency as established pursuant to the **federal Economic Opportunity Act of 1964** and which meets the requirements of ORS 458.505(4), or

(v) Other nonprofit entity representing or seeking to serve the housing, human services and community economic revitalization needs of a clearly-defined population and area.

(8) "Program" means the HELP Program.

(9) "Recipient" means a recipient of HELP funds.

(10) "Use Agreement" means the Financing Adjustment Factor Savings Funds Use Agreement between a Recipient and the Department.

(11) "Very Low Income" means annual Household income which does not exceed 50 percent of the median Household income for the area, as determined by HUD, with allowances for family size.

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

Stat. Auth.: ORS 456.555

Stats. Implemented: ORS 456.555

Hist.: HSG 6-1993(Temp), f. & cert. ef. 10-1-93; HSG 4-1994, f. & cert. ef. 8-1-94; OHCS 12-2006(Temp), f. & cert. ef. 8-4-06 thru 1-30-07; OHCS 11-2007, f. & cert. ef. 1-11-07

813-130-0020

Eligible Applicants for HELP Funds

Eligible Recipients for HELP funds include units of general local government and Nonprofit Organizations which propose to construct, acquire and/or rehabilitate rental housing for Households with Very Low Incomes.

Stat. Auth.: ORS 456.555

Stats. Implemented: ORS 456.555

Hist.: HSG 6-1993(Temp), f. & cert. ef. 10-1-93; HSG 4-1994, f. & cert. ef. 8-1-94; OHCS 12-2006(Temp), f. & cert. ef. 8-4-06 thru 1-30-07; OHCS 11-2007, f. & cert. ef. 1-11-07

813-130-0030

Eligible Activities for HELP Funds

HELP funds provided by the Department shall be used for the construction, acquisition and/or rehabilitation of rental housing to be occupied by Households with Very Low Incomes.

Stat. Auth.: ORS 456.555

Stats. Implemented: ORS 456.555

Hist.: HSG 6-1993(Temp), f. & cert. ef. 10-1-93; HSG 4-1994, f. & cert. ef. 8-1-94; OHCS 12-2006(Temp), f. & cert. ef. 8-4-06 thru 1-30-07; OHCS 11-2007, f. & cert. ef. 1-11-07

813-130-0040

Eligible Costs for HELP Funds

Costs eligible to be paid with HELP funds are costs that promote housing affordability and include but not limited to:

(1) Development hard costs, such as the actual costs of constructing or rehabilitating rental housing;

(2) Costs of acquiring improved or unimproved real property;

(3) Pre-development costs which have been pre-approved by the Department; and

ADMINISTRATIVE RULES

(4) Soft development costs associated with the construction, acquisition, or rehabilitation, including fees and interest studies,

Stat. Auth.: ORS 456.555

Stats. Implemented: ORS 456.555

Hist.: HSG 6-1993(Temp), f. & cert. ef. 10-1-93; HSG 4-1994, f. & cert. ef. 8-1-94; OHCS 12-2006(Temp), f. & cert. ef. 8-4-06 thru 1-30-07; OHCS 11-2007, f. & cert. ef. 1-11-07

813-130-0050

HELP Affordability Requirements

(1) A Use Agreement executed by the Department and a Recipient shall include covenants and restrictions running with land (which will be binding upon the Recipient and any successors in title to the project) that require such project assisted with HELP funds to remain affordable to Very Low Income residents during the Affordability Period. Upon expiration of a Use Agreement, those covenants and restrictions described therein shall also expire.

(2) Use Agreements shall require Recipients to obtain resident income certifications at the time of initial occupancy of the HELP-assisted units and on an annual basis thereafter during the Affordability Period to document to the Department that units assisted with HELP funds continue to serve Very-Low-Income Households.

(3) Use Agreements may provide that a Household with Very-Low Income at the time of initial occupancy shall remain eligible despite the rise of Household income and will not be displaced by reason of ceasing to qualify as a very-low-income family or person if the owner exercises reasonable efforts to lease the next available similar unit to a family or person of very low income.

Stat. Auth.: ORS 456.555

Stats. Implemented: ORS 456.555

Hist.: HSG 6-1993(Temp), f. & cert. ef. 10-1-93; HSG 4-1994, f. & cert. ef. 8-1-94; OHCS 12-2006(Temp), f. & cert. ef. 8-4-06 thru 1-30-07; OHCS 11-2007, f. & cert. ef. 1-11-07

813-130-0060

Program Requirements

The Department shall adopt guidelines for the HELP Program which address application procedures, project eligibility, project selection criteria, financial assistance available, and other applicable information. Program guidelines shall be contained in the HELP application materials.

Stat. Auth.: ORS 456.555

Stats. Implemented: ORS 456.555

Hist.: HSG 6-1993(Temp), f. & cert. ef. 10-1-93; HSG 4-1994, f. & cert. ef. 8-1-94; OHCS 12-2006(Temp), f. & cert. ef. 8-4-06 thru 1-30-07; OHCS 11-2007, f. & cert. ef. 1-11-07

813-130-0070

Distribution of Funds

The Department shall distribute HELP funds according to the Program administrative rules for the targeted clients as endorsed by the Housing Council and in accordance with Program application materials.

Stat. Auth.: ORS 456.555

Stats. Implemented: ORS 456.555

Hist.: HSG 6-1993(Temp), f. & cert. ef. 10-1-93; HSG 4-1994, f. & cert. ef. 8-1-94; OHCS 12-2006(Temp), f. & cert. ef. 8-4-06 thru 1-30-07; OHCS 11-2007, f. & cert. ef. 1-11-07

813-130-0080

Application Procedure and Requirements

(1) The Department may require a non-refundable application charge from any applicant requesting HELP funds through the Consolidated Funding Cycle or otherwise.

(2) The Department may require a supplemental application charge from applicants requesting additional resources for projects that have already been funded by the Department.

(3) The Department may require a transfer application charge from owners of projects that receive grants or tax credits through the Department, who request the Department's approval of a change in project ownership. The Department may assess a transfer review charge to project owners and transferees who effect a change in project ownership without prior written Department approval.

(4) The Department may award HELP funds, subject to availability of funds in the Program, through a process which may include, but is not limited to, a first come-first reviewed or a competitive review process. The application process for HELP funds may include a pre-application and a final application. Upon the basis of its review of the pre-applications, the Department may, in its sole discretion, invite certain Applicants to submit final applications. The Department will not process applications it determines to be incomplete.

(5) An Applicant shall submit to the Department, on the application form and in accordance with the application process prescribed by the Department, such information as the Department may require, including but not limited to:

(a) Name, address and telephone number of Applicant;

(b) Type of assistance requested;

(c) A written description of the project, including the number of units, unit mix, proposed rents, site location, project amenities, and any other information required in the HELP application forms and other application materials and Program guidelines;

(d) A statement of project purpose indicating the housing type and residents to be housed, and the length of the Affordability Period;

(e) A pro forma of project income and expenses;

(f) Amount requested and total project development costs, including a description and documentation of all additional project funding and funding sources;

(g) A narrative of the Applicant's experience in developing affordable housing, including the experience of all members of the project development team;

(h) A narrative of the experience of the Applicant's management agent as it relates to operating affordable housing projects;

(i) A description of the Applicant's readiness to proceed with project activities; and

(j) A schedule for completion of project activities.

(6) The Department may restrict the amount and/or type of assistance available or restrict the type of Applicants eligible for assistance.

Stat. Auth.: ORS 456.555

Stats. Implemented: ORS 456.555

Hist.: HSG 6-1993(Temp), f. & cert. ef. 10-1-93; HSG 4-1994, f. & cert. ef. 8-1-94; OHCS 12-2006(Temp), f. & cert. ef. 8-4-06 thru 1-30-07; OHCS 11-2007, f. & cert. ef. 1-11-07

813-130-0090

Application Review

(1) The Department shall approve, deny, or request additional information on applications requesting HELP funds of \$100,000 or less within the time frame set forth in the HELP application materials.

(2) If the Department proposes to award funds for an application requesting more than \$100,000, it shall submit the application request to the Housing Council for review. The Housing Council shall approve or disapprove the application at a public hearing of the Housing Council, pursuant to ORS 456.571(2).

(3) In reviewing applications for financial assistance, the Department and/or the Housing Council, as appropriate, may consider, in addition to any special evaluation criteria, the following:

(a) Amount of available funds in the HELP Program;

(b) Availability of other sources of assistance; and

(c) Applicant's efforts to leverage public or private funds.

(4) The Department shall not fund any project that is not financially feasible.

(5) The Department shall select those projects which, in the judgment of the Department, best achieve the purposes of the HELP Program and any evaluation criteria outlined in the program application materials.

Stat. Auth.: ORS 456.555

Stats. Implemented: ORS 456.555

Hist.: HSG 6-1993(Temp), f. & cert. ef. 10-1-93; HSG 4-1994, f. & cert. ef. 8-1-94; OHCS 12-2006(Temp), f. & cert. ef. 8-4-06 thru 1-30-07; OHCS 11-2007, f. & cert. ef. 1-11-07

813-130-0100

Form of Assistance; Documentation

(1) The Department may provide HELP funds in the form of a grant or a loan, or a combination of both. Loan rates and terms, if applicable shall be determined by the Department based on a project's needs and cash flow and an Applicant's capacity to repay HELP funds. Preference shall be given to those Applicants requesting loans which show sufficient project cash flow to repay the loan. The Department shall notify an Applicant in writing of the amount and form of assistance, if any, to be provided by the HELP Program.

(2) Each Recipient shall execute a Use Agreement, containing such terms regarding fees, interest rates, repayment terms, performance criteria and reporting requirements as the Department or HUD considers appropriate or necessary for the type and use of assistance provided. Each Use Agreement must be:

(a) (If the Recipient owns the project property at the time of disbursement) recorded as an encumbrance on the project property before any HELP funds are advanced; or

(b) (If the Recipient does not own the project property at the time of disbursement) placed in escrow in an escrow account established by the Recipient, and the Recipient must agree to and make provision for recording the Use Agreement as an encumbrance against the project property immediately upon obtaining title to such project property.

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(3) The Department may require a Recipient to execute such documents as the Department considers appropriate or necessary to evidence the type and amount of financial assistance provided and any terms and conditions agreed to in connection with such assistance, subject to state or federal policy or regulatory direction.

Stat. Auth.: ORS 456.555
Stats. Implemented: ORS 456.555
Hist.: HSG 6-1993(Temp), f. & cert. ef. 10-1-93; HSG 4-1994, f. & cert. ef. 8-1-94; OHCS 12-2006(Temp), f. & cert. ef. 8-4-06 thru 1-30-07; OHCS 11-2007, f. & cert. ef. 1-11-07

813-130-0110

General Administrative and Monitoring Requirements

(1) The Department or HUD may perform such reviews or field inspections as it deems necessary to ensure Program compliance. The Department may require that a Recipient take such remedial actions as described in this rule and OAR 813-130-0120.

(2) Financial records, supporting documents, and all other pertinent records shall be retained by a HELP Recipient for five years after the project is complete, or after any litigation or audit claim is resolved, whichever is later. The Department, HUD, the Inspector General, the General Accounting Office, and Oregon Secretary of State and their representatives shall have access to all books, accounts, documents, records and other property belonging to or in use by the Recipient which relate to the use of HELP funds.

Stat. Auth.: ORS 456.555
Stats. Implemented: ORS 456.555
Hist.: HSG 6-1993(Temp), f. & cert. ef. 10-1-93; HSG 4-1994, f. & cert. ef. 8-1-94; OHCS 12-2006(Temp), f. & cert. ef. 8-4-06 thru 1-30-07; OHCS 11-2007, f. & cert. ef. 1-11-07

813-130-0120

Remedies for Noncompliance

At any time before the expiration of the Affordability Period, the Department may find that a Recipient is not in compliance with the requirements of the Program for reasons including but not limited to use of funds for activities not approved in the Use Agreement, failure to complete activities in a timely manner, failure to comply with applicable rules or regulations, or the lack of a continued capacity by the Recipient to carry out the approved activities. Remedies for noncompliance may include penalties imposed by the Department, including but not limited to repayment of HELP funds.

Stat. Auth.: ORS 456.555
Stats. Implemented: ORS 456.555
Hist.: HSG 6-1993(Temp), f. & cert. ef. 10-1-93; HSG 4-1994, f. & cert. ef. 8-1-94; OHCS 12-2006(Temp), f. & cert. ef. 8-4-06 thru 1-30-07; OHCS 11-2007, f. & cert. ef. 1-11-07

813-130-0130

Sanctions

(1) The Department may invoke sanctions against a Recipient that fails to comply with the provisions of its Use Agreement. The following circumstances may warrant sanctions:

- (a) HELP funds have not been expended within six months of disbursement by the Department to the Recipient;
- (b) There is a material breach of the Use Agreement;
- (c) The Use Agreement was not recorded on the property required by OAR 813-130-0100(3) or as agreed; or
- (d) The Department finds that significant corrective actions are necessary to protect the integrity of the project funds and those corrective actions are not, or will not be, made within a reasonable time.

(2) One or more of the following sanctions may be imposed by the Department:

- (a) Prohibit a Recipient from applying for future HELP assistance or other Department assistance;
- (b) Revoke an existing HELP award;
- (c) Withhold unexpended HELP funds;
- (d) Require return of HELP funds that have been disbursed to the Recipient but not expended by Recipient;
- (e) Require repayment of expended HELP funds; and
- (f) Invoke other remedies that may be incorporated into the Use Agreement.

(3) Sanctions will not be imposed by the Department until the Recipient has been notified in writing of its deficiencies and given a reasonable time to respond and correct the deficiencies noted. The sanctions and remedies set forth in this OAR 813-130-0130 are cumulative and not exclusive and are in addition to any other rights and remedies provided by law or under the Use Agreement.

Stat. Auth.: ORS 456.555
Stats. Implemented: ORS 456.555
Hist.: HSG 6-1993(Temp), f. & cert. ef. 10-1-93; HSG 4-1994, f. & cert. ef. 8-1-94; OHCS 12-2006(Temp), f. & cert. ef. 8-4-06 thru 1-30-07; OHCS 11-2007, f. & cert. ef. 1-11-07

813-130-0140

Waiver

The Director may waive or modify any requirements of these Program rules, unless such waiver or modification would violate applicable state statute or federal regulations.

Stat. Auth.: ORS 456.555
Stats. Implemented: ORS 456.555
Hist.: OHCS 12-2006(Temp), f. & cert. ef. 8-4-06 thru 1-30-07; OHCS 11-2007, f. & cert. ef. 1-11-07

Oregon Patient Safety Commission

Chapter 325

Rule Caption: Establishes pharmacy reporting program.

Adm. Order No.: PSC 4-2006

Filed with Sec. of State: 12-18-2006

Certified to be Effective: 1-1-07

Notice Publication Date: 11-1-06

Rules Adopted: 325-015-0001, 325-015-0005, 325-015-0010, 325-015-0015, 325-015-0020, 325-015-0025, 325-015-0030, 325-015-0035, 325-015-0040, 325-015-0045, 325-015-0050, 325-015-0055, 325-015-0060

Subject: These rules, taken together, establish the Oregon Patient Safety Reporting Program for Oregon Pharmacies. They also establish a pharmacy fee structure to partially fund the work of the Patient Safety Commission.

Rules Coordinator: James C. Dameron—(503) 224-9226

325-015-0001

Definitions

As used in OAR 325-015-0001 to 325-015-0060:

- (1) "Commission" means the Oregon Patient Safety Commission.
- (2) "Event Report" means the form designated by the Commission to be used by Pharmacy Participants for the reporting of Reportable Pharmacy Adverse Events.
- (3) "Pharmacy Participant" means a pharmacy licensed under ORS chapter 689 that has volunteered to participate in the Oregon Patient Safety Reporting Program.
- (4) "Oregon Patient Safety Reporting Program" means the Patient Safety Reporting Program, as defined in Oregon Laws 2003, chapter 686, Section 4, and operated by the Commission.
- (5) "Participant" means an entity that reports Patient Safety Data to a Patient Safety Reporting Program, and any agent, employee, consultant, representative, volunteer or medical staff member of the entity.
- (6) "Patient Safety Activities" include but are not limited to:
 - (a) The collection and analysis of Patient Safety Data by a Participant;
 - (b) The collection and analysis of Patient Safety Data by the Oregon Patient Safety Commission established in Oregon Laws 2003, chapter 686 and ORS 442.820;
 - (c) The utilization of Patient Safety Data by Participants;
 - (d) The utilization of Patient Safety Data by the Oregon Patient Safety Commission to improve the quality of care with respect to patient safety and to provide assistance to health care providers to minimize patient risk; and
 - (e) Oral and written communication regarding Patient Safety Data among two or more Participants with the intent of making a disclosure to or preparing a report to be submitted to a Patient Safety Reporting Program.
- (7) "Patient Safety Data" means oral communication or written reports, data, records, memoranda, analyses, deliberative work, statements, root cause analyses or action plans that are collected or developed to improve patient safety or health care quality that:
 - (a) Are prepared by a Participant for the purpose of reporting Patient Safety Data voluntarily to a Patient Safety Reporting Program, or that are communicated among two or more Participants with the intent of making a disclosure to or preparing a report to be submitted to a Patient Safety Reporting Program; or
 - (b) Are created by or at the direction of the Patient Safety Reporting Program, including communication, reports, notes, or records created in the course of an investigation undertaken at the direction of the Oregon Patient Safety Commission.
- (8) "Reportable Adverse Event" for the purposes of OAR 325-015-0001 to 325-015-0060 means any unanticipated, usually preventable consequences of patient care that result in patient harm or the risk of harm. This includes events that:

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(a) Are not related to the natural course of the patient's illness or underlying condition; and

(b) Resulted in temporary and/or permanent physical harm, or

(c) Posed a risk for temporary or permanent physical harm. "Reportable Adverse Event" includes only those events where a patient receives or has control of the medication.

(9) "Serious Adverse Event" for the purposes of OAR 325-015-0001 to 325-015-0060 means any unanticipated, usually preventable consequence of patient care that results in patient death or serious physical injury, either temporary or permanent.

Stat. Auth: ORS 686, 182.456 - 182.472, OL 2003

Stats. Implemented: ORS 442.820 - 442.835

Hist.: PSC 4-2006, f. 12-18-06, cert. ef. 1-1-07

325-015-0005

Enrollment in the Oregon Patient Safety Reporting Program

(1) Participation in the Oregon Patient Safety Reporting Program is voluntary. Pharmacy Participants are entitled to the benefits and subject to the obligations set forth in these administrative rules.

(2) Interested pharmacies may apply for participation in the Oregon Patient Safety Reporting Program by completing the Commission's registration form and submitting the applicable annual fee. The registration form must include the name of the Pharmacist-in-Charge and a designated contact person. Changes to any information on the registration form must be reported to the Commission with 30 days of the effective change.

(3) In agreeing to participate, a pharmacy must affirm that it is willing to share fully all requested Patient Safety Data with the Commission. This statement must be signed by the pharmacy's Owner, responsible executive, and Quality manager, or their equivalents.

(4) Upon enrolling in the Oregon Patient Safety Reporting Program, a Pharmacy Participant must have adopted policies and procedures describing patient safety activities, including how it triages adverse events; how it investigates adverse events, and how it provides notice of serious adverse events to a patient and/or family member. The Pharmacy Participant must provide copies to the Commission upon request.

(5) Within 30 calendar days of receipt and acceptance of the registration form and fee the Commission will issue a certificate establishing a Pharmacy Participant's enrollment in the Oregon Patient Safety Reporting Program. The Pharmacy Participant should conspicuously post the certificate in public view.

(6) The Commission will issue a press release on a regular basis, which will provide a list of Pharmacy Participants to the public.

Stat. Auth: ORS 686, 182.456 - 182.472, OL 2003

Stats. Implemented: ORS 442.820 - 442.835

Hist.: PSC 4-2006, f. 12-18-06, cert. ef. 1-1-07

325-015-0010

Annual Pharmacy Participant Fee

(1) A Pharmacy Participant must pay an annual fee of \$150.00 per pharmacy licensed under ORS chapter 689.

(2) Initial fees will be assessed at the time of enrollment in the Oregon Patient Safety Reporting Program and will expire on December 31 following the date of issue.

(3) Annual Pharmacy Participant fees will be due by December 31 for the next year's enrollment. A delinquent renewal fee of up to 25% of the renewal fee may be assessed against a Pharmacy Participant submitting fees postmarked after December 31st.

(4) No participation fees will be refunded due to withdrawal or termination from the Oregon Patient Safety Reporting Program.

(5) The Commission may, in its discretion, reduce fees based upon development of an incentive program for participation

Stat. Auth: ORS 686, 182.456 - 182.472, OL 2003

Stats. Implemented: ORS 442.820 - 442.835

Hist.: PSC 4-2006, f. 12-18-06, cert. ef. 1-1-07

325-015-0015

Termination of Participation

(1) The Commission's reporting program relies on voluntary reporting. However, the Commission is responsible for ensuring that those who choose to participate also comply with the standards established by the Commission.

(2) Participation requirements include the reporting of all Reportable Adverse Events; fully completing Event Reports; creating and implementing acceptable action plans; and providing written disclosure to patients or families following a Reportable Serious Adverse Event.

(3) If the Commission believes a Pharmacy Participant is not meeting its participation requirements, the Commission must provide the Pharmacy

Participant with a written notice explaining why. The Pharmacy Participant will have 30 calendar days to respond and come into compliance.

(4) The Commission may deny, suspend, or revoke a Pharmacy Participant's status when the Commission finds that there has been a substantial failure to comply with the provisions of participation. Upon written notification by the Commission of revocation, suspension, or denial of a Pharmacy Participant enrollment in the Oregon Patient Safety Reporting Program, a Pharmacy Participant may request a hearing. Hearings will be held in accordance with ORS 183.310 to 183.470.

Stat. Auth: ORS 686, 182.456 - 182.472, OL 2003

Stats. Implemented: ORS 442.820 - 442.835

Hist.: PSC 4-2006, f. 12-18-06, cert. ef. 1-1-07

325-015-0020

Re-Issue of Suspended or Revoked Participation Certificate

The Commission may re-issue a participation certificate that has been suspended or revoked if the Commission determines that the Pharmacy applying for re-enrollment meets the provisions of participation.

Stat. Auth: ORS 686, 182.456 - 182.472, OL 2003

Stats. Implemented: ORS 442.820 - 442.835

Hist.: PSC 4-2006, f. 12-18-06, cert. ef. 1-1-07

325-015-0025

Reporting Adverse Events

(1) The Commission will provide an Event Report form to be used by Pharmacy Participants for reporting Adverse Events. The Event Report will include a summary description of the event; a description of the Pharmacy Participant's complete, thorough, and credible analysis for that event; information about plans to implement improvements to reduce risk. The meaning of terms "complete," "thorough," and "credible" are explained in OAR 325-015-0035.

(2) Pharmacy Participants must use the Event Report form when reporting Adverse Events to the Commission.

(3) Pharmacy Participants must submit a completed Event Report to the Commission within 45 calendar days of discovery of a Reportable Adverse Event.

(4) If a Pharmacy Participant believes the Commission should immediately issue an alert to all Oregon pharmacies based on a specific Reportable Adverse Event, the Pharmacy Participant should provide an initial report to the Commission within 3 business days of discovery of the event, or sooner. The Pharmacy Participant and Commission will work together to identify information to include in the alert.

Stat. Auth: ORS 686, 182.456 - 182.472, OL 2003

Stats. Implemented: ORS 442.820 - 442.835

Hist.: PSC 4-2006, f. 12-18-06, cert. ef. 1-1-07

325-015-0030

Pharmacy Reporting of Close Calls

(1) In addition to Reportable Adverse Events, Participating Pharmacies are also encouraged to report close calls. Participating Pharmacies should do so when they believe such events present the potential for significant harm.

(2) To report such events, Pharmacy Participants should use the appropriate sections of the Event Report form. Pharmacy Participants will not be required to complete detailed root cause analysis for these close calls.

Stat. Auth: ORS 686, 182.456 - 182.472, OL 2003

Stats. Implemented: ORS 442.820 - 442.835

Hist.: PSC 4-2006, f. 12-18-06, cert. ef. 1-1-07

325-015-0035

Commission Review of Reports

(1) When the Commission receives an Event Report from a Pharmacy Participant, the Commission will determine whether that Event Report is complete, thorough, credible, and acceptable. As used by the Commission:

(a) A report is complete if it contains all the information requested in the Event Report, or explains, to the Commission's satisfaction, why that information is not available or not necessary to provide;

(b) A report is thorough if the investigation (root cause analysis) of the event includes an analysis of all relevant systems issues and shows evidence of an inquiry into all appropriate areas;

(c) A report is credible if it shows evidence that the investigation of the Reportable Pharmacy Adverse Event included participation by leadership within the organization and was logically consistent; and

(d) A report is acceptable if all the above standards are met and the action plans clearly describe meaningful system-level improvement strategies designed to minimize risk, or indicate why only individual improvement strategies are appropriate for the reported event.

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(2) If the Commission believes that an Event Report received from a Pharmacy Participant is incomplete or unacceptable in some manner, it will inform the Pharmacy Participant's contact person within 10 business days of receipt of the Event Report.

(3) On an annual basis, the Commission will query Pharmacy Participants regarding the status of action plans identified in their Event Reports.

Stat. Auth: ORS 686, 182.456 - 182.472, OL 2003
Stats. Implemented: ORS 442.820 - 442.835
Hist.: PSC 4-2006, f. 12-18-06, cert. ef. 1-1-07

325-015-0040

Public Health Officer Certification

(1) At least annually, the Commission will request that the Public Health Officer certify the completeness, credibility, and thoroughness of each Pharmacy Participant's reporting during the applicable period.

(2) The Commission will request that the Public Health Officer develop independent and objective standards to evaluate the overall integrity of the Patient Safety Reporting Program. On an annual basis, the Commission will request that the Public Health Officer use those standards to certify the Oregon Patient Safety Reporting Program.

(3) The Commission will provide information to the Public Health Officer to assist the Public Health Officer in completing the certification processes listed in (1) and (2) of this rule, consistent with OAR 325-015-0055.

Stat. Auth: ORS 686, 182.456 - 182.472, OL 2003
Stats. Implemented: ORS 442.820 - 442.835
Hist.: PSC 4-2006, f. 12-18-06, cert. ef. 1-1-07

325-015-0045

Patient Notification of "Serious Adverse Events"

(1) After a Serious Adverse Event occurs, a Pharmacy Participant must provide written notification to each affected patient, or, if necessary, to the patient's personal representative. Notification must be timely and should be consistent with the Pharmacy Participant's internal communication and disclosure policies.

(2) As provided in Oregon Laws 2003, Chapter 686, Section 4(4), notice provided under this subsection may not be construed as an admission of liability in a civil action.

Stat. Auth: ORS 686, 182.456 - 182.472, OL 2003
Stats. Implemented: ORS 442.820 - 442.835
Hist.: PSC 4-2006, f. 12-18-06, cert. ef. 1-1-07

325-015-0050

Extensions and Waivers

(1) The Commission may grant an extension of any time requirement stipulated in these rules if the Pharmacy Participant provides justification that the delay is due to factors beyond its control or that the delay will not adversely affect the purposes of the Commission. A Pharmacy Participant requesting a waiver must submit a written request to the Commission prior to the deadline for the required action. Facsimile requests are acceptable.

(2) The Commission may grant a waiver of any other provision of these rules if the Pharmacy Participant provides justification that granting the waiver will not adversely affect the purposes of the Commission.

Stat. Auth: ORS 686, 182.456 - 182.472, OL 2003
Stats. Implemented: ORS 442.820 - 442.835
Hist.: PSC 4-2006, f. 12-18-06, cert. ef. 1-1-07

325-015-0055

Protection of Patient Safety Data

(1) The Commission is subject to all the confidentiality provisions set forth in Oregon Laws 2003, Chapter 686, Sections 1, 4 to 6, 8 to 10, 12, and in ORS 442.820 to 442.835.

(2) The Commission will maintain the confidentiality of all Patient Safety Data that identifies or could be reasonably used to identify a Pharmacy Participant or an individual who is receiving or has received health care from the Pharmacy Participant.

(3) Before it takes receipt of any confidential Patient Safety Data, the Commission will have in place appropriate safeguards and security measures to ensure the technical integrity and physical safety of such data.

(4) Pursuant to ORS 442.820(4), meetings or portions of meetings where the Oregon Patient Safety Commission Board of Directors, or subcommittees or advisory committees consider information that identifies a participant or patient are not subject to the Oregon Public Meetings Law, ORS 192.610 to 192.690.

Stat. Auth: ORS 686, 182.456 - 182.472, OL 2003
Stats. Implemented: ORS 442.820 - 442.835
Hist.: PSC 4-2006, f. 12-18-06, cert. ef. 1-1-07

325-015-0060

Commission's Use of Patient Safety Data

(1) The Commission will create a standing committee on best practices in patient safety. This committee will advise the Commission on effective methods for making use of and sharing information gathered from the Commission's review of Event Reports.

(2) At least quarterly, the Commission will provide Pharmacy Participants with patient safety quality improvement information derived from Patient Safety Data.

(3) During the second quarter of each year, the Commission will publish a report to the public summarizing Patient Safety Data for the preceding calendar year. This report will use aggregate, de-identified data from the program and will describe statewide adverse event patterns and best practices to avoid the occurrence or minimize the effects of adverse events.

(4) The Commission will maintain an easily accessible and well-publicized website to share patient safety information directly with consumers.

(5) The Commission, within its resource limitations, will provide technical assistance to Pharmacy Participants, including but not limited to recommendations and advice regarding methodology, communication, dissemination of information, data collection, security and confidentiality.

(6) The Commission will work with representatives of organizations participating in the Oregon Patient Safety Reporting Program and with other interested parties to develop recommendations for continued improvements in the collection and utilization of Patient Safety Data.

Stat. Auth: ORS 686, 182.456 - 182.472, OL 2003
Stats. Implemented: ORS 442.820 - 442.835
Hist.: PSC 4-2006, f. 12-18-06, cert. ef. 1-1-07

Oregon State Lottery Chapter 177

Rule Caption: Amendments to definition for "Key Persons"; Effect on disclosure requirements for retail contract applicants.

Adm. Order No.: LOTT 8-2006

Filed with Sec. of State: 12-20-2006

Certified to be Effective: 1-1-07

Notice Publication Date: 10-1-06

Rules Amended: 177-040-0000

Subject: The Lottery amended this rule in accordance with Oregon Laws 2005, Chapter 166, (SB 363) which amends ORS 461.300 regarding disclosure requirements for Lottery retailers. This rule-making revises the definition of "key person" to conform it to the revised statute.

Rules Coordinator: Mark W. Hohlt—(503) 540-1417

177-040-0000

Definitions

For purposes of OAR chapter 177 division 40, the following definitions apply except as otherwise specifically provided in OAR chapter 177 or unless the context requires otherwise:

(1) "**Age-controlled area**" means an area where a natural person who is under 21 years of age is prohibited from entering or remaining as posted by either the Lottery or the Oregon Liquor Control Commission.

(2) "**Applicant**" means a person applying for a contract with the Lottery for the purpose of selling Lottery tickets or shares to the public, and any key person.

(3) "**Application**" means the forms, documents, or other information that the Lottery requires an applicant to submit to the Lottery in order to apply for or maintain a retailer contract.

(4) "**Business**" includes:

(a) A commercial activity engaged in for profit or gain; or

(b) The activity engaged in by a nonprofit organization; or

(c) The activity engaged in by a private club as described in ORS 471.175(8).

(5) "**Complete application**" means an application that is completely filled out, and when required, is signed by the applicant, and includes all the documentation and information requested by the Lottery.

(6) "**Premises**" means the building and grounds occupied by a business (including those areas not normally open to the public), where traditional Lottery game tickets and shares, Video Lottery game shares, or both, are sold. Premises includes an area designated by the Lottery at any single location identified in an application as a proposed site for Oregon Video Lottery terminals.

(7) "**Key person**" means:

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Oregon State Marine Board Chapter 250

(a) Corporations: For any corporation, including a subsidiary of a parent corporation:

(A) Stockholders: Any stockholder of a corporation who owns 10% or more of the outstanding stock in such corporation.

(B) Directors: Any director of a corporation who owns or controls 3% or more of the voting stock in such corporation.

(C) Officers: Any officer of a corporation.

(b) Private Clubs: For a private club as described in ORS 471.175(8):

(A) The treasurer.

(B) Any officers, directors, or trustees who oversee or direct the operation of the food, beverage, Lottery, or other gambling-related activities of the private club; and

(C) Each manager in charge of the food, beverage, Lottery, or other gambling-related activities of the private club. The provisions of paragraphs (7)(a)(A), (B), and (C) of this rule do not apply to private clubs.

(c) Trusts: The trustee and all persons entitled to receive income or benefit from the trust.

(d) Associations: The members, officers, and directors.

(e) Partnerships and Joint Ventures: All of the general partners, limited partners, or joint venturers.

(f) Limited Liability Companies: Any manager of the limited liability company, and any members of the limited liability company whose investment commitment or membership interest is 10% or more in the limited liability company.

(g) Layered Ownership: If the parent company, general partner, limited partner, joint venturer, stockholder, member or manager of a limited liability company is itself a corporation, trust, association, subsidiary, partnership, joint venture or limited liability company, then the Director may require that the applicant provide disclosure for such entity as if such entity were a key person itself.

(h) Family Members: Immediate family members as required in ORS 461.300(2)(b)(G) and (H).

(i) Sole Proprietors: The sole proprietor, if the retailer is a sole proprietor.

(j) Owner's Representative: Any person who acts or who has real or apparent authority to act on behalf of the owner in most matters concerning the operation of the owner's business during all business hours. This definition does not include a "shift manager" or a "convenience store manager" unless qualified under this rule. The following are examples of managers who are key persons under this definition:

(A) General Manager: A person who operates the business for a corporate or absentee owner.

(B) Area Manager: A person who operates multiple locations or supervises multiple store managers.

(C) Manager in Fact: Any person who routinely performs all of the following duties:

(i) The hiring and firing of employees;

(ii) Making purchasing decisions relating to the buying of supplies and inventory; and

(iii) Conducting banking functions for the business.

(k) Landlord: A landlord who receives 40% or more of the retailer's Lottery commissions as a part of lease payments or rent, or any landlord who the Director finds, based on reasonably reliable information, exerts influence over the operation of the retailer's business.

(l) Contractual Relationship: Any person who has a lease, contract, or other agreement with the applicant or retailer or anyone else, to provide food service or to manage or operate any part of the business in a Video Lottery retailer's premises other than as an employee.

(m) Control Person: Any reference to a "control person" of a retailer in OAR Chapter 177, a Lottery retailer contract, or Lottery form in effect or in use on or after the effective date of this rule shall be deemed to refer to a "key person" as defined in this section.

(8) "Personal disclosure" means that part of the application which relates to a natural person's personal, criminal, and financial background.

(9) "Mediation" has the meaning as defined in ORS 36.110(4).

(10) "Mediator" means a person who performs mediation.

Stat. Auth.: OR Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.300

Hist.: SLC 3-1985(Temp), f. & ef. 1-15-85; SLC 8-1985, f. & ef. 6-21-85; LC 11-1987, f. 6-22-87, ef. 7-1-87; LOTT 2-1998, f. & cert. ef. 5-28-98; LOTT 6-2000, f. 7-26-00, cert. ef. 8-1-00; LOTT 11-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 22-2002, f. & cert. ef. 11-25-02; LOTT 3-2004(Temp), f. & cert. ef. 4-6-04 thru 10-1-04; LOTT 6-2004, f. & cert. ef. 5-26-04; LOTT 3-2006, f. 2-16-06, cert. ef. 3-1-06; LOTT 8-2006, f. 12-20-06, cert. ef. 1-1-07

Rule Caption: These rules establish the requirements of providers to offer Internet boat safety courses online.

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

Filed with Sec. of State: 1-9-2007

Certified to be Effective: 1-9-07 thru 6-30-07

Notice Publication Date:

Rules Adopted: 250-018-0110

Rules Amended: 250-018-0010, 250-018-0020, 250-018-0040, 250-018-0050, 250-018-0060, 250-018-0080, 250-018-0090

Subject: These rules amend regulations governing the Mandatory Boater Education Program and establish criteria for Internet courses. Housekeeping and technical corrections to the regulations may occur to ensure rule consistency.

Rules Coordinator: June LeTarte—(503) 378-2617

250-018-0010

Definitions

As used in this Division the following definitions apply:

(1) "Approved Course Provider" is any individual or organization who instructs or provides a National Association of State Boating Law Administrators (NASBLA) approved boating safety classroom or internet course and who has been approved by the Oregon State Marine Board.

(2) "Boater Education Card" is the boating safety certificate required by ORS 830.086 and 830.094. This document, issued by the Marine Board, certifies that the person named on the card has established proof of competency and is authorized to operate a boat in Oregon under ORS 830.082 to 830.096.

(3) "Boating Safety Course" is any NASBLA approved course of instruction that is offered by an approved course provider and concludes with an examination containing at least 50 questions including a minimum of 10 specific questions about Oregon boating laws.

(4) "Correspondence Course and Self Test" means a boating safety course and examination provided by the Marine Board that is taken at home without a proctor. After, January 1, 2001, this correspondence course and self test will satisfy minimum standard of boating safety education competency only for those individuals who have qualified for hardship status.

(5) "Direct Supervision" occurs when a person maintains close visual and verbal contact with, provides adequate direction to, and can immediately assume control of a motorboat from the operator of a motorboat. A person who is water skiing, or is in the cabin of a boat is not considered to be in direct supervision. Direct supervision is referred to in ORS 830.090 and 830.088.

(6) "Dockside Safety Checklist" is a document provided by the Marine Board that consists of selected facts about Oregon boating laws that a rental or livery agent is required to present to renters/operators of motorboats and must be read and checked by the renter or operator of the motorboat before a motorboat can be rented and operated.

(7) "Equivalency Exam" is a comprehensive written examination created by the Marine Board containing at least 75 questions including a minimum of 15 specific questions about Oregon boating laws. The equivalency exam is intended to provide experienced boat operators the opportunity to meet the minimum standard of boating safety education competency without having to take a boating safety course.

(8) "Hardship" means a situation or condition that prevents an individual from attending a boating safety course or taking an equivalency exam in person within a reasonable amount of time or within reasonably close proximity to the individual's place of residence. The situation or condition must also keep the individual from taking an approved Internet course. A hardship situation may allow an individual to utilize a correspondence course and self test provided by the Marine Board to meet the minimum standard of boating safety education competency. An individual must submit a written request for hardship status. The Marine Board director or his designee has the authority to grant or deny hardship status.

(9) "Internet Course" is any NASBLA approved course of instruction that is offered through the Internet by an approved course provider and concludes with an examination containing at least 75 questions including a minimum of 15 specific questions about Oregon boating laws.

(10) "Minimum Standard of Boating Safety Education Competency" means a standard of proficiency established by the Marine Board based on the standards set by NASBLA that determines whether an applicant for a boater education card has met or exceeded the requirements of a boating

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safety course, equivalency exam, Internet course, or correspondence course and self test.

(11) "Proctor" is an individual who is a member of the U. S. Coast Guard Auxiliary, U.S. Power Squadron, Marine Patrol, or other public safety organization or whose organization has been approved by the Marine Board to administer an equivalency exam. A "proctor" may also be a public official such as a librarian or community college instructor who has been approved by the Marine Board to administer an equivalency exam.

(12) "Proof of Competency" is a document verifying that an individual has achieved the minimum standard for boating safety education competency as determined by the Marine Board.

(13) "Temporary Boater Education Card" is a document issued by the Marine Board or an approved course provider allowing the bearer to operate a motorboat in Oregon for a period of time not to exceed 60 days as provided in ORS 830.082 to 830.096.

Stat. Auth.: ORS 830.110
Stats. Implemented: ORS 830.082 - 830.096
Hist.: OSMB 6-2000, f. & cert. ef. 10-30-00; OSMB 10-2001, f. & cert. ef. 10-29-01; OSMB 3-2003, f. & cert. ef. 3-31-03; OSMB 1-2007(Temp), f. & cert. ef. 1-9-07 thru 6-30-07

250-018-0020

Minimum Standards for Boating Safety Education Competency

(1) A person required to possess a boater education card in order to operate a motorboat in Oregon must meet the minimum standard for boating safety education competency as set by the Marine Board.

(2) The minimum standards for boating safety education competency required by the Marine Board are:

(a) Successful completion of a boating safety course in person and a passing score of at least 70 percent on a written test administered at the conclusion of the course by the instructor or a proctor; or

(b) A score of at least 70 percent on a proctored equivalency exam. Individuals may take the equivalency exam no more than once within any 30-day period; or

(c) A score of at least 80 percent on a correspondence course and self test provided by the Marine Board to individuals qualifying for hardship status; or

(d) A score of at least 80 percent on a self-test associated with a boating safety course offered over the Internet. For an Internet course to meet Marine Board standards, it must be NASBLA approved and contain at least 75 questions with at least 15 of the questions Oregon specific. Questions must be pulled randomly from a database of a 180 questions minimum, and questions must address each of the key areas of general boat information, national and Oregon specific boating laws, boat operation, preparation and trailering, legal requirements and boating emergencies; or

(e) Possession of a certificate, card, or other official document issued by another state or Canada that is equivalent to Oregon's boater education card as determined by the Marine Board; or

(f) Satisfactory completion of Marine Safety Law Enforcement Academy; or

(g) U.S. Coast Guard certification as Crewman or Coxswain or similar classification within other branches of the armed forces.

(3) Suitable evidence of achieving the minimum standard for boating safety education competency or "proof of competency" documents must contain the name of the individual applying for the boater education card and be signed or otherwise certified by the issuing organization. Proof of competency documents include:

(a) A certificate of completion issued by the U.S. Power Squadrons, U.S. Coast Guard Auxiliary, Marine Board or other approved course provider; or

(b) A certificate, card, or other official document issued by a proctor stating that the individual passed the equivalency exam with a score of 70 percent or better; or

(c) A certificate, card, or other official document issued by another state or Canada that is equivalent to Oregon's boater education card; or

(d) A U.S. Coast Guard operator's license either valid or expired. The following designations will be accepted: First Class Pilot; Master of Steam or Motor or Auxiliary Sail Vessels of not more than 25, 50, 100, 150, 200, 500, 1600 or any gross tons; Mate of Steam or Motor or Auxiliary Sail Vessels of not more than 25, 50, 100, 150, 200, 500, 1600 or any gross tons; Operator of Uninspected Towing Vessels Commercial Assistance Towing; Operator of Uninspected Passenger Vessels; or

(e) A certificate of completion or other official record or document stating that the individual successfully completed the Oregon Marine Safety Law Enforcement Academy; or

(f) A letter from the unit Commanding Officer/Officer in Charge stating that the individual has achieved certification as a U.S. Coast Guard

Crewman or Coxswain or similar classification within other branches of the armed forces; or

(g) In the event the original document establishing proof of competency is not available, a signed statement from an approved-course provider of a boating safety course stating that the individual has successfully completed a boating safety course or equivalency exam will be accepted by the Marine Board.

(4) Correspondence course and self tests taken after January 1, 2001, except as stated in (2)(c), will not meet Marine Board standards.

Stat. Auth.: ORS 830.110
Stats. Implemented: ORS 830.082 - 830.096
Hist.: OSMB 6-2000, f. & cert. ef. 10-30-00; OSMB 10-2001, f. & cert. ef. 10-29-01; OSMB 1-2007(Temp), f. & cert. ef. 1-9-07 thru 6-30-07

250-018-0040

Replacement Boater Education Card

(1) A person may apply for a replacement boater education card from the Marine Board if:

- They legally change their name; or
- The card is lost, stolen or destroyed; or
- Misinformation is printed on the card.

(2) To obtain a replacement boater education card, an applicant must provide the Marine Board with:

(a) A completed application on a form provided by the Marine Board which includes an affidavit signed by the applicant stating the circumstances that led to the replacement of the original boater education card; and

(b) A \$8 fee for a replacement card paid-in-full in a manner determined by the Marine Board and stated on the application form.

Stat. Auth.: ORS 830.110
Stats. Implemented: ORS 830.082 - 830.096
Hist.: OSMB 6-2000, f. & cert. ef. 10-30-00; OSMB 1-2007(Temp), f. & cert. ef. 1-9-07 thru 6-30-07

250-018-0050

Temporary Boater Education Card

(1) The registered owner of a new motorboat who is otherwise required to possess a boater education card may use the temporary certificate of number issued by the Marine Board or its authorized agent as a temporary education card and may operate the new motorboat for no more than 60 days from the date of registration provided the temporary certificate of number is on board.

(2) A person who is required to possess a boater education card may use an original proof of competency (Certificate of Completion) as a temporary card and may operate a boat for no more than 60 days from date of issue provided the original proof of competency is on board.

(3) A person residing in Oregon who is otherwise required to possess a boater education card and has received a certificate, card, or other official document issued by another state or Canada that is equivalent to Oregon's boater education card may use that document as a temporary card and may operate a boat in Oregon for no more than 60 days from date of residency provided the document is on board.

(4) A person who legally rents a motorboat and is otherwise required to possess a boater education card may use the required dockside checklist as a temporary education card and may operate the rental motorboat in Oregon for the term of the rental agreement but not longer than 60 days.

Stat. Auth.: ORS 830.110
Stats. Implemented: ORS 830.082 - 830.096
Hist.: OSMB 6-2000, f. & cert. ef. 10-30-00; OSMB 1-2007(Temp), f. & cert. ef. 1-9-07 thru 6-30-07

250-018-0060

Dockside Checklist

(1) Beginning May 1, 2002 any person who provides a motorboat for rent in Oregon must require that the renter or operator of the rental motorboat show proof of possession of a boater education card before renting the person a motorboat.

(2) If the renter or operator of the rented motorboat does not possess a boater education card, the rental agent must provide the renter or operator of the craft with a dockside checklist provided by the Marine Board.

(3) The renter or operator of a rental motorboat must review and mark the dockside checklist in the presence of the rental agent before they may operate the rental motorboat.

(4) The renter or operator of the rental motorboat must retain the dockside checklist on board when operating the boat.

(5) It is not required that every person who will operate the rented motorboat complete the checklist. A person over the age of 16 may operate the rented motorboat if they are accompanied and directly supervised by a

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person over the age of 16 (18 for personal watercraft) who is carrying a boater education card or proof of completing the dockside safety checklist.

Stat. Auth.: ORS 830.110
Stats. Implemented: ORS 830.082 - 830.096
Hist.: OSMB 6-2000, f. & cert. ef. 10-30-00; OSMB 3-2003, f. & cert. ef. 3-31-03; OSMB 1-2007(Temp), f. & cert. ef. 1-9-07 thru 6-30-07

250-018-0080

Exemptions

(1) ORS 830.092 states that non-resident boaters will be exempt from carrying a card if operating in Oregon waters for less than 60 days. This exemption will apply only to non-residents age 12 and older. No one age 11 and under, whether a resident of this state or not, may operate a power boat of any horsepower after January 1, 2003.

(2) In addition to the exemptions granted in ORS 830.092:

(a) A person operating a seaplane with a valid license issued by the Federal Aviation Administration (FAA) and a seaplane endorsement is not required to carry a boater education card. Seaplane pilots must possess a boater education card to operate a recreational boat.

(b) A person operating a motorboat in an authorized competitive marine event on a course authorized by the Marine Board, or engaged in practicing for a competitive power boat race on a course authorized by the Marine Board is not required to carry a boater education card.

Stat. Auth.: ORS 830.110
Stats. Implemented: ORS 830.082 - 830.096
Hist.: OSMB 6-2000, f. & cert. ef. 10-30-00; OSMB 10-2001, f. & cert. ef. 10-29-01; OSMB 3-2003, f. & cert. ef. 3-31-03; OSMB 1-2007(Temp), f. & cert. ef. 1-9-07 thru 6-30-07

250-018-0090

Fees

(1) The Boater Education Card fee is \$10.

(2) The Replacement Card fee is \$8. The fee is waived if replacement is necessary because of a Marine Board error. The same number will be assigned on any replacement card as was assigned on the original.

(3) Fees paid to the Marine Board for a boater education card or replacement are not refundable.

(4) Active duty marine officers will not have to pay the \$10 fee for the boater education card. Non-active marine officers will have to pay the \$10 fee.

(5) An approved course provider acting under the authority of the Marine Board may charge a reasonable fee to recover costs associated with providing a boating safety course or equivalency exam.

(6) The Agency of the State Marine Board may charge a reasonable fee to recover the cost of providing educational materials used in safe boating courses. The fee schedule for materials shall be approved by the five members of the Marine Board who have been appointed by the Governor of the State of Oregon.

Stat. Auth.: ORS 830.110
Stats. Implemented: ORS 830.082 - 830.096
Hist.: OSMB 6-2000, f. & cert. ef. 10-30-00; OSMB 10-2001, f. & cert. ef. 10-29-01; OSMB 1-2007(Temp), f. & cert. ef. 1-9-07 thru 6-30-07

250-018-0110

Approved Internet Course Providers

(1) Individuals and organizations who would like to provide an approved boating safety Internet course must apply to the Marine Board to become an approved Internet course provider. To apply, each Internet course provider must, in the following order:

(a) Obtain NASBLA approval prior to Oregon state approval;

(b) Complete and submit, for Marine Board review and approval, the Marine Board Internet Course provider application and boating safety course.

(2) To meet the Marine Board's Internet standards, Internet course providers must:

(a) Be approved by NASBLA and have a signed Course Provider Contract with NASBLA;

(b) Meet the Oregon Internet Approval Standards provided by the Marine Board;

(c) Write state-specific information consistent with NASBLA Standard #8. A link to the Marine Board website will not be accepted;

(d) Provide 45 state-specific questions in accordance to NASBLA Testing Standards #1, #2, #3 and #4.

(3) An Internet course provider who offers boaters the option to obtain the Boater Education Card online must:

(a) Provide the Marine Board compatible electronic data files, as specified by the Marine Board, containing data of individuals who are eligible for their boater education card. Files will be transmitted once weekly on a day to be determined by the Marine Board. The files must contain

specified information: name, date of birth, address, phone number, hair color, eye color, and gender.

(b) Provide the Marine Board weekly deposits, with deposit day and account number to be determined by the Marine Board;

(c) Provide the Marine Board accounting section weekly reports indicating the cost of the card for each application and the total amount to be paid to the Marine Board;

(d) Provide the students information regarding security measures that are in place for financial transactions before personal information is exchanged online. All transactions must follow industry security standards.

(4) All promotion materials and products to be used by the Internet course provider to promote their website must be approved by the Marine Board before publishing and distribution to the public.

(5) An Internet course provider may charge a testing fee. The fee amount is at the discretion of the Internet course provider. However, the testing fee must be clearly communicated to the test-taker prior to testing on the Internet course provider's website.

(6) The Marine Board may, upon evidence, place any approved Internet course provider on probation for a period for up to 24 months or remove an approved Internet course from the Marine Board website for any of the following reasons:

(a) Making false statements, misusing, or misrepresenting the Marine Board, its staff, or policies and procedures;

(b) Misinforming boaters in advertising, marketing, or publishing efforts;

(c) Generating and providing their own Boater Education Cards for the State of Oregon.

Stat. Auth.: ORS 830.110
Stats. Implemented: ORS 830.082 - ORS 830.096
Hist.: OSMB 1-2007(Temp), f. & cert. ef. 1-9-07 thru 6-30-07

Oregon University System Chapter 580

Rule Caption: Repeals annual salary calculation method for academic staff.

Adm. Order No.: OSSHE 1-2007

Filed with Sec. of State: 1-11-2007

Certified to be Effective: 1-11-07

Notice Publication Date: 12-1-06

Rules Repealed: 580-020-0020

Subject: 580-020-0200: This rule describes the monthly salary calculation method for academic staff with rank of instructor or above, employed on an academic year basis. The rule is no longer needed due to implementation of an automated payroll system capable of making precise monthly pro-rations in accordance with the terms of academic staff contracts and pay period variations occurring in the academic calendar year-to-year.

Rules Coordinator: Marcia M. Stuart—(541) 346-5749

Rule Caption: To establish tuition and fees for the 2007 summer session, including room and board rates.

Adm. Order No.: OSSHE 2-2007

Filed with Sec. of State: 1-11-2007

Certified to be Effective: 1-11-07

Notice Publication Date: 11-1-06

Rules Amended: 580-040-0035

Subject: To establish tuition and fees for the 2007 Summer Session, including room and board rates.

Rules Coordinator: Marcia M. Stuart—(541) 346-5749

580-040-0035

Summer Session Fee Book

The document entitled "Summer Session Fee Book" dated January 05, 2007, is hereby amended by reference as a permanent rule. All prior adoptions of summer session 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 2-1978, f. & ef. 5-16-78; HEB 3-1979, f. & ef. 4-27-79; HEB 4-1980, f. & ef. 4-18-80; HEB 3-1981, f. & ef. 6-4-81; HEB 3-1982, f. & ef. 4-20-82; HEB 2-1983, f. & ef. 2-11-83; HEB 2-1984, f. & ef. 3-21-84; HEB 3-1985, f. & ef. 3-4-85; HEB 9-1986, f. & ef. 4-7-86; HEB 3-1987, f. & ef. 3-9-87; HEB 3-1988, f. & cert. ef. 3-16-88; HEB 2-1989, f. & cert. ef. 2-14-89; HEB 3-1990, f. & cert. ef. 2-13-90; HEB 2-1991, f. & cert. ef. 3-12-91; HEB 1-1992, f. & cert. ef. 2-12-92; HEB 2-1993, f. & cert. ef. 2-5-93; HEB 2-1994, f. 2-9-

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94, cert. ef. 2-15-94; HEB 1-1995, f. & cert. ef. 2-23-95; HEB 1-1996, f. & cert. ef. 2-5-96; HEB 1-1997, f. & cert. ef. 1-28-97; OSSHE 1-1998, f. & cert. ef. 1-27-98; OSSHE 7-1998, f. & cert. ef. 12-23-98; OSSHE 7-1999, f. & cert. ef. 12-22-99; OSSHE 5-2000, f. & cert. ef. 12-21-00; OSSHE 1-2002, f. & cert. ef. 1-2-02; OSSHE 6-2003, f. & cert. ef. 12-24-03; OSSHE 2-2005, f. & cert. ef. 2-15-05; OSSHE 2-2007, f. & cert. ef. 1-11-07

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

Rule Caption: Minor changes to the Student Conduct Code allowing notice to be electronic or in writing.

Adm. Order No.: PSU 1-2007

Filed with Sec. of State: 1-5-2007

Certified to be Effective: 1-5-07

Notice Publication Date: 12-1-06

Rules Amended: 577-031-0140

Subject: The proposed amendment allows for notice from the Senior Conduct Officer to the Respondent to be written notice. This change in language provides the agency with the flexibility to send written, hard copy notice or to send notice electronically.

Rules Coordinator: Jeremy Randall Dalton—(503) 725-3701

577-031-0140

Procedures for Complaints Against Individuals

(1) Any person may submit a written complaint to OSA alleging that a student(s) or student organization or group has engaged in conduct proscribed by this Code. Any charge should be submitted as soon as possible after the event takes place, preferably within fourteen days of the event. The process cannot begin until the written complaint has been received.

(a) A "Complainant" is defined as any person submitting a written complaint to OSA alleging that a student(s), student organization or group has engaged in conduct proscribed by this Code.

(b) A "Respondent" is defined as any student who is alleged to have engaged in conduct proscribed by the Code.

(2) Within a reasonable time from the receipt of a complaint, the Senior Conduct Officer, will send written notice or have written notice delivered to the Respondent(s) (with reference to the specific section of this Code allegedly violated) alleged to have violated the Code. This notice will advise him or her of the allegations and request a meeting to investigate the matter to determine whether there are reasonable grounds to adjudicate the complaint. If the Respondent fails to appear for this investigational meeting, the Senior Conduct Officer will determine whether there are reasonable grounds to adjudicate the complaint in the Respondent's absence. Following this determination, the Senior Conduct Officer will adjudicate the complaint and send the Respondent written notice of the outcome.

(3) If reasonable grounds are not found, the Senior Conduct Officer, in his/her sole discretion, will refer the issue to mediation, dismiss the case, or dismiss the case with administrative counsel when warranted. In the event that the case is dismissed, the Senior Conduct Officer will notify the Complainant and the Respondent of this dismissal.

(4) If reasonable grounds are found, or if the Respondent accepts responsibility for the alleged conduct, the Respondent is informed of the alleged violation and of his or her option to have the complaint heard by the Senior Conduct Officer or the Committee. Once informed of this option, the Respondent has five (5) days to submit a written request for a hearing before the Committee. Failure to file a timely request for a hearing shall result in the loss of this option, and the Senior Conduct Officer will decide the matter in the Respondent's absence.

(5) If the Respondent chooses to have the Senior Conduct Officer hear the case, the Respondent will be given an opportunity to explain the alleged behavior and will be informed of the information supporting the charge. All hearings are closed and information presented in them and supporting documents are confidential except as required by law. The hearing is informal and does not follow administrative contested case or courtroom procedures:

(a) If the Respondent fails to meet with the Senior Conduct Officer, the Senior Conduct Officer will take decide the matter in the Respondent's absence. Failure to cooperate or appear shall not delay the disposition of the matter.

(b) The Respondent may bring a third party advisor of his/her choice to the hearing as long as the availability of the advisor does not interfere with the timeliness of the hearing. The Respondent will be expected to speak for him or her self at all times and may only use the advisor for consultation or support. The Respondent may elect to have an attorney serve as advisor. The University assumes no responsibility for any costs associated with such representation.

(c) The Respondent has the opportunity to offer information on his or her behalf and to review and respond to all information presented. (d) The Senior Conduct Officer may ask questions of any person present during the hearing. The Senior Conduct Officer may invite questions and comments from advisors or others present. (e) If the Senior Conduct Officer decides an essential person or piece of information is missing, the Senior Conduct Officer may decide to reconvene the hearing at the earliest practical time that the missing information will be available. (f) The Senior Conduct Officer will determine, based upon a preponderance of the evidence (using a standard of "more likely than not"), whether a Code violation exists. Once that determination is made, the Senior Conduct Officer will send written notice to the Respondent articulating the determination of responsible or not for the alleged violation, subsequent sanction, if any imposed, and information about the Appeal Process.

(6) If the Respondent chooses to have the Student Conduct Committee (the Committee) hear the case, the Committee Chairperson facilitates the hearing procedures and has voting power in the case of a tie. The Senior Conduct Officer serves as an ex-officio consultant and ensures administrative support of the process. All Committee hearings are closed and information presented in them and supporting documents are confidential except as required by law. The hearing is informal and does not follow administrative contested case or courtroom procedures.

(a) If the Respondent fails to appear, the Committee will proceed with the hearing in the Respondent's absence. Failure to cooperate or appear shall not delay the disposition of the matter.

(b) The Respondent may bring a third party advisor of his/her choice to the hearing as long as the availability of the advisor does not interfere with the timeliness of the hearing. The Respondent will be expected to speak for him or her self at all times and may only use the advisor for consultation or support. The Respondent may elect to have an attorney serve as advisor. The University assumes no responsibility for any costs associated with such representation. (c) The Respondent has the opportunity to offer information on his or her behalf and to review and respond to all information presented. Respondent

(d) Members of the Committee may ask questions of any person present during the hearing. The Chairperson may invite questions and comments from advisors or others present. If the Chairperson decides an essential person or piece of information is missing, the Chairperson may decide to reconvene the hearing at the earliest practical time that the missing information will be available.

(e) After the Chairperson has determined that all the necessary information has been presented and questions answered, the Committee goes into executive session and all persons are excused. The Committee determines, based on a preponderance of evidence (using a standard of "more likely than not"), whether a Code violation exists, and, if so, what sanctions may be appropriate. The Committee communicates the outcome of the hearing to the Respondent.

(7) The hearing process will make an effort to consider the rights and needs of the Complainant, if there is one, in decisions related to sanctions such as restitution.

(8) Pending resolution of a matter, the Respondent is entitled to all rights and privileges of a student in good standing. However, the Dean may suspend the Respondent or take other appropriate action upon a finding by clear and convincing evidence (using a standard of highly probable) that the Respondent's presence at the University constitutes a substantial threat to health, personal safety, or property. In cases where this determination is made, the Dean will notify the Respondent in writing of his/her interim action.

(9) Appeals of the decision of the Senior Conduct Officer or of the Committee shall be made to the Dean. This appeal must be in writing and filed within five (5) days following notification to the Respondent of the hearing's outcome. Sanctions will take effect upon expiration of the time period allocated for appeal. Similarly, notification of the outcome to additional individuals, as required by law and as necessary to implement the decision, will occur at this time.

Stat. Auth.: ORS 351.070

Stats. Implemented:

Hist.: PSU 1-1982, f. & ef. 4-22-82; PSU 4-1987, f. 9-30-87, ef. 10-1-87; PSU 2-1988(Temp), f. & cert. ef. 3-15-88; PSU 4-1988, f. & cert. ef. 6-16-88; PSU 1-1994, f. & cert. ef. 1-10-94; PSU 2-2002, f. & cert. ef. 10-22-02; PSU 4-2006, f. & cert. ef. 8-22-06; PSU 1-2007, f. & cert. ef. 1-5-07

Rule Caption: Periodic Update to the Parking Rules and Regulations.

Adm. Order No.: PSU 2-2007

Filed with Sec. of State: 1-5-2007

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Certified to be Effective: 1-5-07

Notice Publication Date: 12-1-06

Rules Amended: 577-070-0005, 577-070-0010, 577-070-0015, 577-070-0020, 577-070-0025, 577-070-0030, 577-070-0035, 577-070-0045, 577-070-0050

Subject: The proposed amendment updates the Parking Rules and Regulations to make them consistent with recent changes to the Schedule of Fines and Fees for General Services (577-060-0020). This amendment corrects OAR references within the rule and more clearly defines ambiguous terminology that was present in the rule. The amendment includes minor changes to hours of operation and enforcement.

Rules Coordinator: Jeremy Randall Dalton—(503) 725-3701

577-070-0005

Declaration of Purpose

(1) In order to facilitate the operation of parking structures, parking lots and controlled street access areas of the University, the following rules and regulations are hereby established and are enforceable under authority provided by ORS 352.360.

(2) All motor vehicle laws of the State of Oregon including specifically, but not limited by, ORS Chapters 481, 482, 483, 484, and 486, together with amendments hereafter adopted, are applicable to the campus of Portland State University to the same extent as if this campus and its streets were public highways, and all provisions of said motor vehicle laws are applicable and enforceable. State motor vehicle laws shall apply should any of these parking rules and regulations be found inconsistent and incompatible.

(3) Portland State University, through the President and other administrative officers designated by him or her, is hereby authorized to place these rules and regulations into effect and to provide for the enforcement thereof through the hiring, appointment and management of university employees.

Stat. Auth.: ORS 351 & 352

Stats. Implemented:

Hist.: PSU 6(Temp), f. & ef. 8-13-76; PSU 9, f. & ef. 11-2-76; PSU 5-1978, f. 7-18-78; PSU 2-1979, f. & ef. 9-17-79; PSU 1-1980, f. 7-30-80, ef. 8-1-80; PSU 1-1981, f. 7-28-81, ef. 8-1-81; PSU 2-1982, f. 7-30-82, ef. 8-1-82; PSU 6-1988, f. 9-6-88, cert. ef. 9-1-88; PSU 1-2003, f. 6-25-03, cert. ef. 7-1-03; PSU 2-2007, f. & cert. ef. 1-5-07

577-070-0010

Use Restrictions

The parking structures and parking lots owned or leased by PSU are for the use of faculty, staff, students, tenants, guests and visitors of the State System of Higher Education; parking by all persons is subject to availability of parking spaces and the policies as established by the administration of Portland State University. All persons who park in University-owned or leased parking lots, structures, street access areas, other no parking zones, or all other campus areas must obtain and display a valid PSU parking permit for the space, and if applicable, the area where the vehicle is parked. Vehicles cited for failure to display such permits are subject to penalty as assessed by the University. PSU reserves the right to enforce all campus areas at all times.

Stat. Auth.: ORS 351 & 352

Stats. Implemented:

Hist.: PSU 6(Temp), f. & ef. 8-13-76; PSU 9, f. & ef. 11-2-76; PSU 5-1978, f. 7-18-78; PSU 2-1979, f. & ef. 9-17-79; PSU 1-1980, f. 7-30-80, ef. 8-1-80; PSU 1-1981, f. 7-28-81, ef. 8-1-81; PSU 2-1982, f. 7-30-82, ef. 8-1-82; PSU 6-1988, f. 9-6-88, cert. ef. 9-1-88; PSU 1-2000, f. 5-10-00, cert. ef. 6-19-00; PSU 1-2003, f. 6-25-03, cert. ef. 7-1-03; PSU 2-2007, f. & cert. ef. 1-5-07

577-070-0015

Permits and Fees

(1) Permits: Valid PSU parking permits are required to park in any non-assigned parking space in non-restricted University parking facilities from 8am to 7pm, Monday through Thursday and 8am to 5pm, Fridays and Saturdays, except on legal holidays when the University is closed. To be eligible for a permit lasting more than seven calendar days, applicants must provide the PSU Transportation and Parking Office with their vehicle license number (or VIN# in lieu), make and year of the vehicle(s) on which the permits will be displayed. Applicants registering vehicles with the Transportation and Parking Office may be required to provide proof of registration or leasing of the vehicle by Applicant, or member's of Applicants' immediate family. Emeritus will receive, upon written confirmation from the Office of Academic Affairs, a complimentary parking permit. Student applicants desiring PSU parking permits must meet the credit requirements for the parking permit which they are purchasing. All permit holders must

maintain their eligibility requirements throughout the term or surrender their permit for applicable permit exchange and, if applicable, monetary adjustment within 10 calendar days of becoming ineligible for the permit, whether or not notice was provided to the student. Failure to surrender the permit will result in the permit being deemed invalid, and vehicles displaying the permit will be subject to parking citations for misuse of permit. All students will be required to pay for all outstanding fines, prior to purchasing a current term permit.

(2) PSU parking permits are valid only when purchased from or approved by the PSU Transportation and Parking Office. Permits are to be displayed in a manner prescribed by the Transportation and Parking Office. Permits which are static cling or stickers are to be adhered inside of vehicle, on the lower left rear window, left rear side window, or if vehicle has a canopy, or a convertible top, driver's front left side window. Motorcycle permits are to be displayed in a conspicuous place. Hangtag permits are to be hung on rear view mirror facing toward front windshield, and clearly visible through the windshield or taped to the lower left rear window.

(3) Except in the case of carpool permits, only one physical permit is issued.

(4) Institutional accounts may not be charged for permits or spaces issued to PSU paid employees or students, but may be charged for permits or spaces for guests not paid by the university or for PSU owned vehicles.

(5) The following types of parking permits have additional restrictions.

(a) Reserved Space permits allow an assigned vehicle to be parked from 6:00 a.m. to 6:00 p.m., Monday through Saturday in their assigned reserved space, unless otherwise posted.

(b) Carpool permits allow one vehicle at any time from a carpool registered with the Transportation and Parking Office to park in one of the preferred carpool parking spaces on campus. If the carpool spaces are full, carpool permit holders may park in non-assigned, general permit parking spaces. A carpool shall be defined as two (2) or more University staff, faculty, or full-time students, who have compatible schedules, allowing the individuals to ride together a minimum of three days per week. Individuals who carpool must come into the Transportation and Parking Office together to sign a carpool agreement receive their carpool permit.

(c) Motorcycle permits allow motorcycles, power scooters and mopeds to be parked at any time in areas designated as "Motorcycle Parking". This excludes spaces identified as bicycle parking.

(d) Special Event Parking permits may be made available if the issuance of the Special Event Parking permit does not displace a University permit holder who has purchased permits under section one (1) of OAR 577-070-0015. Special event parking requires a PSU parking permit designed and/or approved by the Transportation and Parking Office. Parking availability will be the decision of the Manager of Transportation and Parking Services, or designated staff. Some events will require written agreement with regard to permit distribution, fees, and related considerations.

(e) Student Housing permits are available to those individuals with proof of on campus student residency, and proof of registration at the University for at least one (1) credit hour.

(f) Tenant Parking permits are provided at University District market rates at the discretion of the Manager of Transportation and Parking Services or designated employee.

(g) Service, Contractor and Loading Zone permits are available to individuals and companies working on PSU campus and allow vehicles to park in any non-assigned parking space in non-restricted lots. Parking in reserved spaces, restricted lots or no parking areas must be approved by the Transportation & Parking Office. Permits arranged through PSU Facilities and Planning requires appropriate project accounting codes identified at the time the permit is issued and submitted to the Transportation and Parking Office.

(h) Departmental Service permits may be requested by departments at no charge to be used by faculty and staff parking permit holders for loading and unloading in no parking zones for up to 30 minutes.

(6) Commercial Delivery vehicles may use any designated loading zone for the time allowed in that space noted through signage, while conducting business with the University without a permit.

(7) Lost and Stolen permits:

(a) Permits, which are lost or stolen, must be reported immediately to the Transportation and Parking Office. They will be replaced (see rule 577-070-0020) only if the person to whom the permit was originally issued signs a lost/stolen permit form. In order for the stolen permit fee to be waived, a report must first be filed with the Campus Public Safety Office

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setting out the fact that permit was stolen on PSU owned or leased property.

(b) Any car appearing on campus with a permit listed in the Transportation and Parking Office as lost or stolen will be booted or towed immediately on discovery, and will be subject to fines listed in rule 577-060-0020.002. Possession of a lost or stolen permit could be grounds for criminal charges and, if applicable, University disciplinary action. Drivers of cars bearing a stolen or lost permit will also be charged for the entire value of the permit from the date that it was originally issued.

(8) Forged or Altered permits: Drivers of cars bearing forged or altered permits are subject to fines listed in 577-060-0020.002. The car will be booted or towed immediately on discovery, and the remaining permit value may, at the discretion of the PSU Transportation and Parking Office, be forfeited. Drivers of vehicles bearing a forged permit will also be charged for the entire cost of the permit, without proration, from the date that its original copy was issued.

(9) Application for Refund of Fees: Unused portions of parking permits valid for longer than one day may be submitted to the Transportation and Parking Office for a pro-rated refund. Permits must be removed from the vehicle and returned to the Transportation and Parking Office. Refunds are computed from the date the permit is returned. Refunds for term and academic year permits will not be issued during the last two weeks of the academic term and refunds for monthly or annual permits will not be issued during the last 15 days of the month for that month. Faculty/Staff permits not returned within 30 days after termination may be considered to be lost/stolen and the possessor of the permit will be billed the one month value of the parking permit.

Stat. Auth.: ORS 351.070 & 352.360
Stats. Implemented: ORS 352.360
Hist.: PSU 69(Temp), f. & ef. 8-13-76; PSU 9, f. & ef. 11-2-76; PSU 5-1978, f. & ef. 7-18-78; PSU 2-1979, f. & ef. 9-17-79; PSU 1-1980, f. 7-30-80, ef. 8-1-80; PSU 1-1981, f. 7-28-81, ef. 8-1-81; PSU 2-1982, f. 7-30-82, ef. 8-1-82; PSU 3-1983, f. 6-22-83, ef. 7-1-83; PSU 2-1984, f. 6-8-84, ef. 7-1-84; PSU 2-1985, f. 6-26-85, ef. 7-1-85; PSU 2-1986, f. 7-28-86, ef. 9-1-86; PSU 2-1987, f. 6-19-87, ef. 9-1-87; PSU 6-1988, f. 9-6-88, cert. ef. 9-1-88; PSU 4-1989(Temp), f. & cert. ef. 10-10-89; PSU 1-1990, f. & cert. ef. 1-22-90; PSU 6-1990(Temp), f. 8-17-90, cert. ef. 9-1-90; PSU 7-1990(Temp), f. 11-14-90, cert. ef. 12-26-90; PSU 8-1990, f. 12-11-90, cert. ef. 12-26-90; PSU 3-1992, f. & cert. ef. 6-16-92; PSU 2-1994, f. 10-14-94, cert. ef. 1-1-95; PSU 2-1996, f. & cert. ef. 5-1-96; PSU 4-1996, f. & cert. ef. 10-8-96; PSU 1-1998, f. & cert. ef. 7-16-98; PSU 1-2000, f. 5-10-00, cert. ef. 6-19-00; PSU 1-2003, f. 6-25-03, cert. ef. 7-1-03; PSU 2-2007, f. & cert. ef. 1-5-07

577-070-0020

Replacement Permits

A replacement permit may be obtained when a parking permit is lost, stolen or damaged at the replacement fee cost listed in OAR 577-060-0020 after completing and signing a lost/stolen permit form. In the event a permit is stolen on PSU campus, a stolen permit report must be filed with the Campus Public Safety Office before a replacement permit may be issued.

Stat. Auth.: ORS 351.070 & 352.360
Stats. Implemented: ORS 352.360
Hist.: PSU 6(Temp), f. & ef. 8-13-76; PSU 9, f. & ef. 11-2-76; PSU 5-1978, f. 7-18-78; PSU 2-1979, f. & ef. 9-17-79; PSU 1-1980, f. 7-30-80, ef. 8-1-80; PSU 1-1981, f. 7-28-81, ef. 8-1-81; PSU 2-1982, f. 7-30-82, ef. 8-1-82; PSU 6-1988, f. 9-6-88, cert. ef. 9-1-88; PSU 4-1989(Temp), f. & cert. ef. 10-10-89; PSU 1-1990, f. & cert. ef. 1-22-90; PSU 1-2000, f. 5-10-00, cert. ef. 6-19-00; PSU 1-2003, f. 6-25-03, cert. ef. 7-1-03; PSU 2-2007, f. & cert. ef. 1-5-07

577-070-0025

Miscellaneous Regulations

(1) No driver of a vehicle shall stop or park a vehicle at a time or in a place not authorized by a permit issued under these regulations.

(2) Other vehicles: motorcycles, scooters, mopeds and bicycles may be parked only in those areas specifically designated for their use. Bicycles may be parked without charge in areas where the University has placed suitable racks. Bicycles parked in any area designated for vehicle parking, chained to signposts, stairwells, trees or other structures not designed for bicycle parking are subject to being removed at the owner's expense and will be retained by PSU, if not picked up by the bicycle owner, for 7 calendar days at which time it will be deemed forfeited and become the property of PSU. Bicycles are only allowed in campus buildings if being taken to a designated indoor bicycle parking facility or to one's office or cubicle if approved by a department head or dean or Transportation and Parking Services. No motorized vehicles are allowed to park in bicycle areas.

(3) No permit holder is allowed to use his/her vehicle, while on PSU property, for the purpose of temporary or permanent residence. Vehicle maintenance and repair may not be done in parking areas or any other campus areas without the approval of Transportation and Parking Services.

(4) Loading Zones are for the specific use of loading and unloading only, and vehicles parked in loading zones that are not being used for this purpose are subject to citations listed in OAR 577-060-0020(002).

(5) State Vehicles (E-Plates) owned or assigned to the University may park in any non-assigned, general permit parking space at the current faculty/staff rates; other State Vehicles wishing to park in PSU owned or leased areas, including all other government vehicles i.e., cities, municipalities, counties, or federal government, will be required to obtain a permit in accordance with established fees under 577-060-0020(002) and notify the PSU Transportation and Parking office.

(6) Police and fire vehicles and ambulances may park on campus for official business at PSU at no cost. Vehicles whose operator is at Portland State University for any other purpose will be required to obtain a permit in accordance with established fees under 577-060-0020(002).

(7) No permit holder is allowed to use PSU property for the purpose of storing an inoperable vehicle.

Stat. Auth.: ORS 351.070 & 352.360

Stats. Implemented: ORS 352.360

Hist.: PSU 6(Temp), f. & ef. 8-13-76; PSU 9, f. & ef. 11-2-76; PSU 5-1978, f. & ef. 7-18-78; PSU 2-1979, f. & ef. 9-17-79; PSU 1-1980, f. 7-30-80, ef. 8-1-80; PSU 1-1981, f. 7-28-81, ef. 8-1-81; PSU 2-1982, f. 7-30-82, ef. 8-1-82; PSU 2-1994, f. 10-14-94, cert. ef. 1-1-95; PSU 4-1996, f. & cert. ef. 10-8-96; PSU 1-1998, f. & cert. ef. 7-16-98; PSU 1-2000, f. 5-10-00, cert. ef. 6-19-00; PSU 1-2003, f. 6-25-03, cert. ef. 7-1-03; PSU 2-2007, f. & cert. ef. 1-5-07

577-070-0030

Vehicular Traffic Within the Structures and Lots

(1) Unless otherwise posted, the speed limit within the parking structures and lots and any other PSU areas shall be 10 miles per hour.

(2) Traffic within the parking structures or lots is limited to movement into and out of parking spaces and from parking spaces to an exit. All vehicles will follow the indicated direction of traffic flow, including traffic on the University-controlled street access areas. Vehicles in violation are subject to the fines listed under OAR 577-060-0020.002. and may be subject to forfeiture of a parking permit. Failure to forfeit a parking permit or to comply with the instructions against driving a vehicle on PSU owned, leased or managed property may result in the violators vehicle being towed and/or elimination of all parking privileges.

Stat. Auth.: ORS 351.070 & 352.360

Stats. Implemented:

Hist.: PSU 6(Temp), f. & ef. 8-13-76; PSU 9, f. & ef. 11-2-76; PSU 5-1978, f. & ef. 7-18-78; PSU 2-1979, f. & ef. 9-17-79; PSU 1-1980, f. 7-30-80, ef. 8-1-80; PSU 1-1981, f. 7-28-81, ef. 8-1-81; PSU 2-1982, f. 7-30-82, ef. 8-1-82; PSU 2-1985, f. 6-26-85, ef. 7-1-85; PSU 6-1988, f. 9-6-88, cert. ef. 9-1-88; PSU 3-1992, f. & cert. ef. 6-15-92; PSU 2-1994, f. 10-14-94, cert. ef. 1-1-95; PSU 1-2000, f. 5-10-00, cert. ef. 6-19-00; PSU 1-2003, f. 6-25-03, cert. ef. 7-1-03; PSU 2-2007, f. & cert. ef. 1-5-07

577-070-0035

Vehicle Immobilization, Towing, Booting and Tow Notices

(1) Booting, Towing and Impoundment. Release of a booted, towed or impounded vehicle will be made upon payment (cash, credit card or check with the exception of after hours transactions limited to cash or checks at the discretion of the Campus Public Safety Office) of all outstanding fines with the Transportation and Parking office, after proof of ownership is substantiated. In the case of a vehicle being booted or towed due to having displayed a forged, altered or stolen permit, the permit must be given to the Transportation and Parking office before the vehicle is released.

(2) Tow Notice Violation. A vehicle having three or more outstanding parking citations is subject to a Tow Notice Violation. If payments of all outstanding citations are made with the Transportation and Parking office within (7) seven calendar days of receiving a Tow Notice Violation, the penalty for the Tow Notice Violation will be waived.

(3) Vehicles parked anywhere on University property may be booted or towed at the owner's expense without notice, under the following conditions:

(a) Parking in an area designated as a fire-lane (yellow or red curbing and/or signed) or tow-a-way zone.

(b) Blocking traffic or obstructing the normal flow of traffic.

(c) For fire or safety reasons.

(d) Abandoned vehicles — Abandoned or junked vehicles remaining on University property more than 24 hours will be removed. Unlicensed vehicles (to include those with obscured VIN numbers) parked on University property will be considered as abandoned and subject to removal upon discovery or booted until ownership and information is verified.

(e) Vehicles bearing forged, altered or stolen permits.

(f) Parking in an Reserved space, Disabled Reserved space, or restricted area without an appropriate permit.

(g) Vehicles equipped with alarms that do not cease emitting intermittent or constant sound after an aggregate time of 3 minutes within any 15-minute period.

(h) Vehicles parked in pedestrian or no parking zones.

(i) Vehicles with an outstanding, expired tow notice violation.

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Stat. Auth.: ORS 351.070 & 352.360
Stats. Implemented: ORS 352.360

Hist.: PSU 6(Temp), f. & ef. 8-13-76; PSU 9, f. & ef. 11-2-76; PSU 5-1978, f. & ef. 7-18-78; PSU 2-1979, f. & ef. 9-17-79; PSU 1-1980, f. 7-30-80, ef. 8-1-80; PSU 1-1981, f. 7-28-81, ef. 8-1-81; PSU 2-1982, f. 7-30-82, ef. 8-1-82; PSU 2-1984, f. 6-8-84, ef. 7-1-84; PSU 6-1988, f. 9-6-88, cert. ef. 9-1-88; PSU 4-1989(Temp), f. & cert. ef. 10-10-89; PSU 1-1990, f. & cert. ef. 1-22-90; PSU 6-1990(Temp), f. 8-17-90, cert. ef. 9-1-90; PSU 7-1990(Temp), f. 11-14-90, cert. ef. 12-26-90; PSU 8-1990, f. 12-11-90, cert. ef. 12-26-90; PSU 3-1992, f. & cert. ef. 6-16-92; PSU 2-1995, f. & cert. ef. 12-12-95; PSU 4-1996, f. & cert. ef. 10-8-96; PSU 1-2000, f. 5-10-00, cert. ef. 6-19-00; PSU 1-2003, f. 6-25-03, cert. ef. 7-1-03; PSU 2-2007, f. & cert. ef. 1-5-07

577-070-0045

Violations and Penalties

(1) Fines. Fines for violation of regulations are set forth in OAR 577-060-0020.002. Citation payments must be made to the PSU's Transportation and Parking office.

(2) Enforcement of Penalties:

(a) All disputed violations may be appealed within fourteen (14) calendar days of the date of the citation by completion of a PSU Citation Petition Form which will be decided upon by a PSU citation appeals officer. Decisions made by appeals officers may be disputed by completing a PSU Traffic Appeals Board Petition and will be reviewed by the Traffic Appeals Board. Disputes to the Traffic Appeals Board may be conducted in writing or in person at scheduled Traffic Appeals Board meetings. Any further dispute of decisions on waivers may be appealed in writing to the Director of Auxiliary Services at Portland State University within fourteen (14) calendar days of the postmark of notification by the Traffic Appeals Board.

(b) The Director of Auxiliary Services will also provide an opportunity for a hearing if requested by the appealing party. Such hearing will be conducted without formal rules of evidence, and will provide an opportunity for presentation of circumstances surrounding the issuance of the citation(s). Decisions by the Director of Auxiliary Services, after the hearing will be in writing, but need not contain specific findings of fact and conclusions of law.

(c) The ruling on the appeal to the Director of Auxiliary Services shall be final.

(d) Failure to adhere to the timelines laid out above will result in dismissal of petition.

(3) Nonpayment of Fines:

(a) A student who fails to tender payment to the University for any traffic violations received, or fails to request a waiver in a timely manner as specified in rule 577-070-0045 on or before the date specified in the traffic citation may have their transcripts withheld, a registration hold placed on their student account or may be denied graduation if any fines or fees under these regulations are unpaid.

(b) Unpaid parking citations that have been unpaid for at least three (3) months may be sent to the responsible party's university Accounts Receivable account or an outside collection agency at the discretion of the Transportation and Parking office.

(4) Forfeiture of Parking Privileges:

(a) Drivers of vehicles bearing forged, altered or stolen permits, drivers who are verbally or physically abusive to Transportation and Parking or other PSU personnel, persons who cause damage to Transportation and Parking property, or drivers who have had their vehicle booted or towed three (3) or more times in one year may be denied parking privileges for a period determined by Transportation and Parking Administration. Drivers will be booted and/or towed for not adhering to their revocation of parking privileges.

(b) Six or more violations resulting in non-payment of citations in a one year period may be cause for forfeiture of a parking permit. Failure to forfeit a parking permit or to comply with the instructions against driving a vehicle within on PSU owned, leased or managed areas, may result in the violator's vehicle being towed or booted.

Stat. Auth.: ORS 351.070 & 352.360
Stats. Implemented: ORS 352.360

Hist.: PSU 6(Temp), f. & ef. 8-13-76; PSU 9, f. & ef. 11-2-76; PSU 5-1978, f. & ef. 7-18-78; PSU 2-1979, f. & ef. 9-17-79; PSU 1-1980, f. 7-30-80, ef. 8-1-80; PSU 1-1981, f. 7-28-81, ef. 8-1-81; PSU 2-1982, f. 7-30-82, ef. 8-1-82; PSU 2-1984, f. 6-8-84, ef. 7-1-84; PSU 2-1986, f. 7-28-86, ef. 9-1-86; PSU 2-1987, f. 6-19-87, ef. 9-1-87; PSU 4-1989(Temp), f. & cert. ef. 10-10-89; PSU 1-1990, f. & cert. ef. 1-22-90; PSU 6-1990(Temp), f. 8-17-90, cert. ef. 9-1-90; PSU 7-1990(Temp), f. 11-14-90, cert. ef. 12-26-90; PSU 8-1990, f. 12-11-90, cert. ef. 12-26-90; PSU 3-1992, f. & cert. ef. 6-16-92 (and corrected 6-19-92); PSU 1-1998, f. & cert. ef. 7-16-98; PSU 1-2000, f. 5-10-00, cert. ef. 6-19-00; PSU 1-2003, f. 6-25-03, cert. ef. 7-1-03; PSU 2-2007, f. & cert. ef. 1-5-07

577-070-0050

Abandoned or Inoperable Vehicles

(1) Abandoned vehicles. Abandoned or junked vehicles remaining on University property more than 24 hours, will be removed at the owner's

expense, in accordance with ORS Chapter 819. Unlicensed (to include those with obscured VIN numbers) vehicles parked on University property will be considered as abandoned and subject to removal upon discovery.

(2) Inoperable vehicles. Vehicles which have broken down on University property and which cannot be removed must be reported at once to the Transportation and Parking or Campus Public Safety Office. Inoperable vehicles must be removed from the campus within 24 hours, or will be subject to removal at the owner's expense. Mechanical repairs to disabled private vehicles on University property is prohibited.

Stat. Auth.: ORS 351 & 352

Stats. Implemented:

Hist.: PSU 6(Temp), f. & ef. 8-13-76; PSU 9, f. & ef. 11-2-76; PSU 5-1978, f. 7-18-78; PSU 2-1979, f. & ef. 9-17-79; PSU 1-1980, f. 7-30-80, ef. 8-1-80; PSU 1-1981, f. 7-28-81, ef. 8-1-81; PSU 2-1982, f. 7-30-82, ef. 8-1-82; PSU 6-1988, f. 9-6-88, cert. ef. 9-1-88; PSU 1-2003, f. 6-25-03, cert. ef. 7-1-03; PSU 2-2007, f. & cert. ef. 1-5-07

Real Estate Agency Chapter 863

Rule Caption: Advertising.

Adm. Order No.: REA 3-2006(Temp)

Filed with Sec. of State: 12-28-2006

Certified to be Effective: 1-1-07 thru 6-29-07

Notice Publication Date:

Rules Amended: 863-015-0125

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

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 of communication for any purpose related to professional real estate activity, including, without limitation, advertising activity conducted by mail, telephone, the Internet, the World Wide Web, E-mail, electronic bulletin board or other similar electronic common carrier systems, business cards, signs, billboards and telephonic greetings or answering machine messages.

(2) All advertising must be done in the principal real estate broker's, sole practitioner real estate broker's or property manager's licensed or registered business name.

(3) If a real estate broker or property manager is associated with a principal real estate broker, the principal real estate broker shall be responsible for all advertising. Pursuant to written company policy, a principal real estate broker may delegate direct supervisory authority over advertising originating in a branch office to the branch office manager but the principal real estate broker shall remain responsible for all advertising done under the broker's real estate license.

(4) A licensee may advertise property owned by the licensee if the property is not listed for sale or lease with the licensee's principal real estate broker or property manager, provided, however, that the advertising identifies the individual as a licensee.

(5) Advertising by a licensee, in process and in substance:

(a) Shall be reasonably identifiable as advertising of a real estate licensee;

(b) Shall be truthful and not deceptive or misleading;

(c) Shall 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) Shall not use any words that state or imply that he or she is qualified or has a level of expertise other than as currently maintained by the licensee; and

(e) Shall be done only with the written permission of the owner or owner(s)' authorized agent.

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

ADMINISTRATIVE RULES

Rule Caption: Rules of Procedure.
Adm. Order No.: REA 4-2006
Filed with Sec. of State: 12-28-2006
Certified to be Effective: 1-1-07
Notice Publication Date:
Rules Amended: 863-001-0005
Subject: Adopts the January 1, 2006, version of the Attorney General's Uniform and Model Rules.
Rules Coordinator: Laurie Skillman—(503) 378-4170, ext. 237

863-001-0005

Rules of Procedure

The Real Estate Agency adopts by reference the Attorney General's Uniform and Model Rules OAR 137-001-0005 through 137-005-0070 bearing the effective date of January 1, 2007.

Stat. Auth.: ORS 183.341, 183.502 & 696.385

Stats. Implemented: ORS 183.341 & 183.502

Hist.: REC 32, f. 11-2-71, ef. 11-15-71; REC 36, f. 1-15-74, ef. 2-11-74; REC 48, f. & ef. 7-19-76; REC 4-1978, f. & ef. 7-2-78; REC 1-1982, f. & ef. 2-3-82; REC 2-1983, f. & ef. 10-13-83; REC 1-1986, f. & ef. 2-11-86; REA 2-1988, f. & cert. ef. 9-9-88; REA 2-1989(Temp), f. & cert. ef. 9-22-89; REA 3-1990, f. 12-13-90, cert. ef. 2-1-90; REA 6-1992, f. 11-4-92, cert. ef. 1-1-93; REA 1-1996, f. 6-3-96, cert. ef. 6-10-96; REA 1-1998, f. & cert. ef. 4-3-98; REA 2-1998, f. 5-28-98, cert. ef. 6-1-98; REA 1-2000, f. & cert. ef. 1-28-00; REA 2-2000, f. 3-27-00, cert. ef. 3-31-00; 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 4-2006, f. 12-28-06, cert. ef. 1-1-07

**Secretary of State,
Elections Division
Chapter 165**

Rule Caption: Repeal of Electronic Filing Rule.

Adm. Order No.: ELECT 14-2006

Filed with Sec. of State: 12-29-2006

Certified to be Effective: 1-1-07

Notice Publication Date: 12-1-06

Rules Repealed: 165-012-0230

Subject: This rule is repealed because ORS 260.159, which sets out the electronic filing requirements implemented by the rule, is repealed effective January 1, 2007. Electronic filing requirements mandated by ORS 260.057 will be incorporated into the 2007 *Campaign Finance Manual for Candidates and Political Committees* adopted by OAR 165-012-0005.

Rules Coordinator: Brenda Bayes—(503) 986-1518

Rule Caption: Change Rule on Procedures for Reporting Contributions Related to Polling; Defines "Committee."

Adm. Order No.: ELECT 15-2006

Filed with Sec. of State: 12-29-2006

Certified to be Effective: 12-29-06

Notice Publication Date: 12-1-06

Rules Amended: 165-012-0050

Subject: This amendment defines "committee" for purposes reporting the contribution of poll results, allocation of polling expenses, valuation of poll results and reporting of in-kind contributions of poll results. The amendment deletes the definition of "candidate" and substitutes a definition of "committee" that includes any candidate or candidate committee, measure committee, political party committee, chief petitioner committee, or other committee, or an agent of any of them. These committees have an obligation to report specific information related to polling.

Rules Coordinator: Brenda Bayes—(503) 986-1518

165-012-0050

Contribution of Polls, Allocation of Polling Expenses

(1) The purpose of this rule is to establish procedures for reporting the contribution of poll results, the allocation of polling expenses, the valuation of poll results, and the reporting of in-kind contributions of poll results.

(2) This rule does not apply to:

(a) Individuals mentioned in a poll who are not candidates; and

(b) Polls conducted internally by a campaign or entity that are not contributed.

(3) For purposes of this rule and, except where otherwise defined:

(a) "Committee" refers to all candidates/candidate committees, measure committees, political party committees, miscellaneous committees, chief petitioner committees or an agent of a committee.

(b) "Contributor" means a purchaser of a poll or agent who gives the poll results to one or more nonpurchaser candidates or non-purchaser political committees.

(c) "Date of purchase" means the date that a person pays for a poll.

(d) "Person" includes an agent of the person.

(e) "Poll:"

(A) Means a questioning of selected participants regarding one or more candidates or issues that comprises one or more questions, whether the questioning is commissioned or conducted by volunteers; and

(B) Includes a sample of participants that is a self-contained subset of all participants under paragraph (A) of this subsection.

(f) "Purchaser" means a person or political committee that requests or otherwise commissions and pays for a poll.

(g) "Receipt" means in the custody of a candidate or political committee. Examples of custody include but are not limited to physical or electronic possession or possession by means of telephonic or facsimile communication.

(h) "Results" means the raw data of a poll or any compiled conclusions and analysis supported by the raw data.

(4) The purchase of the results of a poll by a committee is an expenditure by the committee.

(5) The acceptance of the results of a poll that have a value under section 9 of this rule by a committee is an in-kind contribution by the contributor and an in-kind expenditure in the amount determined under sections 8 and 9 of this rule and must be reported by:

(a) The recipient committee; and

(b) If the contributor is required to file statements of contributions received and expenditures made under ORS 260.058 to 260.073, the contributor.

(6) A committee accepts the results of a poll if the committee:

(a) Requests the poll results; or

(b) Obtains the poll results from the contributor.

(7) A contributor of poll results shall retain records for two years sufficient to support the valuation of poll results and any allocation of poll costs.

(8) The contributor of a poll shall determine:

(a) The percentage of the poll's overall cost to be allocated to each of the committees directly or indirectly affected by the poll (Divide the number of questions in the sample received by a committee by the total number of questions asked in the sample); and

(b) The base amount of in-kind contribution to each recipient committee (Multiply the overall cost of the poll by a particular committee's percentage of the overall cost as calculated under subsection (a) of this section).

(9) For purposes of valuing poll results accepted by a committee:

(a) A poll shall have no value to any recipient committee if the poll is simultaneously released to each candidate who is running for nomination or election to an office covered by the poll.

(A) The provisions of this subsection may be used only if a poll covers more than one candidate.

(B) If any individual files for an office covered by a contributed poll within 90 days of the poll being valued under this subsection, the contributor must give the individual the poll results not later than the 30th day after the date the individual files for the office.

(b) A poll shall have no value to any recipient committee if the poll is released (prior to or simultaneously with delivery to a candidate covered in the poll or any political committee) to:

(A) The newspaper of largest circulation in the district from which a candidate or candidates are running, or if the district is statewide, to at least ten of the largest daily circulation newspapers in the state; and

(B) At least one broadcast media outlet licensed for commercial operations by the FCC whose primary broadcast coverage encompasses the district in which a candidate or candidates are running.

(c) A poll that is not valued under subsections (a) or (b) of this section shall be valued according to the valuation schedule provided in this subsection. Except as provided in subsection (d) of this section, poll results received by a committee within the following time periods after the last (closing) day that the purchaser or other entity conducting the poll accepts data from which the poll results will be compiled (for example, the day the last oral questions are asked or the day that the purchaser stops accepting mail returns) shall have the corresponding value to the recipient as an in-kind contribution:

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- (A) One to 15 days after the closing day, 100 percent of the:
- (i) Recipient candidate committee's base amount of in-kind contribution for a poll calculated under section 8(b) of this rule;
 - (ii) Overall cost of a poll for all other recipient committees.
- (B) 16 to 60 days after the closing day, 50 percent of the:
- (i) Recipient candidate committee's base amount of in-kind contribution for a poll calculated under section 8(b) of this rule; or
 - (ii) Overall cost of a poll for all other recipient committees.
- (C) Sixty one to 180 days after the closing day, five percent of the:
- (i) Recipient candidate committee's base amount of in-kind contribution for a poll calculated under section 8(b) of this rule; or
 - (ii) Overall cost of a poll for all other recipient committees.
- (D) More than 180 days after the closing day, no value to the recipient committee.

(d) Notwithstanding subsection (c) of this section, a poll conducted and completed more than 180 days prior to the next election to be held after the poll is conducted and completed shall have no value to any recipient committee. "Conducted and completed" means that all questions, in any format, have been asked and further replies are not being accepted by the purchaser or other entity in charge of gathering data from which the poll results will be compiled, and that the poll results have been compiled.

(10) A committee that has accepted the results of a poll believing that the results have no value or a particular value is liable for any fees or penalties owed as a result of having to report the acceptance as a previously unreported or underreported in-kind contribution and expenditure if the results of the poll are subsequently determined to have value or a higher value to the committee.

Stat. Auth.: ORS 246.150 & 260.156

Stats. Implemented: ORS 260.083

Hist.: SD 24-1986, f. & ef. 8-1-86; ELECT 2-1996, f. & cert. ef. 1-3-96; ELECT 5-1997, f. & cert. ef. 3-24-97; ELECT 19-2003, f. & cert. ef. 12-5-03; ELECT 15-2006, f. & cert. ef. 12-29-06

Rule Caption: Method of Calculating Total Eligible Voters as Required by Article XI, Section 11(8) Oregon Constitution.

Adm. Order No.: ELECT 16-2006

Filed with Sec. of State: 12-29-2006

Certified to be Effective: 12-29-06

Notice Publication Date: 11-1-06

Rules Amended: 165-007-0130

Subject: The rule governs the calculation of eligible voters for purposes of determining whether the election has sufficient turnout for an election conducted under Article XI, section 11(8), of the Oregon Constitution. This rule is proposed for amendment to clarify language and update Appendix A.

Rules Coordinator: Brenda Bayes—(503) 986-1518

165-007-0130

Method of Calculating Registered Voters Eligible to Vote for Elections Conducted Pursuant to Article XI, section 11(8) of the Oregon Constitution

(1) The purpose of this rule is to assist county elections officials in calculating the total number of eligible voters for purposes of applying Article XI, section 11(8) of the Oregon Constitution. For purposes of applying Article XI, section 11(8) of the Oregon Constitution and this rule, active registered voters are eligible voters, and inactive registered voters are not eligible voters.

(2) To calculate the total number of eligible voters within the district holding the election, county elections officials must:

(a) Determine the number of active registered voters as of the voter registration deadline in ORS 247.025. This is the base group of "registered voters eligible to vote."

(b) Add to the base group of "registered voters eligible to vote" any voter who is ineligible due to a change in residence address, or any inactive voter, who updates their voter registration as provided in ORS 247.307.

(c) Add to the base group of "registered voters eligible to vote" any voter determined to have been placed on the inactive list in error.

(d) Subtract from the base group of "registered voters eligible to vote," all voters who are determined during the particular election to be ineligible to vote, based on information received during the conduct of the election. These subtractions shall be made in the following manner:

(A) Subtract all voters who were mailed a ballot, which is returned as undeliverable, if the information on the returned envelope shows that the voter's residence address has changed, or that the voter is deceased.

(B) Subtract all voters for whom written information is received, other than a returned ballot, showing to the satisfaction of the county elections official that the voter is ineligible to vote.

(3) The information regarding eligibility used to make the calculations described in (2)(b) through (d) shall be made based on information received by the county elections official after the voter registration deadline in ORS 247.025 and not later than 8:00 p.m. on election day. Information received after that time shall not be used to calculate the total number of eligible voters for that election.

(4) The calculation of the percentage of ballots cast to the number of eligible voters to vote on the measure for a particular election shall be not later than the thirtieth (30th) day after the election.

(5) A voter eligible to vote within the district holding an election subject to Article XI, section 11(8) of the Oregon Constitution will be considered to have "cast a ballot" if the ballot has been returned to an elections office and the ballot is determined to be qualified to be counted (outer envelope contains signature of voter, signature matches the registration signature of the voter, no marks on outside of envelope which would cause ballot to be rejected). If these conditions are met, the ballot is "cast" even if the ballot, when opened for counting, is determined to be deficient and is not counted, or if the voter does not vote on the particular measure at issue in the calculation.

(g) For purposes of determining voter eligibility in local elections, Appendix A of this rule will apply.

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

Stat. Auth.: ORS 246.120, 246.150, 254.465, 254.470 & Or. Const. Art. XI, Sec. 11(8)

Stats. Implemented: Or. Const. Art. XI, Sec. 11(8)

Hist.: ELECT 3-1997, f. & cert. ef. 2-25-97; ELECT 11-1997, f. & cert. ef. 10-27-97; ELECT 12-1999(Temp) f. & cert. ef. 10-19-99 thru 4-14-00; ELECT 4-2000, f. & cert. ef. 2-4-2000; ELECT 9-2003, f. & cert. ef. 9-3-03; ELECT 8-2006, f. & cert. ef. 4-27-06; ELECT 16-2006, f. & cert. ef. 12-29-06

Rule Caption: Updates Enforcement Actions for Campaign Finance Civil Penalty Election Law Violations.

Adm. Order No.: ELECT 17-2006

Filed with Sec. of State: 12-29-2006

Certified to be Effective: 12-29-06

Notice Publication Date: 12-1-06

Rules Amended: 165-013-0010

Subject: ORS 260.215(4) directs the Secretary of State to require a candidate or treasurer of a principal campaign committee to provide documentation of not more than 8 transactions previously supplied on campaign finance reports. This amendment permanently adopts the temporary amendments that exempted from disclosure any bank account number(s), credit card number(s) or social security number(s) supplied as documentation pursuant to ORS 260.200(3) as well as setting penalties for failing to provide documentation to a spot check review request. Appendix A of this rule is updated to include statutory changes that were passed in the 2005 Legislative Session.

Rules Coordinator: Brenda Bayes—(503) 986-1518

165-013-0010

Penalty Matrix for Other Campaign Finance Violations

(1) This penalty matrix applies to civil penalties for campaign finance violations not covered by the penalty matrices in the Campaign Finance Manual.

(2)(a) Spot Check Review. The Secretary of State, Elections Division, will hold exempt from disclosure as a public record any bank account number(s), credit card number(s) or social security number(s) received as required documentation in response to a request for documentation necessary to perform a spot check review in accordance with ORS 260.215(4).

(b) If a principal campaign committee fails to provide documentation or provides insufficient documentation in response to a request for documentation necessary to perform a spot check review, each omitted or insufficient item is a violation of ORS 260.055(1).

(c) Omitted or insufficient information submitted after the deadline provided for in the notice of spot check review, but prior to the deadline for a candidate or treasurer to request a hearing may result in a 50% per item reduction of the penalty, if the candidate or treasurer also submits a written statement explaining why it was not possible through the exercise of reasonable diligence to provide the information on or before the deadline provided for in the notice of spot check review. If a public hearing is requested, the omitted or insufficient information may be submitted up to the date of the hearing. In such an event, the candidate or treasurer will be entitled to a 50% per item reduction of the assessed penalty if the candidate or treasurer

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urer establishes at the hearing that it was not possible through the exercise of reasonable diligence to provide the information on or before the deadline provided for in the notice of spot check review.

(d) The candidate or treasurer who filed the last report for the committee relating to the election, along with the candidate is responsible for submitting all requested documentation for all reports encompassed by the spot check review.

(3) Mitigating Circumstances. Except as specifically provided in paragraph (2)(c), the only mitigating circumstances that will be considered in a campaign finance violation covered by this rule include:

(a) The violation is a direct result of a valid personal emergency of the candidate or treasurer. A valid personal emergency is an emergency, such as a serious personal illness or death in the immediate family of the candidate or treasurer which caused the violation to occur. Personal emergency does not include a common cold or flu, or a long-term illness where other arrangements could have been made. In this case, independent written verification must be provided;

(b) The violation is the direct result of an error by the elections filing officer;

(c) The violation is the direct result of clearly-established fraud, embezzlement, or other criminal activity against the committee, committee treasurer or candidate, as determined in a criminal or civil action in a court of law or independently corroborated by a report of a law enforcement agency or insurer or the sworn testimony or affidavit of an accountant or bookkeeper or the person who actually engaged in the criminal activity;

(d) The violation is the direct result of fire, flood or other calamitous event, resulting in physical destruction of, or inaccessibility to, committee records. ("Calamitous event" means a phenomenon of an exceptional character, the effects of which could not have been reasonably prevented or avoided by the exercise of due care or foresight); or

(e) The violation is the direct result of failure of a professional delivery service to deliver documents in the time guaranteed for delivery by written receipt of the service provider (this does not include delivery by fax).

(4)(a) Penalty Matrix. These mitigating circumstances may be considered in reducing, in whole or in part, the civil penalty. If the violation is a direct result of an error by the elections filing officer, the violation is waived and no penalty is assessed.

(b) The penalty amount for a violation will be calculated against the same candidate or treasurer for a period based on the number of violations by the candidate or treasurer of the same offense in the two years preceding the date the violation occurs.

(c) For purposes of determining penalty amounts for violations of campaign finance violations covered by this rule Appendix A of this rule will apply. [Appendix not included. See ED. NOTE.]

[ED. NOTE: Appendix referenced is available from the agency.]

Stat. Auth.: ORS 246.150, 260.200

Stats. Implemented: ORS 260.200, 260.215, 260.232, 260.995

Hist.: ELECT 13-2000, f. 7-31-00, cert. ef. 8-4-00; ELECT 22-2003, f. & cert. ef. 12-5-03; ELECT 1-2004, f. & cert. ef. 2-13-04; ELECT 16-2005, f. & cert. ef. 12-30-05; ELECT 10-2006(Temp), f. & cert. ef. 7-6-06 thru 1-2-07; ELECT 17-2006, f. & cert. ef. 12-29-06

Rule Caption: Prescribes when a Residence Address Disclosure Exemption may be granted by the County Elections Official.

Adm. Order No.: ELECT 18-2006

Filed with Sec. of State: 12-29-2006

Certified to be Effective: 1-1-07

Notice Publication Date: 12-1-06

Rules Amended: 165-005-0130

Subject: As of January 1, 2007, the Attorney General's Address Confidentiality Program becomes operative. Authorizing legislation directs county elections officials not to disclose the residence addresses of participants, or of the parents or guardians of participants. This rule provides the procedure for participants and county elections officials to follow to exempt a participant's residence address from disclosure as a public record.

Rules Coordinator: Brenda Bayes—(503) 986-1518

165-005-0130

Residence Address Disclosure Exemption

(1) The purpose of this rule is to define when a county elections official may exempt the residence address of an elector from disclosure as a public record.

(2) The terms used in this rule shall have the same meaning as defined in ORS Chapters 246 through 260, commonly referred to as "Oregon Election Laws".

(3) An elector may request that a county elections official not disclose the residence address of the elector. If the elector demonstrates to the satisfaction of the county elections official that the personal safety of the elector, or the personal safety of a family member residing with the elector, is in danger if the residence address remains available for public inspection, the county elections official shall not disclose that information except in compliance with a court order, a request by a law enforcement agency, or with the consent of the elector.

(4) An exemption from disclosure granted under this rule shall include the residence address on the elector's voter registration record, registration lists produced in accordance with ORS 247.940 and 247.945, poll books, and any other material produced or maintained by the county elections official which is available for public inspection that may reveal the requestor's residence address. The elector's mailing address may be used in place of the exempt residence address.

(5) A request under section (3) of this rule shall be submitted to the county elections official. The exemption request shall be submitted on form SEL 550 Application to Exempt Residence Address from Disclosure. The request shall be in writing, signed by the elector, and shall include:

(a) The name of the elector requesting exemption;

(b) A non-exempt mailing address for the elector; and

(c) Evidence sufficient to establish to the satisfaction of the county elections official that disclosure of the elector's residence address would constitute a danger to the personal safety of the elector, or of a family member residing with the elector. Such evidence may include copies of the following documents:

(A) An affidavit, medical records, police reports or court records showing that the elector, or a family member residing with the elector, has been a victim of domestic violence;

(B) A citation or an order issued under ORS 133.055 for the protection of the elector, or a family member residing with the elector;

(C) An affidavit or police report showing that a law enforcement officer has been contacted concerning domestic violence, other physical abuse, or threatening or harassing letters or telephone calls directed at the elector, or a family member residing with the elector;

(D) A temporary restraining order or other no-contact order to protect the elector, or a family member residing with the elector, from future physical abuse;

(E) Court records showing that criminal or civil legal proceedings have been filed regarding physical protection for the elector, or a family member residing with the elector;

(F) A citation or a court's stalking protective order pursuant to ORS 163.735 or 163.738, obtained for the protection of the elector, or a family member residing with the elector;

(G) An affidavit or police report showing that the elector, or a family member residing with the elector, has been a victim of a person convicted of the crime of stalking or of violating a court's stalking protective order;

(H) A conditional release agreement issued under ORS 135.250-135.260 providing protection for the elector, or a family member residing with the elector;

(I) A protective order issued pursuant to ORS 135.873 or 135.970 protecting the identity or place of residence of the elector, or a family member residing with the elector;

(J) An affidavit from a district attorney, or deputy district attorney, stating that the elector, or a family member residing with the elector, is scheduled to testify or has testified as a witness at a criminal trial, grand jury hearing or preliminary hearing, and that such testimony places the personal safety of the witness in danger;

(K) A court order stating that the elector, or a family member residing with the elector, is or has been a party, juror, judge, attorney or involved in some other capacity in a trial, grand jury proceeding or other court proceeding, and that such involvement places the personal safety of that elector in danger; or

(L) Such other documentary evidence that establishes to the satisfaction of the county elections official that disclosure of the elector's residence address would constitute a danger to the personal safety of the elector, or a family member residing with the elector.

(6) The county elections official receiving a request under this rule will promptly review the request and notify the elector, in writing, whether the evidence submitted is sufficient to demonstrate to the satisfaction of the county elections official that the personal safety of the elector, or a family member residing with the elector, would be in danger if the residence

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address remains available for public inspection. The county elections official may request that the elector submit additional information concerning the request.

(7) If a county elections official grants the request to exempt the residence address of an elector from disclosure as a public record, the county elections official must include a statement in its notice to the elector that: the exemption will remain effective until the elector requests termination of the exemption or the elector is required to update the elector's voter registration.

(8) If the elector is required to update the elector's voter registration, the elector may apply for another exemption from disclosure. At the time of updating if no SEL 550 Application To Exempt Residence Address From Disclosure As A Public Record accompanies the voter registration card or is incomplete, the county elections official must send notice, by certified mail return receipt requested, to the elector that states:

(a) Currently the elector's address is non-disclosed; and

(b) If an updated SEL 550 Application To Exempt Residence Address From Disclosure As A Public Record is not received within 10 business days of receipt of the notice, the elector's residence address will not be exempt from disclosure as a public record.

(9) An elector who has requested that a county elections official not disclose his or her residence address may revoke the request by notifying, in writing, the county elections official to which the request was made that disclosure no longer constitutes a danger to personal safety. The notification must be signed by the person who submitted the original request for nondisclosure of the residence address.

(10.) Form SEL 550 may be used by a public safety officer to request that the officer's home address, home telephone number and electronic mail address be exempted from disclosure pursuant to ORS 192.502. A public safety officer making such a request is not required to provide information described in paragraph (5)(c).

(11) Form SEL 550 shall be used by a participant or parent or guardian of a participant in the Address Confidentiality Program to request that the elector's residence address be exempted from disclosure pursuant to ORS 192.842. The form shall be completed by the participant and include:

(a) The name of the elector requesting exemption;

(b) The substitute address provided by the Address Confidentiality Program; and

(c) A copy of the Address Confidentiality Program Authorization Card.

(12) A request under section (11) of this rule is not required to be signed and a copy of the Address Confidentiality Program Authorization Card is the only evidentiary documentation required.

(13) If a participant or parent or guardian of a participant in the Address Confidentiality Program is required to update the elector's voter registration due to a change in residence address, only an updated voter registration card is required to be completed.

(14) If a participant or parent or guardian of a participant in the Address Confidentiality Program is required to update the elector's voter registration due to a name change section (8) of this rule applies. If an updated SEL 550 is received in response to the notice in section (8) of this rule it must be accompanied by a copy of the Address Confidentiality Program Authorization Card.

(15) Pursuant to ORS 192.842 the county elections official may not disclose the elector's residence address, and the county elections official shall use the substitute address of the program participant for purposes of mailing a ballot to an elector under ORS 254.470.

Stat. Auth.: ORS 246.150 & 247.969

Stats. Implemented: ORS 247.965 & 192.842

Hist.: ELECT 3-1994, f. & cert. ef. 2-4-94; ELECT 13-2001, f. & cert. ef. 6-15-01; ELECT 8-2003, f. & cert. ef. 9-3-03; ELECT 4-2006, f. & cert. ef. 4-18-06; ELECT 18-2006, f. 12-29-06, cert. ef. 1-1-07

Rule Caption: Adoption of 2007 Campaign Finance Manual.

Adm. Order No.: ELECT 1-2007

Filed with Sec. of State: 1-5-2007

Certified to be Effective: 1-5-07

Notice Publication Date: 12-1-06

Rules Amended: 165-012-0005

Subject: This rule amendment designates the *2007 Campaign Finance Manual for Candidates and Political Committees* and associated forms as the procedures and guidelines to be used by candidates and political committees for compliance with campaign finance regulations. This amendment also readopts the *2006 Campaign*

Finance Manual and associated forms as the procedures and guidelines to be used by chief petitioner committees for compliance with campaign finance regulations.

Rules Coordinator: Brenda Bayes—(503) 986-1518

165-012-0005

Designating the Campaign Finance Manual and Forms

(1) The Secretary of State designates the *2007 Campaign Finance Manual for Candidates and Political Committees* and associated forms as the procedures and guidelines to be used by candidates and political committees for compliance with Oregon campaign finance regulations.

(2) The Secretary of State designates the *2006 Campaign Finance Manual* and associated forms as the procedures and guidelines to be used by chief petitioner committees for compliance with Oregon campaign finance regulations.

Stat. Auth.: ORS 246.120, 246.150, 260.156 & 260.200

Stats. Implemented: ORS 246.120, 246.150, 260.156 & 260.200

Hist.: SD 101, f. & ef. 12-3-75; SD 120, f. & ef. 12-21-77; SD 34-1980, f. & ef. 3-6-80; SD 28-1983, f. & ef. 12-20-83; SD 3-1986, f. & ef. 2-26-86; ELECT 32-1988(Temp), f. & cert. ef. 8-26-88; ELECT 22-1989(Temp), f. & cert. ef. 11-9-89; ELECT 19-1990, f. & cert. ef. 6-4-90; ELECT 14-1992 (Temp), f. & cert. ef. 6-10-92; ELECT 37-1992, f. & cert. ef. 12-15-92; ELECT 34-1993, f. & cert. ef. 11-1-93; ELECT 1-1995(Temp), f. & cert. ef. 2-23-95; ELECT 15-1995, f. & cert. ef. 12-18-95; ELECT 9-1996, f. & cert. ef. 7-26-96; ELECT 5-1997, f. & cert. ef. 3-24-97; ELECT 6-1997(Temp), f. & cert. ef. 4-18-97; ELECT 15-1997, f. & cert. ef. 12-31-97; ELECT 5-1998, f. & cert. ef. 2-26-98; ELECT 8-1998, f. & cert. ef. 6-2-98; ELECT 9-1998, f. & cert. ef. 9-11-98; ELECT 13-1998(Temp), f. & cert. ef. 12-15-98 thru 6-13-99; ELECT 2-1999(Temp), f. & cert. ef. 1-15-99 thru 7-14-99; ELECT 3-1999, f. & cert. ef. 3-1-99; ELECT 1-2000, f. & cert. ef. 1-3-00; ELECT 3-2002, f. & cert. ef. 3-13-02; ELECT 23-2003, f. & cert. ef. 12-12-03; ELECT 13-2005, f. & cert. ef. 12-30-05; ELECT 1-2007, f. & cert. ef. 1-5-07

Water Resources Department Chapter 690

Rule Caption: Amended Mid Coast Basin Program Rules.

Adm. Order No.: WRD 1-2007

Filed with Sec. of State: 1-5-2007

Certified to be Effective: 1-5-07

Notice Publication Date: 9-1-06

Rules Amended: 690-518-0020

Subject: The Water Resources Commission adopted rules related to the Mid Coast Basin Program (OAR Chapter 690, Division 518). These rules amended the basin program to reflect the priority date for a reservation to be the date the Commission took action to initiate the rulemaking process. Reservations are reflected in the Department's water availability model and future water right applications or appropriate reserved water may only request to use such water for multi-purpose storage for future economic development

The Commission approved initiation of the rulemaking process on May 5, 2006.

Rules Coordinator: Debbie Colbert—(503) 986-0878

690-518-0020

Reservations

(1) In addition to the uses specified in subsection (1)(a) of OAR 690-518-0010, 1.5 cfs of the water of Woahink Lake are reserved for municipal purposes and 0.75 cfs for public park purposes.

(2) The waters of the following streams are reserved for municipal purposes in the amounts specified:

(a) Aalsea River below stream mile 25 — 5 cfs.

(b) Yachats River below stream mile 5 — 1 cfs.

(3) The waters of the following streams are reserved for multipurpose storage for future economic development as allowed under ORS 537.356 with a priority date of May 5, 2006:

(a) A reservation of 374 acre-feet of unappropriated water in Rock Creek, tributary to Devil's Lake,

(b) A reservation of 1,250 acre-feet of unappropriated water from Treat River, tributary to Salmon River,

(c) A reservation of 1,350 acre-feet of unappropriated water from an unnamed stream (locally referred to as "Side Creek"), tributary to Devil's Lake, for future application exclusively by the City of Lincoln City.

Stat. Auth.: ORS 536 & 537

Stats. Implemented: ORS 536.310, 537.249, 537.356 & 537.358

Hist.: WRB 36, f. 7-27-66; WRB 59, f. 4-15-74; WRB 62, f. 3-26-75; WRD 4-1981, f. & cert. ef. 5-28-81; WRD 4-1984, f. & cert. ef. 10-30-84; WRD 5-1987, f. & cert. ef. 5-20-87; WRD 20-1990, f. & cert. ef. 12-14-90, Renumbered from 690-080-0180; WRD 1-2007, f. & cert. ef. 1-5-07

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Rule Caption: Updated rules related to contested case hearings and rulemaking; adopted rules for public records requests.

Adm. Order No.: WRD 2-2007

Filed with Sec. of State: 1-5-2007

Certified to be Effective: 1-5-07

Notice Publication Date: 5-1-06

Rules Adopted: 690-385-3145

Rules Amended: 690-385-0100, 690-385-3100, 690-385-3200, 690-385-3500

Subject: The Water Resources Commission adopted rules related to district water right transfers (OAR chapter 690, division 385). These rules provide certain districts the opportunity to apply to temporarily (for one irrigation season) change the point of diversion for a water right in the event an emergency prevents a district from diverting the water to which it is legally entitled. These rules implement HB 2875 (Chapter 401, 2005 Oregon Water Laws) which created a new emergency provision for districts. They describe the requirements and procedures for the Department to evaluate an application to temporarily change a point of diversion in response to an emergency.

Rules Coordinator: Debbie Colbert—(503) 986-0878

690-385-0100

Definitions

The definitions in this rule, along with the definitions in OAR 690-08-0001 (Statutory Ground Water Terms), 690-300-0010 (Definitions), and 690-380-0100 (Water Right Transfers), apply to the rules in OAR chapter 690, division 385. Where a term is defined in more than one rule, the definition in OAR 690-385-0100 applies.

(1) "Application" means a petition by a district to transfer water rights within district boundaries as used in ORS 540.570 through 540.580.

(2) "District" means an irrigation district formed under ORS chapter 545, a drainage district formed under ORS chapter 547, a water improvement district formed under ORS chapter 552, a water control district formed under ORS chapter 553, or a corporation formed under ORS chapter 554.

(3) "District boundaries" means the extent and fixed limit of district jurisdictional authority under state law described by metes and bounds, public land survey, or assessor's map and tax lot numbers.

(4) "Enlargement" means an expansion of a water right and includes, but is not limited to:

(a) Using a greater rate or duty of water per acre than currently allowed under a right;

(b) Increasing the acreage irrigated under a right;

(c) Failing to keep the original place of use from receiving water from the same source; or

(d) Diverting more water at the new point of diversion or appropriation than is legally available to that right at the original point of diversion or appropriation.

(5) "Full-Time Manager", as used in ORS 540.572 and OAR 690-385-5000, means a person under contract to, or employed by a district to provide general supervision of the business and the employees of the district. The manager must be employed no less than 1,600 hours per calendar year.

(6) "Injury" or "Injury to an existing water right" means a proposed transfer would result in another, existing water right not receiving previously available water to which it is legally entitled.

(7) "Manager" means a person under contract to, or employed by a district to provide general supervision of the business and the employees of the district.

(8) "No Longer Irrigated or Susceptible of Irrigation" means:

(a) Land on which water for irrigation has not been applied for a period of five successive irrigation seasons; or

(b) Land that does not have reasonable access to the system of irrigation works of the district, or that cannot be irrigated or that is not susceptible to or would not, by reason of being permanently devoted to uses other than agricultural, horticultural, viticultural or grazing uses, be directly benefited by actual irrigation from the district.

(9) "Notice of Permanent District Transfer" means notification of a change in place of use allowed by a district prior to submitting a transfer application to make the change permanent.

(10) "Point of appropriation" means a well or the pump location on a sump at which groundwater is withdrawn from the ground for use under a groundwater right.

(11) "Point of diversion" means the place at which surface water is diverted from a surface water source as specified in the water right.

(12) "Primary water right" means the water right designated by the Commission as the principal water supply for the authorized use, or if no designation has been made, the water right designated by the applicant as the principal water supply for the authorized use.

(13) "Protest" means a written statement expressing disagreement with approval of a transfer application and includes the fee prescribed in ORS 536.050.

(14) "ODFW" means the Oregon Department of Fish and Wildlife.

(15) "Supplemental water right or permit" means an additional water right to make up a deficiency in supply from an existing water right. A supplemental water right or permit is used in conjunction with a primary water right.

(16) "User" means an owner of land who is subject to the charges or assessments of a district and from whose land the appurtenant water right would be transferred, or an owner of land within the district boundaries to which a water right would be transferred.

(17) "Water use subject to transfer" means a water use established by:

(a) An adjudication under ORS Chapter 539 as evidenced by court decree;

(b) A water right certificate;

(c) A water use permit for which a request for issuance of a water right certificate under ORS 537.250 has been received and approved by the Commission under ORS 537.250; or

(d) A transfer application for which an order approving the change has been issued under ORS 540.530 and for which proper proof of completion of the change has been filed with the Commission.

(18) "DSL" means the Department of State Lands

(19) "Emergency" means a sudden, unforeseen event resulting in damage to an authorized point of diversion structure or primary conveyance canal that prevents a district from diverting the water to which it is legally entitled, and necessitates immediate action to minimize loss of property by water users within the district.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.570, 540.572 - 540.578 & 540.580

Hist.: WRD 1-1993, f. & cert. ef. 2-3-93; WRD 5-1996, f. & cert. ef. 7-11-96; Renumbered from 690-021-0010, WRD 9-2004, f. & cert. ef. 11-16-04; WRD 2-2007, f. & cert. ef. 1-5-07

690-385-3100

Types of District Temporary Transfers

District temporary transfers include:

(1) A change in place of use;

(2) A change in type of use of a water right to store water;

(3) A change in type of use from a primary right to a supplemental right;

(4) A change in point of diversion or appropriation to facilitate a change in place of use;

(5) A change in point of diversion in response to an emergency; and

(6) A change from a surface water point of diversion to a ground water appropriation.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.570

Hist.: WRD 1-1993, f. & cert. ef. 2-3-93; WRD 5-1996, f. & cert. ef. 7-11-96; Renumbered from 690-021-0030, WRD 9-2004, f. & cert. ef. 11-16-04; WRD 2-2007, f. & cert. ef. 1-5-07

690-385-3145

Temporary Change in Point of Diversion in Response to an Emergency

(1) As provided in ORS 540.570, a temporary change in point of diversion may be made in response to an emergency as defined in OAR 690-385-0100(19).

(2) A temporary change in point of diversion is restricted to the same source of surface water or to ground water from an unconfined aquifer that is hydraulically connected to the same source of surface water pursuant to OAR 690-385-3150, and shall be limited to diverting no more than the quantity of water available for diversion from the surface water source at the original point of diversion.

(3) Pursuant to OAR 690-385-3000(1), a district may submit and the Department may approve an application for a temporary change in point of diversion in response to an emergency for a period of time not to exceed one irrigation season.

ADMINISTRATIVE RULES

(4) If more than one irrigation season is necessary to correct the emergency under OAR 690-385-0100(19), a district shall submit an application for a temporary change in point of diversion for the succeeding irrigation season.

(5) Under this rule, a district may be limited to filing no more than two temporary transfer applications, for successive irrigation seasons, in response to the same emergency.

(6) An applicant shall not divert water from a temporary change in point of diversion in response to an emergency prior to:

(a) Submitting a complete application as required under OAR 690-385-3200(3)(a)(C) that lists the agencies and governments and contact names with whom the applicant has notified and consulted; and

(b) Consulting with applicable state agencies such as ODFW and DSL, and applicable local governments and tribal governments about the temporary change in point of diversion.

(7) The Department shall consult with ODFW to determine whether a fish screen device is necessary for the diversion pursuant to OAR 690-385-3520.

(8) Pursuant to OAR 690-385-3500, a final order approving a temporary change in point of diversion in response to an emergency may include any conditions or restrictions necessary to prevent injury to another water right.

(9) If the proposed transfer affects an instream water right, the Department shall develop any conditions or restrictions necessary to prevent injury to the instream water right in consultation with the state agency that has management responsibility for the resources protected by the instream water right.

(10) The Department, may at any time upon determining a temporary change in point of diversion results in injury to an existing water right:

(a) Impose conditions to prevent injury; or

(b) Reject or revoke the change.

Stat. Auth.: ORS 536.025, 536.027

Stats. Implemented: ORS 540.570

Hist.: WRD 2-2007, f. & cert. ef. 1-5-07

690-385-3200

District Temporary Transfer Applications

(1) Each district temporary transfer application shall contain the standard information required by OAR 690-385-2000.

(2) Pursuant to ORS 540.570(3), a district temporary transfer application shall include a statement certifying the district notified each affected user that the Department may condition or revoke a district temporary transfer, at any time, upon determining the change results in injury to an existing water right.

(3) In addition to the standard application information required under OAR 690-385-2000, temporary district transfer applications shall include the following information:

(a) For a change in point of diversion or appropriation, or a change from surface water point of diversion to ground water appropriation, the application shall include:

(A) The existing and proposed points of diversion or points of appropriation located accurately in reference to a public land survey corner.

(B) If the request is for a change in point of appropriation, or a change in point of diversion to a ground water appropriation (well), copies of water well reports for the authorized and proposed point of appropriation. Each water well report shall be labeled to correctly identify and locate the well, and identify the well report as either the authorized or proposed point of appropriation. If water well reports are not available, a description of the construction of each well, including but not limited to, well depth, static water level, casing size, and any other necessary information to establish the groundwater body developed or proposed to be developed.

(C) If the request is for a change in point of diversion in response to an emergency, a listing of agencies, local and tribal governments, and the applicable contact names with whom the applicant has consulted about the change in point of diversion.

(b) For a change in type of use from a primary right to a supplemental right, the application shall identify the change from primary to supplemental for the applicable authorized and proposed place of use by its location within the public land survey, tax lot number, and the name of each user.

(c) For a change in type of use of a water right to store water, the application shall include:

(A) Written consent to the change in type of use from the operator of the reservoir; and

(B) If the water right to store water is issued in the name of a federal governmental agency, include written consent from the agency to the change in type of use.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 536.050, 540.570 & 540.574

Hist.: WRD 1-1993, f. & cert. ef. 2-3-93; WRD 5-1996, f. & cert. ef. 7-11-96; Renumbered from 690-021-0040, WRD 9-2004, f. & cert. ef. 11-16-04; WRD 2-2007, f. & cert. ef. 1-5-07

690-385-3500

District Temporary Transfer Approval and Final Orders

A district temporary transfer application submitted according to ORS 540.570 and OAR 690-385-3200 shall be approved if the Department determines that:

(1) The water right proposed for transfer is subject to transfer as defined in ORS 540.505(4) and OAR 690-385-0100(17) and, for a right described under OAR 690-385-0100(17)(d), the proof of completion has been approved under OAR 690-385-7600;

(2) The proposed transfer would not result in enlargement as defined in OAR 690-385-0100(4);

(3) The proposed transfer would not result in injury as defined in OAR 690-385-0100(6); and

(4) Any other applicable requirements for district temporary water right transfers are met.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.570

Hist.: WRD 9-2004, f. & cert. ef. 11-16-04; WRD 2-2007, f. & cert. ef. 1-5-07

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| 330-070-0026 | 1-1-07 | Amend | 2-1-07 | 339-010-0055 | 12-28-06 | Amend | 2-1-07 |
| 330-070-0045 | 1-1-07 | Amend | 2-1-07 | 340-228-0300 | 12-22-06 | Amend | 2-1-07 |
| 330-070-0059 | 1-1-07 | Amend | 2-1-07 | 340-228-0600 | 12-22-06 | Adopt | 2-1-07 |
| 330-070-0060 | 1-1-07 | Amend | 2-1-07 | 340-228-0602 | 12-22-06 | Adopt | 2-1-07 |
| 330-070-0064 | 1-1-07 | Amend | 2-1-07 | 340-228-0603 | 12-22-06 | Adopt | 2-1-07 |
| 330-070-0070 | 1-1-07 | Amend | 2-1-07 | 340-228-0604 | 12-22-06 | Adopt | 2-1-07 |
| 330-070-0073 | 1-1-07 | Amend | 2-1-07 | 340-228-0605 | 12-22-06 | Adopt | 2-1-07 |
| 330-090-0110 | 12-1-07 | Amend | 1-1-07 | 340-228-0606 | 12-22-06 | Adopt | 2-1-07 |
| 331-105-0020 | 12-1-06 | Amend | 1-1-07 | 340-228-0608 | 12-22-06 | Adopt | 2-1-07 |
| 331-105-0030 | 12-1-06 | Amend | 1-1-07 | 340-228-0610 | 12-22-06 | Adopt | 2-1-07 |
| 331-110-0005 | 12-1-06 | Amend | 1-1-07 | 340-228-0612 | 12-22-06 | Adopt | 2-1-07 |
| 331-110-0010 | 12-1-06 | Amend | 1-1-07 | 340-228-0614 | 12-22-06 | Adopt | 2-1-07 |
| 331-110-0055 | 12-1-06 | Amend | 1-1-07 | 340-228-0616 | 12-22-06 | Adopt | 2-1-07 |
| 331-120-0000 | 12-1-06 | Amend | 1-1-07 | 340-228-0618 | 12-22-06 | Adopt | 2-1-07 |
| 331-120-0020 | 12-1-06 | Amend | 1-1-07 | 340-228-0620 | 12-22-06 | Adopt | 2-1-07 |
| 331-125-0010 | 12-1-06 | Amend | 1-1-07 | 340-228-0622 | 12-22-06 | Adopt | 2-1-07 |
| 331-135-0000 | 12-1-06 | Amend | 1-1-07 | 340-228-0624 | 12-22-06 | Adopt | 2-1-07 |
| 333-002-0010 | 11-16-06 | Amend | 1-1-07 | 340-228-0626 | 12-22-06 | Adopt | 2-1-07 |
| 333-002-0035 | 11-16-06 | Amend | 1-1-07 | 340-228-0628 | 12-22-06 | Adopt | 2-1-07 |
| 333-002-0040 | 11-16-06 | Amend | 1-1-07 | 340-228-0630 | 12-22-06 | Adopt | 2-1-07 |
| 333-002-0050 | 11-16-06 | Amend | 1-1-07 | 340-228-0632 | 12-22-06 | Adopt | 2-1-07 |
| 333-002-0070 | 11-16-06 | Amend | 1-1-07 | 340-228-0634 | 12-22-06 | Adopt | 2-1-07 |
| 333-002-0080 | 11-16-06 | Amend | 1-1-07 | 340-228-0636 | 12-22-06 | Adopt | 2-1-07 |
| 333-002-0090 | 11-16-06 | Amend | 1-1-07 | 340-228-0638 | 12-22-06 | Adopt | 2-1-07 |
| 333-002-0100 | 11-16-06 | Amend | 1-1-07 | 340-228-0640 | 12-22-06 | Adopt | 2-1-07 |
| 333-002-0110 | 11-16-06 | Amend | 1-1-07 | 340-228-0642 | 12-22-06 | Adopt | 2-1-07 |
| 333-002-0120 | 11-16-06 | Amend | 1-1-07 | 340-228-0644 | 12-22-06 | Adopt | 2-1-07 |
| 333-002-0130 | 11-16-06 | Amend | 1-1-07 | 340-228-0646 | 12-22-06 | Adopt | 2-1-07 |
| 333-002-0140 | 11-16-06 | Amend | 1-1-07 | 340-228-0648 | 12-22-06 | Adopt | 2-1-07 |
| 333-002-0150 | 11-16-06 | Amend | 1-1-07 | 340-228-0650 | 12-22-06 | Adopt | 2-1-07 |
| 333-002-0160 | 11-16-06 | Amend | 1-1-07 | 340-228-0652 | 12-22-06 | Adopt | 2-1-07 |
| 333-002-0170 | 11-16-06 | Amend | 1-1-07 | 340-228-0654 | 12-22-06 | Adopt | 2-1-07 |
| 333-002-0210 | 11-16-06 | Amend | 1-1-07 | 340-228-0656 | 12-22-06 | Adopt | 2-1-07 |
| 333-002-0220 | 11-16-06 | Amend | 1-1-07 | 340-228-0658 | 12-22-06 | Adopt | 2-1-07 |

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| 340-228-0664 | 12-22-06 | Adopt | 2-1-07 | 410-122-0240 | 1-1-07 | Amend | 1-1-07 |
| 340-228-0666 | 12-22-06 | Adopt | 2-1-07 | 410-122-0280 | 1-1-07 | Amend | 1-1-07 |
| 340-228-0668 | 12-22-06 | Adopt | 2-1-07 | 410-122-0320 | 1-1-07 | Amend | 1-1-07 |
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| 340-228-0671 | 12-22-06 | Adopt | 2-1-07 | 410-122-0340 | 1-1-07 | Amend | 1-1-07 |
| 340-228-0672 | 12-22-06 | Adopt | 2-1-07 | 410-122-0360 | 1-1-07 | Amend | 1-1-07 |
| 340-228-0673 | 12-22-06 | Adopt | 2-1-07 | 410-122-0365 | 1-1-07 | Amend | 1-1-07 |
| 340-228-0674 | 12-22-06 | Adopt | 2-1-07 | 410-122-0375 | 1-1-07 | Amend | 1-1-07 |
| 340-228-0676 | 12-22-06 | Adopt | 2-1-07 | 410-122-0380 | 1-1-07 | Amend | 1-1-07 |
| 340-228-0678 | 12-22-06 | Adopt | 2-1-07 | 410-122-0400 | 1-1-07 | Amend | 1-1-07 |
| 340-238-0040 | 12-22-06 | Amend | 2-1-07 | 410-122-0420 | 1-1-07 | Amend | 1-1-07 |
| 340-238-0060 | 12-22-06 | Amend | 2-1-07 | 410-122-0500 | 1-1-07 | Amend | 1-1-07 |
| 340-244-0030 | 12-22-06 | Amend | 2-1-07 | 410-122-0510 | 1-1-07 | Amend | 1-1-07 |
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| 409-022-0020 | 1-1-07 | Adopt | 1-1-07 | 410-122-0600 | 1-1-07 | Amend | 1-1-07 |
| 409-022-0030 | 1-1-07 | Adopt | 1-1-07 | 410-122-0620 | 1-1-07 | Amend | 1-1-07 |
| 409-022-0040 | 1-1-07 | Adopt | 1-1-07 | 410-122-0660 | 1-1-07 | Amend | 1-1-07 |
| 409-022-0050 | 1-1-07 | Adopt | 1-1-07 | 410-122-0678 | 1-1-07 | Amend | 1-1-07 |
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| 409-030-0005 | 11-28-06 | Amend(T) | 1-1-07 | 410-127-0000 | 1-1-07 | Repeal | 2-1-07 |
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| 410-121-0157 | 1-1-07 | Amend | 2-1-07 | 410-141-0420 | 1-1-07 | Amend(T) | 2-1-07 |
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| 410-121-0320 | 1-1-07 | Amend | 2-1-07 | 410-141-0520 | 1-1-07 | Amend | 1-1-07 |
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| 410-122-0182 | 1-1-07 | Amend | 1-1-07 | 410-147-0365 | 1-1-07 | Amend | 1-1-07 |
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| 411-050-0412 | 1-1-07 | Amend | 2-1-07 | 414-350-0110 | 12-1-06 | Amend | 1-1-07 |
| 411-050-0415 | 1-1-07 | Amend | 2-1-07 | 414-350-0120 | 12-1-06 | Amend | 1-1-07 |
| 411-050-0420 | 1-1-07 | Amend | 2-1-07 | 437-002-0120 | 11-30-06 | Amend | 1-1-07 |
| 411-050-0430 | 1-1-07 | Amend | 2-1-07 | 437-002-0360 | 11-30-06 | Amend | 1-1-07 |
| 411-050-0435 | 1-1-07 | Amend | 2-1-07 | 437-003-0001 | 11-30-06 | Amend | 1-1-07 |
| 411-050-0437 | 1-1-07 | Repeal | 2-1-07 | 437-004-1041 | 11-30-06 | Amend | 1-1-07 |
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| 411-050-0442 | 1-1-07 | Repeal | 2-1-07 | 441-730-0000 | 12-21-06 | Amend | 2-1-07 |
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| 461-140-0220 | 1-1-07 | Amend | 2-1-07 | 461-170-0103 | 1-1-07 | Amend | 2-1-07 |
| 461-140-0242 | 1-1-07 | Amend | 2-1-07 | 461-170-0130 | 1-1-07 | Amend | 2-1-07 |
| 461-140-0242 | 1-1-07 | Amend | 2-1-07 | 461-175-0010 | 1-1-07 | Amend | 2-1-07 |
| 461-140-0270 | 1-1-07 | Amend | 2-1-07 | 461-175-0030 | 1-1-07 | Repeal | 2-1-07 |
| 461-140-0296 | 1-1-07 | Amend | 2-1-07 | 461-175-0222 | 1-1-07 | Am. & Ren. | 2-1-07 |
| 461-140-0300 | 1-1-07 | Amend | 2-1-07 | 461-175-0250 | 1-1-07 | Amend | 2-1-07 |
| 461-145-0001 | 1-1-07 | Amend | 2-1-07 | 461-180-0044 | 1-1-07 | Amend | 2-1-07 |
| 461-145-0020 | 1-1-07 | Amend | 2-1-07 | 461-180-0085 | 1-1-07 | Amend | 2-1-07 |
| 461-145-0022 | 1-1-07 | Amend | 2-1-07 | 461-180-0090 | 1-1-07 | Amend | 2-1-07 |
| 461-145-0025 | 1-1-07 | Amend | 2-1-07 | 461-185-0050 | 1-1-07 | Amend | 2-1-07 |
| 461-145-0055 | 1-1-07 | Amend | 2-1-07 | 461-190-0161 | 1-1-07 | Repeal | 2-1-07 |
| 461-145-0108 | 1-1-07 | Amend | 2-1-07 | 461-190-0197 | 1-1-07 | Amend | 2-1-07 |
| 461-145-0130 | 1-1-07 | Amend | 2-1-07 | 461-190-0310 | 1-1-07 | Amend | 2-1-07 |
| 461-145-0140 | 1-1-07 | Amend | 2-1-07 | 461-195-0301 | 1-1-07 | Amend | 2-1-07 |
| 461-145-0175 | 1-1-07 | Amend | 2-1-07 | 461-195-0305 | 1-1-07 | Amend | 2-1-07 |
| 461-145-0185 | 1-1-07 | Adopt | 2-1-07 | 461-195-0310 | 1-1-07 | Amend | 2-1-07 |
| 461-145-0220 | 1-1-07 | Amend | 2-1-07 | 461-195-0325 | 1-1-07 | Amend | 2-1-07 |
| 461-145-0250 | 1-1-07 | Amend | 2-1-07 | 461-195-0511 | 1-1-07 | Amend | 2-1-07 |
| 461-145-0280 | 1-1-07 | Amend | 2-1-07 | 461-195-0541 | 1-1-07 | Amend | 2-1-07 |
| 461-145-0310 | 1-1-07 | Amend | 2-1-07 | 461-195-0611 | 1-1-07 | Amend | 2-1-07 |
| 461-145-0330 | 1-1-07 | Amend | 2-1-07 | 471-030-0074 | 12-3-06 | Amend(T) | 1-1-07 |
| 461-145-0340 | 1-1-07 | Amend | 2-1-07 | 471-030-0075 | 12-3-06 | Amend(T) | 1-1-07 |
| 461-145-0343 | 1-1-07 | Adopt | 2-1-07 | 471-040-0010 | 12-3-06 | Amend | 1-1-07 |
| 461-145-0440 | 1-1-07 | Amend | 2-1-07 | 471-040-0040 | 12-3-06 | Amend | 1-1-07 |
| 461-145-0470 | 1-1-07 | Amend | 2-1-07 | 471-040-0041 | 12-3-06 | Adopt | 1-1-07 |
| 461-145-0505 | 1-1-07 | Amend | 2-1-07 | 577-031-0140 | 1-5-07 | Amend | 2-1-07 |
| 461-145-0540 | 1-1-07 | Amend | 2-1-07 | 577-070-0005 | 1-5-07 | Amend | 2-1-07 |
| 461-145-0540 | 1-1-07 | Amend | 2-1-07 | 577-070-0010 | 1-5-07 | Amend | 2-1-07 |

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| 577-070-0025 | 1-5-07 | Amend | 2-1-07 | 584-040-0260 | 11-22-06 | Amend | 1-1-07 |
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| 577-070-0035 | 1-5-07 | Amend | 2-1-07 | 584-040-0280 | 11-22-06 | Amend | 1-1-07 |
| 577-070-0045 | 1-5-07 | Amend | 2-1-07 | 584-040-0290 | 11-22-06 | Amend | 1-1-07 |
| 577-070-0050 | 1-5-07 | Amend | 2-1-07 | 584-040-0310 | 11-22-06 | Amend | 1-1-07 |
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| 580-023-0005 | 11-29-06 | Adopt | 1-1-07 | 584-048-0006 | 11-22-06 | Amend | 1-1-07 |
| 580-023-0010 | 11-29-06 | Adopt | 1-1-07 | 584-048-0010 | 11-22-06 | Amend | 1-1-07 |
| 580-023-0015 | 11-29-06 | Adopt | 1-1-07 | 584-048-0015 | 11-22-06 | Amend | 1-1-07 |
| 580-023-0020 | 11-29-06 | Adopt | 1-1-07 | 584-048-0020 | 11-22-06 | Amend | 1-1-07 |
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| 580-023-0030 | 11-29-06 | Adopt | 1-1-07 | 584-048-0030 | 11-22-06 | Amend | 1-1-07 |
| 580-023-0035 | 11-29-06 | Adopt | 1-1-07 | 584-048-0032 | 11-22-06 | Amend | 1-1-07 |
| 580-023-0040 | 11-29-06 | Adopt | 1-1-07 | 584-048-0035 | 11-22-06 | Amend | 1-1-07 |
| 580-023-0045 | 11-29-06 | Adopt | 1-1-07 | 584-048-0040 | 11-22-06 | Amend | 1-1-07 |
| 580-023-0050 | 11-29-06 | Adopt | 1-1-07 | 584-048-0042 | 11-22-06 | Repeal | 1-1-07 |
| 580-023-0055 | 11-29-06 | Adopt | 1-1-07 | 584-048-0065 | 11-22-06 | Amend | 1-1-07 |
| 580-023-0060 | 11-29-06 | Adopt | 1-1-07 | 584-048-0067 | 11-22-06 | Amend | 1-1-07 |
| 580-023-0065 | 11-29-06 | Adopt | 1-1-07 | 584-048-0070 | 11-22-06 | Amend | 1-1-07 |
| 580-040-0035 | 1-11-07 | Amend | 2-1-07 | 584-048-0085 | 11-22-06 | Amend | 1-1-07 |
| 581-011-0077 | 12-12-06 | Amend | 1-1-07 | 584-048-0090 | 11-22-06 | Amend | 1-1-07 |
| 581-021-0061 | 12-12-06 | Amend | 1-1-07 | 584-048-0095 | 11-22-06 | Amend | 1-1-07 |
| 581-021-0062 | 12-12-06 | Adopt | 1-1-07 | 584-048-0105 | 11-22-06 | Amend | 1-1-07 |
| 581-022-1130 | 12-12-06 | Amend | 1-1-07 | 584-048-0110 | 11-22-06 | Amend | 1-1-07 |
| 581-045-0001 | 1-1-07 | Amend | 1-1-07 | 584-048-0115 | 11-22-06 | Amend | 1-1-07 |
| 581-045-0006 | 1-1-07 | Amend | 1-1-07 | 584-048-0120 | 11-22-06 | Amend | 1-1-07 |
| 581-045-0012 | 1-1-07 | Amend | 1-1-07 | 584-050-0004 | 11-22-06 | Amend | 1-1-07 |
| 581-045-0014 | 1-1-07 | Amend | 1-1-07 | 584-050-0005 | 11-22-06 | Amend | 1-1-07 |
| 581-045-0018 | 1-1-07 | Amend | 1-1-07 | 584-050-0006 | 11-22-06 | Amend | 1-1-07 |
| 581-045-0019 | 1-1-07 | Amend | 1-1-07 | 584-050-0007 | 11-22-06 | Repeal | 1-1-07 |
| 581-045-0023 | 1-1-07 | Amend | 1-1-07 | 584-050-0008 | 11-22-06 | Repeal | 1-1-07 |
| 581-045-0028 | 1-1-07 | Renumber | 1-1-07 | 584-050-0009 | 11-22-06 | Amend | 1-1-07 |
| 581-045-0032 | 1-1-07 | Amend | 1-1-07 | 584-050-0012 | 11-22-06 | Amend | 1-1-07 |
| 581-045-0036 | 1-1-07 | Am. & Ren. | 1-1-07 | 584-050-0015 | 11-22-06 | Amend | 1-1-07 |
| 581-045-0037 | 1-1-07 | Am. & Ren. | 1-1-07 | 584-050-0016 | 11-22-06 | Adopt | 1-1-07 |
| 581-045-0038 | 1-1-07 | Adopt | 1-1-07 | 584-050-0018 | 11-22-06 | Adopt | 1-1-07 |
| 581-045-0060 | 1-1-07 | Amend | 1-1-07 | 584-050-0019 | 11-22-06 | Adopt | 1-1-07 |
| 581-045-0061 | 1-1-07 | Amend | 1-1-07 | 584-050-0020 | 11-22-06 | Amend | 1-1-07 |
| 581-045-0062 | 1-1-07 | Amend | 1-1-07 | 584-050-0022 | 11-22-06 | Amend | 1-1-07 |
| 581-045-0064 | 1-1-07 | Amend | 1-1-07 | 584-050-0025 | 11-22-06 | Repeal | 1-1-07 |
| 581-045-0200 | 1-1-07 | Amend | 1-1-07 | 584-050-0027 | 11-22-06 | Amend | 1-1-07 |
| 581-045-0210 | 1-1-07 | Amend | 1-1-07 | 584-050-0035 | 11-22-06 | Amend | 1-1-07 |
| 584-017-0120 | 11-22-06 | Amend | 1-1-07 | 584-050-0040 | 11-22-06 | Amend | 1-1-07 |
| 584-017-0251 | 11-16-06 | Amend | 1-1-07 | 584-050-0042 | 11-22-06 | Amend | 1-1-07 |
| 584-017-0261 | 11-16-06 | Amend | 1-1-07 | 584-050-0043 | 11-22-06 | Adopt | 1-1-07 |
| 584-017-0441 | 11-22-06 | Amend | 1-1-07 | 584-060-0022 | 11-22-06 | Amend | 1-1-07 |
| 584-017-0442 | 11-22-06 | Amend | 1-1-07 | 584-060-0051 | 11-22-06 | Amend | 1-1-07 |
| 584-017-0451 | 11-22-06 | Amend | 1-1-07 | 584-060-0071 | 11-22-06 | Amend | 1-1-07 |
| 584-017-0452 | 11-22-06 | Amend | 1-1-07 | 584-080-0001 | 11-22-06 | Amend | 1-1-07 |
| 584-038-0290 | 11-22-06 | Amend | 1-1-07 | 584-080-0002 | 11-22-06 | Amend | 1-1-07 |
| 584-038-0295 | 11-22-06 | Amend | 1-1-07 | 584-080-0011 | 11-22-06 | Repeal | 1-1-07 |
| 584-038-0310 | 11-22-06 | Amend | 1-1-07 | 584-080-0012 | 11-22-06 | Adopt | 1-1-07 |
| 584-038-0320 | 11-22-06 | Amend | 1-1-07 | 584-080-0021 | 11-22-06 | Repeal | 1-1-07 |
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| 584-100-0006 | 11-22-06 | Amend | 1-1-07 | 629-606-0000 | 11-21-06 | Repeal | 1-1-07 |
| 585-001-0015 | 11-24-06 | Amend(T) | 1-1-07 | 629-606-0010 | 11-21-06 | Repeal | 1-1-07 |
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| 603-011-0371 | 12-4-06 | Amend | 1-1-07 | 629-606-0200 | 11-21-06 | Repeal | 1-1-07 |
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| 603-095-0360 | 12-21-06 | Repeal | 2-1-07 | 629-606-0600 | 11-21-06 | Repeal | 1-1-07 |
| 603-095-0380 | 12-21-06 | Amend | 2-1-07 | 629-606-0700 | 11-21-06 | Repeal | 1-1-07 |
| 603-100-0000 | 1-2-07 | Amend | 2-1-07 | 629-606-0800 | 11-21-06 | Repeal | 1-1-07 |
| 603-100-0010 | 1-2-07 | Amend | 2-1-07 | 629-606-0900 | 11-21-06 | Repeal | 1-1-07 |
| 603-100-0040 | 1-2-07 | Adopt | 2-1-07 | 629-606-1000 | 11-21-06 | Repeal | 1-1-07 |
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| 603-110-0200 | 11-20-06 | Adopt | 1-1-07 | 629-640-0110 | 1-8-07 | Amend | 2-1-07 |
| 603-110-0300 | 11-20-06 | Adopt | 1-1-07 | 635-004-0005 | 1-12-07 | Amend | 2-1-07 |
| 603-110-0400 | 11-20-06 | Adopt | 1-1-07 | 635-004-0009 | 1-12-07 | Amend | 2-1-07 |
| 603-110-0500 | 11-20-06 | Adopt | 1-1-07 | 635-004-0018 | 1-1-07 | Amend(T) | 2-1-07 |
| 603-110-0600 | 11-20-06 | Adopt | 1-1-07 | 635-004-0018 | 1-12-07 | Amend | 2-1-07 |
| 603-110-0700 | 11-20-06 | Adopt | 1-1-07 | 635-004-0018(T) | 1-12-07 | Repeal | 2-1-07 |
| 603-110-0800 | 11-20-06 | Adopt | 1-1-07 | 635-004-0027 | 1-1-07 | Amend(T) | 2-1-07 |
| 603-110-0900 | 11-20-06 | Adopt | 1-1-07 | 635-004-0033 | 1-1-07 | Amend(T) | 2-1-07 |
| 603-110-1000 | 11-20-06 | Adopt | 1-1-07 | 635-004-0033 | 1-12-07 | Amend | 2-1-07 |
| 603-110-1100 | 11-20-06 | Adopt | 1-1-07 | 635-004-0033(T) | 1-12-07 | Repeal | 2-1-07 |
| 629-021-0100 | 11-21-06 | Adopt | 1-1-07 | 635-005-0042 | 1-1-07 | Amend(T) | 1-1-07 |
| 629-021-0200 | 11-21-06 | Adopt | 1-1-07 | 635-005-0055 | 12-1-06 | Amend(T) | 1-1-07 |
| 629-021-0300 | 11-21-06 | Adopt | 1-1-07 | 635-005-0055 | 12-26-06 | Amend | 2-1-07 |
| 629-021-0400 | 11-21-06 | Adopt | 1-1-07 | 635-005-0055(T) | 12-26-06 | Suspend | 2-1-07 |
| 629-021-0500 | 11-21-06 | Adopt | 1-1-07 | 635-006-0232 | 1-12-07 | Amend | 2-1-07 |
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| 629-021-0700 | 11-21-06 | Adopt | 1-1-07 | 635-006-1015(T) | 1-12-07 | Repeal | 2-1-07 |
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| 629-021-0900 | 11-21-06 | Adopt | 1-1-07 | 635-006-1065 | 1-12-07 | Amend(T) | 2-1-07 |
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| 629-022-0130 | 1-11-07 | Amend | 2-1-07 | 635-039-0080(T) | 1-12-07 | Repeal | 2-1-07 |
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| 629-022-0250 | 1-11-07 | Amend | 2-1-07 | 635-042-0130 | 1-1-07 | Amend(T) | 2-1-07 |
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| 629-022-0310 | 1-11-07 | Repeal | 2-1-07 | 635-042-0135 | 1-1-07 | Amend(T) | 2-1-07 |
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| 629-022-0340 | 1-11-07 | Repeal | 2-1-07 | 635-060-0000 | 1-1-07 | Amend | 1-1-07 |
| 629-022-0350 | 1-11-07 | Repeal | 2-1-07 | 635-060-0046 | 1-1-07 | Amend | 1-1-07 |
| 629-022-0360 | 1-11-07 | Repeal | 2-1-07 | 635-060-0055 | 4-1-07 | Amend | 1-1-07 |
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| 629-022-0380 | 1-11-07 | Amend | 2-1-07 | 635-065-0401 | 1-1-07 | Amend | 1-1-07 |
| 629-022-0390 | 1-11-07 | Amend | 2-1-07 | 635-065-0625 | 1-1-07 | Amend | 1-1-07 |
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| 635-067-0000 | 1-1-07 | Amend | 1-1-07 | 736-017-0025 | 12-15-06 | Adopt | 1-1-07 |
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| 635-067-0034 | 12-15-06 | Amend(T) | 1-1-07 | 736-017-0040 | 12-15-06 | Adopt | 1-1-07 |
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| 690-385-3200 | 1-5-07 | Amend | 2-1-07 | 800-025-0050 | 2-1-07 | Amend | 2-1-07 |
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| 813-130-0080(T) | 1-11-07 | Repeal | 2-1-07 | 820-010-0227 | 11-21-06 | Adopt | 1-1-07 |
| 813-130-0090 | 1-11-07 | Amend | 2-1-07 | 820-010-0228 | 11-21-06 | Adopt | 1-1-07 |
| 813-130-0090(T) | 1-11-07 | Repeal | 2-1-07 | 820-010-0230 | 11-21-06 | Amend | 1-1-07 |
| 813-130-0100 | 1-11-07 | Amend | 2-1-07 | 820-010-0231 | 11-21-06 | Adopt | 1-1-07 |
| 813-130-0100(T) | 1-11-07 | Repeal | 2-1-07 | 820-010-0255 | 11-21-06 | Amend | 1-1-07 |
| 813-130-0110 | 1-11-07 | Amend | 2-1-07 | 820-010-0300 | 11-21-06 | Amend | 1-1-07 |
| 813-130-0110(T) | 1-11-07 | Repeal | 2-1-07 | 820-010-0305 | 11-21-06 | Amend | 1-1-07 |
| 813-130-0120 | 1-11-07 | Amend | 2-1-07 | 820-010-0400 | 11-21-06 | Adopt | 1-1-07 |
| 813-130-0120(T) | 1-11-07 | Repeal | 2-1-07 | 820-010-0605 | 11-21-06 | Amend | 1-1-07 |
| 813-130-0130 | 1-11-07 | Amend | 2-1-07 | 820-010-0617 | 11-21-06 | Amend | 1-1-07 |
| 813-130-0130(T) | 1-11-07 | Repeal | 2-1-07 | 820-010-0618 | 11-21-06 | Repeal | 1-1-07 |
| 813-130-0140 | 1-11-07 | Adopt | 2-1-07 | 820-010-0620 | 12-5-06 | Amend(T) | 1-1-07 |
| 813-130-0140(T) | 1-11-07 | Repeal | 2-1-07 | 820-010-0621 | 12-5-06 | Adopt(T) | 1-1-07 |
| 813-205-0000 | 1-11-07 | Amend | 2-1-07 | 820-010-0622 | 11-21-06 | Amend | 1-1-07 |
| 813-205-0000(T) | 1-11-07 | Repeal | 2-1-07 | 820-010-0635 | 11-21-06 | Amend | 1-1-07 |
| 813-205-0010 | 1-11-07 | Amend | 2-1-07 | 820-015-0005 | 11-21-06 | Amend | 1-1-07 |
| 813-205-0010(T) | 1-11-07 | Repeal | 2-1-07 | 820-015-0010 | 11-21-06 | Amend | 1-1-07 |
| 813-205-0020 | 1-11-07 | Amend | 2-1-07 | 820-015-0026 | 11-21-06 | Amend | 1-1-07 |
| 813-205-0020(T) | 1-11-07 | Repeal | 2-1-07 | 820-020-0005 | 11-21-06 | Amend | 1-1-07 |
| 813-205-0030 | 1-11-07 | Amend | 2-1-07 | 820-020-0010 | 11-21-06 | Repeal | 1-1-07 |
| 813-205-0030(T) | 1-11-07 | Repeal | 2-1-07 | 820-020-0025 | 11-21-06 | Amend | 1-1-07 |
| 813-205-0040 | 1-11-07 | Amend | 2-1-07 | 820-020-0030 | 11-21-06 | Amend | 1-1-07 |
| 813-205-0040(T) | 1-11-07 | Repeal | 2-1-07 | 820-020-0035 | 11-21-06 | Amend | 1-1-07 |
| 813-205-0050 | 1-11-07 | Amend | 2-1-07 | 820-020-0045 | 11-21-06 | Amend | 1-1-07 |
| 813-205-0050(T) | 1-11-07 | Repeal | 2-1-07 | 820-040-0040 | 11-21-06 | Amend | 1-1-07 |
| 813-205-0051 | 1-11-07 | Amend | 2-1-07 | 837-012-0305 | 1-1-07 | Amend | 2-1-07 |
| 813-205-0051(T) | 1-11-07 | Repeal | 2-1-07 | 837-012-0310 | 1-1-07 | Amend | 2-1-07 |

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| 837-012-0320 | 1-1-07 | Amend | 2-1-07 | 855-065-0007 | 12-19-06 | Amend | 2-1-07 |
| 837-012-0325 | 1-1-07 | Amend | 2-1-07 | 855-065-0009 | 12-19-06 | Amend | 2-1-07 |
| 837-012-0330 | 1-1-07 | Amend | 2-1-07 | 855-065-0010 | 12-19-06 | Amend | 2-1-07 |
| 837-012-0340 | 1-1-07 | Amend | 2-1-07 | 855-065-0012 | 12-19-06 | Adopt | 2-1-07 |
| 837-012-0350 | 1-1-07 | Amend | 2-1-07 | 855-065-0013 | 12-19-06 | Adopt | 2-1-07 |
| 837-012-0360 | 1-1-07 | Amend | 2-1-07 | 855-070-0005 | 12-19-06 | Amend | 2-1-07 |
| 837-012-0370 | 1-1-07 | Amend | 2-1-07 | 855-080-0028 | 12-19-06 | Amend | 2-1-07 |
| 837-012-1200 | 12-1-06 | Amend | 1-1-07 | 855-110-0005 | 12-19-06 | Amend | 2-1-07 |
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| 837-012-1220 | 12-1-06 | Amend | 1-1-07 | 860-016-0021 | 12-15-06 | Amend | 1-1-07 |
| 837-012-1230 | 12-1-06 | Amend | 1-1-07 | 860-016-0025 | 12-15-06 | Amend | 1-1-07 |
| 837-012-1240 | 12-1-06 | Amend | 1-1-07 | 860-016-0030 | 12-15-06 | Amend | 1-1-07 |
| 837-012-1250 | 12-1-06 | Amend | 1-1-07 | 863-001-0005 | 1-1-07 | Amend | 2-1-07 |
| 837-012-1260 | 12-1-06 | Amend | 1-1-07 | 863-015-0125 | 1-1-07 | Amend(T) | 2-1-07 |
| 837-012-1270 | 12-1-06 | Amend | 1-1-07 | 918-040-0000 | 12-29-06 | Adopt | 2-1-07 |
| 837-012-1280 | 12-1-06 | Amend | 1-1-07 | 918-040-0020 | 12-29-06 | Adopt | 2-1-07 |
| 837-012-1290 | 12-1-06 | Amend | 1-1-07 | 918-040-0030 | 12-29-06 | Adopt | 2-1-07 |
| 837-012-1300 | 12-1-06 | Amend | 1-1-07 | 918-040-0040 | 12-29-06 | Adopt | 2-1-07 |
| 837-012-1310 | 12-1-06 | Amend | 1-1-07 | 918-098-1000 | 1-1-07 | Amend | 2-1-07 |
| 837-012-1320 | 12-1-06 | Amend | 1-1-07 | 918-098-1005 | 1-1-07 | Amend | 2-1-07 |
| 837-012-1330 | 12-1-06 | Amend | 1-1-07 | 918-098-1010 | 1-1-07 | Amend | 2-1-07 |
| 837-012-1340 | 12-1-06 | Amend | 1-1-07 | 918-098-1020 | 1-1-07 | Am. & Ren. | 2-1-07 |
| 837-012-1350 | 12-1-06 | Amend | 1-1-07 | 918-098-1025 | 1-1-07 | Amend | 2-1-07 |
| 837-012-1360 | 12-1-06 | Amend | 1-1-07 | 918-098-1030 | 1-1-07 | Amend | 2-1-07 |
| 837-012-1370 | 12-1-06 | Amend | 1-1-07 | 918-098-1040 | 1-1-07 | Repeal | 2-1-07 |
| 837-012-1380 | 12-1-06 | Amend | 1-1-07 | 918-098-1042 | 1-1-07 | Repeal | 2-1-07 |
| 837-012-1390 | 12-1-06 | Amend | 1-1-07 | 918-098-1045 | 1-1-07 | Repeal | 2-1-07 |
| 837-012-1400 | 12-1-06 | Amend | 1-1-07 | 918-098-1050 | 1-1-07 | Repeal | 2-1-07 |
| 837-012-1410 | 12-1-06 | Amend | 1-1-07 | 918-098-1055 | 1-1-07 | Repeal | 2-1-07 |
| 837-012-1420 | 12-1-06 | Amend | 1-1-07 | 918-098-1060 | 1-1-07 | Repeal | 2-1-07 |
| 837-040-0001 | 4-1-07 | Amend | 1-1-07 | 918-098-1065 | 1-1-07 | Repeal | 2-1-07 |
| 837-040-0010 | 4-1-07 | Amend | 1-1-07 | 918-098-1070 | 1-1-07 | Repeal | 2-1-07 |
| 837-040-0020 | 4-1-07 | Amend | 1-1-07 | 918-098-1075 | 1-1-07 | Repeal | 2-1-07 |
| 837-040-0140 | 4-1-07 | Amend | 1-1-07 | 918-098-1085 | 1-1-07 | Repeal | 2-1-07 |
| 839-005-0030 | 1-3-07 | Amend | 2-1-07 | 918-098-1200 | 1-1-07 | Repeal | 2-1-07 |
| 839-009-0280 | 1-3-07 | Amend | 2-1-07 | 918-098-1205 | 1-1-07 | Repeal | 2-1-07 |
| 839-020-0004 | 11-27-06 | Amend(T) | 1-1-07 | 918-098-1220 | 1-1-07 | Repeal | 2-1-07 |
| 839-025-0700 | 11-20-06 | Amend | 1-1-07 | 918-098-1305 | 1-1-07 | Amend | 2-1-07 |
| 839-025-0700 | 12-8-06 | Amend | 1-1-07 | 918-098-1310 | 1-1-07 | Amend | 2-1-07 |
| 839-025-0700 | 1-1-07 | Amend | 2-1-07 | 918-098-1315 | 1-1-07 | Amend | 2-1-07 |
| 839-025-0750 | 1-1-07 | Amend | 2-1-07 | 918-098-1320 | 1-1-07 | Amend | 2-1-07 |
| 839-050-0140 | 12-6-06 | Amend | 1-1-07 | 918-098-1325 | 1-1-07 | Amend | 2-1-07 |
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| 850-060-0226 | 12-11-06 | Amend | 1-1-07 | 918-098-1400 | 1-1-07 | Repeal | 2-1-07 |
| 851-002-0020 | 11-29-06 | Amend | 1-1-07 | 918-098-1440 | 1-1-07 | Amend | 2-1-07 |
| 851-002-0035 | 11-29-06 | Amend | 1-1-07 | 918-098-1450 | 1-1-07 | Amend | 2-1-07 |
| 851-031-0010 | 11-29-06 | Amend | 1-1-07 | 918-098-1620 | 1-1-07 | Amend | 2-1-07 |
| 851-062-0016 | 11-29-06 | Amend | 1-1-07 | 918-098-1630 | 1-1-07 | Amend | 2-1-07 |
| 855-001-0005 | 12-19-06 | Amend | 2-1-07 | 918-225-0230 | 12-29-06 | Repeal | 2-1-07 |
| 855-006-0005 | 12-19-06 | Amend | 2-1-07 | 918-225-0430 | 1-1-07 | Amend | 2-1-07 |
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| 855-050-0070 | 1-1-07 | Amend(T) | 2-1-07 | 918-225-0570 | 1-1-07 | Amend | 2-1-07 |
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| 855-065-0001 | 12-19-06 | Amend | 2-1-07 | 918-261-0034 | 1-1-07 | Adopt | 2-1-07 |
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